

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1048 OF 2016

MR. KLAUS D. ELIT., ... Petitioner
Versus
MR. TARUN MANSUKHLAL VASA AND 3 ... Respondents
ORS.,

Mr. Jitendra P. Supekar, Advocate for the Petitioner.

Coram:- F. M. REIS, J.

Date:- 22nd November, 2016

P.C.:

Heard Shri Jitendra P. Supekar, learned Counsel appearing for the Petitioner.

2. The challenge in the above petition is to an order dated 25.01.2016 whereby an application under Order 7 Rule 11 of Civil Procedure Code filed by the Petitioner to reject the plaint as against the Petitioner came to be dismissed.

3. Mr. Supekar, learned Counsel appearing for the Petitioner has vehemently argued that the suit filed by the Respondent no. 1 is basically making allegations against the Respondents no. 2, 3 and 4 and, in fact, there are no allegations against the Petitioner. Learned Counsel further pointed out that merely because the Petitioner is a Director of the company known as Keestrack NV,

based at Belgium, Respondent no.1 has made the Petitioner as one of the co-defendant. Learned Counsel has thereafter taken me minutely through the plaint and pointed out that there are no specific averments as against the Petitioner in connection with the second transaction. Learned Counsel further pointed out that merely because of the allegation in the plaint that the Petitioner had indicated in an email message the inability to supply the subject machinery, would not by itself be a cause of action to the Respondent no. 1 to file a suit against the petitioner.

4. Learned Counsel has thereafter taken me through the impugned Order passed by the learned Judge to point out that the plaint has been misconstrued by the learned Judge whilst making observation therein with regard to the Petitioner and, as such, the impugned Order deserves to be quashed and set aside. In support of his case the learned Counsel has relied upon Judgment of the Delhi High Court in 2007 DGLS (Del.) 480 in the case of Tristar Consultants versus Vcustomer Services India Pvt. Ltd. and Anr. and 1999 DGLS (Del.) 743 in the case of Vantage Construction (P) Ltd. versus Satnam Singh Gill and Anr..

4. I have considered the submissions of the learned Counsel and I have gone through the records.

5. In the present case, the application filed by the Petitioner is

essentially for rejection of plaint as against the Petitioner. The allegations in the plaint are of different aspects as at para 26 there are specific allegations as against the Petitioner herein. In the para disclosing the cause of action it is also pointed out that the Petitioner had intimated the inability to supply the machinery. The suit which has been filed as against the Petitioner does not, prima facie, state that the Petitioner is being sued as a Director of the concerned company. In such circumstances, the Judgments relied upon by the the learned Counsel appearing for the Petitioner would not be applicable to the facts of the present case. The cause of action consists of a bundle of facts which can extend to different transactions. Though Mr. J. Supekar, learned Counsel appearing for the Petitioner has disputed the truthfulness and correctness of the allegations as against the Petitioner, nevertheless, the defence of the Petitioner cannot looked into while considering the application under Order 7 Rule 11 of the Civil Procedure Code. Considering the allegations in the plaint and on bare perusal of the plaint, it is not possible to take a view that the Petitioner has no nexus with the alleged dispute raised by the petitioner herein.

6. In such circumstances, I find that there is no error committed by the learned Judge while passing the impugned Order. Hence, no case is made out for interference of this Court under Article

227 of the Constitution. Needless to say, the observations herein and in the impugned order are tentative findings which would not influence the learned Judge while deciding the suit on merits. The Petitioner, if so advised, can also raise all such contentions in the written statement to the plaint and on the basis thereof the Court can frame issues and decide the matter in accordance with law.

7. The Writ Petition, accordingly, stands disposed of.

F. M. REIS, J.

msr