

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 33 OF 2016

MR. DATTA S. NAIK, THR. THEIR DULY
CONST. ATT. SHRI. VALMIKI D. NAIK
AND ANR.,

... Petitioners

Versus

SHIVSONS RESORTS AND PROPERTIES
PVT. LTD. AND 4 ORS.,

... Respondents

Mr. R. G. Ramani, Advocate for the petitioners.
Mr. U. R. Timble, Advocate for the respondent nos. 1 to 3.

Coram:- F. M. REIS, J.

Date:- 25th November, 2016

ORAL ORDER :

Heard Mr. R. G. Ramani, learned counsel appearing for the petitioners and Mr. U. R. Timble, learned counsel appearing for the respondent nos. 1 to 3.

2. The challenge in the above petition is to the order passed by the learned Lower Appellate Court dated 31.03.2016 whereby an appeal preferred by the respondents challenging an order rejecting the plaint filed by the respondents came to be allowed and the application filed by the petitioners for rejection of the plaint came to be dismissed.

3. Mr. Ramani, learned counsel appearing for the petitioners points out that in terms of Section 15(h) of the

Specific Relief Act, 1963 the parties who are entitled to seek specific performance are clearly specified. It is further submitted that in terms thereof, the respondents have to plead that the company incorporated had intimated the petitioners about the accepting of the agreement allegedly executed by the company prior to the incorporation and that the terms of the agreement have to be accepted while incorporating the company. The learned counsel has taken me through the averments in the plaint to point out that there are no pleadings to that effect in the plaint filed by the respondents and as such the learned Trial Judge was justified to reject the plaint. The learned counsel further pointed out that the learned Lower Appellate Court has erroneously interfered in the order of the learned Trial Judge on the ground that such aspects are to be examined at the time of the trial of the suit. The learned counsel has taken me through the judgment passed by the learned Trial Judge to point out that a well reasoned order passed by the learned Judge has been erroneously interfered by the learned Lower Appellate Court. The learned counsel further pointed out that the learned Lower Appellate Court has misconstrued the provisions of Section 15(h) of the Specific Relief Act and as such has committed a jurisdictional error which calls for interference in the present revision application.

4. On the other hand, Mr. U. R. Timble, learned counsel

appearing for the respondent nos. 1 to 3 submits that there are specific averments in the plaint and the documents relied upon by the respondents that the requirements of Section 15(h) of the Specific Relief Act have been duly complied with. The learned counsel further pointed out that in the meanwhile for abandoned caution the respondents have also filed an application for amendment which is pending consideration before the learned Trial Judge. The learned counsel further pointed out that such defect if any is curable which does not in any way vitiate the plaint filed by the respondents. The learned counsel further pointed out that the respondents shall produce enough evidence to substantiate their case that the requirements of Section 15(h) of the Specific Relief Act have been duly complied with. The learned counsel as such submits that the application be accordingly rejected.

5. On perusal of the judgment passed by the learned Lower Appellate Court, I find that the learned Judge has proceeded to examine the material on record to come to the conclusion that there is no bar in law to file a suit in the manner so filed by the respondents herein. The learned Judge has also noted that there is no bar in law as contended by the petitioners to reject the plaint in terms of Order VII Rule 11 of the Civil Procedure Code.

Apart from that, the suit filed by the respondents is by impleading the Company as well as the promoters of the

Company. Reading the provisions of the Civil Procedure Code and the plaint and the documents relied referred to therein, I find prima facie, that the petitioners have failed to make out any case that the requirements as provided in Section 15(h) of the Specific Relief Act have not been complied with. In such circumstances, there is no jurisdictional error committed by the learned Judge while passing the impugned judgment which would call for interference of this Court in the present revision application. It is however clarified that the observations made in the impugned order are only tentative for the purpose of examining the application under Order VII Rule 11 of the Civil Procedure Code. Consequently, all contentions of the petitioners as well as the respondents on merits are left open to be examined during the course of the trial of the suit.

6. Subject to the above, the application stands rejected.

F. M. REIS, J.

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