

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 43 OF 2016

MR. ANTONIO ROSARIO L.F. SIMOES.

... Petitioner

Versus

MR. AGNELO GREGORIO JOSE SIMOES
AND 2 ORS.,

... Respondents

Mr. Jagannath Jayant Mulgaonkar, Advocate for the petitioner.

Mr. G. Teles, Advocate for the respondent no.1.

Ms. D. Tulkar, Advocate for the respondent no.2.

Coram:- F. M. REIS, J.

Date:- 15th November, 2016

ORAL ORDER :

Heard Mr. J. J. Mulgaonkar, learned counsel appearing for the petitioner, Mr. G. Teles, learned counsel appearing for the respondent no.1 and Ms. D. Tulkar, learned counsel appearing for the respondent no.2.

2. This is a revision preferred by the petitioner challenging

the order passed by the learned Civil Judge Junior Division, Panaji, in Regular Civil Suit No.167/2015 dated 06.01.2016 whereby an application under Order VII Rule 11 of the Civil Procedure Code came to be rejected.

3. Mr. Mulgaonkar, learned counsel appearing for the petitioner has pointed out that the suit filed by the respondent is on the premise that the petitioner is a benami holder of the office premises purchased by the respondent no.1 on payment of the full consideration in the name of the petitioner. The learned counsel further pointed out that as such the suit is barred under Section 4 of the Benami Transactions (Prohibition) Act, 1988. The learned counsel has thereafter extensively taken me through the plaint to point out that there are specific averments therein that the subject premises was purchased in the name of the petitioner upon payment of the consideration by the respondent no.1 which clearly comes within the definition of 'benami' in terms of the said Act. The learned counsel further pointed out that as the suit is barred in terms of Section 4 of the said Act, the learned Judge was not justified to pass the impugned order and dismiss the application under Order VII Rule 11 of the Civil

Procedure Code. In support of his submissions, the learned counsel has relied upon the judgment of the Delhi High Court dated 30.07.2015 passed in CS (OS) No.478/2004 in the case of ***Sh. Amar N. Gugnani V/s Naresh Kumar Gugnani (Through Legal Heirs)***.

4. On the other hand, Mr. G. Teles, learned counsel appearing for the respondent no.1 has specifically taken me through paras 4 and 21 of the plaint to point out that it is the case of the respondent no.1/plaintiff that as he was abroad and could not be in Goa at the relevant time, the subject premises were purchased in the name of the petitioner as trustee being his brother. The learned counsel further pointed out that this itself would come within the exception as culled out in Section 4 of the said Act. The learned counsel as such points out that the revision be accordingly rejected.

5. I have considered the submissions of the learned counsel and I have also gone through the records. It need not be overemphasized that to examine an application under Order VII Rule 11 of the Civil Procedure Code, the averments in the plaint are to be looked into. As pointed by Mr. Teles, the learned counsel appearing

for the respondent no.1, there are specific averments at para 21 to contend that the petitioner was a trustee of the respondent no.1 being his brother. The correctness or otherwise of such allegations would have to be examined after evidence is recorded. Section 4 of the said Act reads thus :

“4. Prohibition of the right to recover

property held benami- (1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held *benami*, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply,--

(a) where the person in whose name the property is held is a coparcener in

a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.”

6. On going through the said provisions, the bar to file a suit would not apply to the person who hold the property for the benefit of another person for whom he is a trustee. Considering the averments in the plaint referred to herein above, I find that there is no case made out by the petitioner to reject the plaint under Order VII Rule 11 of the Civil Procedure Code. The learned Judge shall examine this aspect after examining the defence of the respondents and framing issues in accordance with law. All contentions of the petitioner to that effect are left open. Subject to the above, revision stands rejected.

F. M. REIS, J.

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