

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 32 OF 2016

THE MORMUGAO PLANNING AND
DEVELOPMENT AUTHORITY, THR. ITS
MEMBER SECRETARY AND ANR.

... Petitioners

Versus

SMT. UJWALA VINAYAK PARAB AND 10
ORS.

... Respondents

Mr. Menino Pereira, Advocate for the Petitioners.

Mr. Abhay Nachinolkar, Advocate for the Respondent nos. 1, 2 and
3.

Coram:- F. M. REIS, J.

Date:- 17th November, 2016

P.C.

Heard Mr. Menino Pereira, learned Counsel appearing for the
Petitioners and Mr. Abhay Nachinolkar, learned Counsel appearing
for the Respondent nos. 1 to 3.

2. This is a Civil Revision Application challenging the Order
dismissing the application filed under Order 7 Rule 11 of Civil
Procedure Code by the Petitioners in respect of the suit filed by the
Respondent nos. 1 to 3.

3. Mr. Menino Pereira, learned Counsel appearing for the
Petitioners, has vehemently argued that there is no cause of action
against the Petitioners as, according to him, the dispute is with regard
to an access claimed by the Respondent nos. 1 to 3-Original

Plaintiffs as against the other defendants. Learned Counsel further pointed out that apparently the cause of action is on the ground that access is being blocked by the remaining defendants. The learned Counsel further pointed out that the Petitioners are a statutory body and there is a bar to file such suit under the Town and Country Planning Act against the Officers of such authorities. Learned Counsel further pointed out that though there are allegations at Paras 27 and 35 with regard to fraud and collusion, nevertheless, there are no particulars in the plaint to remotely suggest that there are any allegations to that effect. Learned Counsel further pointed out that the learned Judge whilst passing the impugned Order, erroneously found that there is no material filed by the Petitioners and dismissed the application. The learned Counsel as such submits that case has been made out for interference in the present Revision Application.

4. On the other hand, Shri Nachinolkar, learned Counsel appearing for the Respondent nos. 1 to 3-original Plaintiffs, herein, has pointed out that on plain reading of the allegations at Paras 27 and 35, it clearly shows that there are specific averments in the plaint raising the contentions of fraud and collusion as against the Officers of the Petitioners. Learned Counsel further submits that it is well settled that whilst examining the application under Order 7 Rule 11 of the Civil Procedure Code, only the averments of the plaint have to be looked into and not the defence raised in the written statement. Learned Counsel further submits that there is no jurisdictional error

committed by the learned Judge whilst passing the impugned Order and, consequently, Civil Revision Application be rejected.

5. I have carefully considered the submissions of the learned Counsel and I have also gone through the records. On plain reading of the said paragraphs referred to herein above, as pointed out by learned Counsel appearing for the Respondent nos. 1, 2 and 3, it clearly shows that there are specific averments in the plaint alleging that there was fraud and collusion between the official of the Petitioner and the co-Defendants. The truthfulness thereof has to be examined looking into the defence by the Petitioners in their written statement. At this stage, on plain reading of the plaint, I find that there is no case made out for any interference by this Court in dismissing the application filed under Order 7 Rule 11 of the Civil Procedure Code.

6. In such circumstances, I find that there is no jurisdictional error committed by the learned Judge which would call for interference by this Court in the present revision.

7. Civil Revision Application accordingly stands rejected.

F. M. REIS, J.

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