

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO. 37 OF 2015

Village Panchayat at Veling Priol-Cuncolem, represented by its Secretary/Sarpanch, having office at V.P. Veling Priol-Cuncolem, Mardol, Petitioner
Ponda-Goa.

Versus

Ashok Raghu Naik, son of Raghu Bito Naik, aged 52 years, resident of House No. 805, Nagarwada, Priol, Mardol-Goa. Respondent

Mr. Nikhil Vaze, Advocate for the Petitioner.

Mr. Nigel Da Costa Frias, Advocate for the Respondent.

CORAM:- S.B. SHUKRE, J.

DATE:- 3rd MARCH, 2016.

ORAL JUDGMENT:

Heard. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. It is the contention of learned Counsel for the petitioner that the application compositely filed by invoking the provisions of Order 7 Rule 11 and Section 9 of C.P.C. has been

rejected on grounds not at all germane to the issue involved. He further submits that it was nobody's case that the attorney of the petitioner did not act in good faith.

3. Learned Counsel for the respondent pointed out that the use of word "Attorney" is a mistake on the part of the learned Civil Judge and she should have referred to the word "Administrator" because the paragraph 1 of the application states that the Administrator of the petitioner acted illegally, when the lease of the subject shop was granted to the respondent.

4. Whatever might be the case, the fact remains, and it can be seen from the impugned orders that the reason that it is the own case of the petitioner/defendant that some of its Agents or Officers illegally acted in granting lease of the subject shop, was the basis for rejection of the application. In this case, the issue is about attempt of the petitioner to illegally cancel the lease and not about illegal grant of lease.

5. That apart, as submitted by learned Counsel for the respondent, the plaint cannot be rejected on the basis of the

allegations made by the defendant in the written statement or in the application for rejection of the plaint [**Mayar (H.K.) Ltd. And Others Vs. Owners & Parties, Vessel M.V. Fortune Express and Others, AIR 2006 SC 1828**], but, the learned Civil Judge considered them, and erroneously.

6. It is further seen from the impugned order that the learned Civil Judge has also not considered the aspect of bar of suit in view of the provisions of Section 226(2) of the Goa Panchayat Raj Act, 1994 when this Section requires the parties to obtain previous sanction of the Zilla Panchayat for filing the suit against the Chief Executive Officer or the Secretary or any Officer of the Panchayat or the Panchayat itself. Of course, the learned Counsel for the respondent has submitted that the word "a Panchayat" and "Zilla Panchayat" used in Section 226(2) have to be understood in the context of "any other officer" of a Panchayat or a Zilla Panchayat. It is seen from the impugned order that the learned Civil Judge has not rejected the application on the ground that Section 226(2) is not applicable to the instant case but, for the reason that the suit has not been filed against any Officer of the Panchayat. This aspect of the matter, if raised, would also have to be decided appropriately by

the learned Civil Judge.

7. In view of the above, I find that the impugned order deserves to be quashed and set aside and the matter be remanded back to the trial Court for deciding the application vide Exhibit-14 afresh and in accordance with law. Accordingly, the Civil Revision Application is allowed. The impugned order is quashed and set aside. Application vide Exhibit-14 be decided afresh, in accordance with law and as expeditiously as possible, preferably within a period of three months. All contentions of both sides are kept open.

8. Civil Revision Application is disposed of.

S. B. SHUKRE, J.

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