

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 12 OF 2016

Maya Shrikant Sawant Dessai,
49 years of age,
Daughter of Babani Dessai,
Resident of H. No. 1130, Ghotmarad, Kakoda,
P.O. Curchorem, Goa.

..... Appellant

V e r s u s

1. The Chief Secretary
Government of Goa,
Secretariat, Porvorim, Goa.

2. The Executive Engineer,
Works Division XIV,
W.R.D., Gogol,
Margao, Goa.

..... Respondents

Mr. A. D. Bhobe, Advocate for the Appellant.

Mr. Sagar Dhargalkar, Addl. Government Advocate for the Respondents.

Coram :- F. M. REIS, J

Date : 5th August, 2016

ORAL JUDGMENT

Heard Shri Bhobe, learned Counsel appearing for the Appellant and
Shri Sagar Dhargalkar, learned Addl. Government Advocate appearing for the
Respondents.

2. Rule. Heard forthwith with the consent of the learned Counsel.
Learned Addl. Government Advocate appearing for the Respondents, waives
service. The notice also indicated that the parties were also put to notice that the

matter may be disposed of finally at the stage of admission.

3. The above Appeal challenges the Judgment/Order of the learned Addl. District Judge-2, South Goa, Margao, on 29.07.2015, whereby the plaint filed by the Appellants came to be rejected under Order 7 Rule 11 of the Civil Procedure Code.

4. Shri Bhobe, learned Counsel appearing for the Appellant has pointed out that the Appellant has filed a suit, inter alia, contending that the whole exercise carried out by the Respondent is in bad faith and by fraud which forced the Appellant to file the suit. It is further pointed out that based on such fraudulent act, an auction was carried out whereby contrary to the CADA Act, (Goa Command Area Development Act). Learned Counsel further pointed out that the suit was filed on the basis that the Respondents had acted in bad faith and, as such, according to him, the bar in terms of Section 50(2) of the said Act which requires a sanction to file the suit would not be applicable to the suit filed by the Appellant. Learned Counsel further pointed out that earlier a similar Order was passed by the learned Judge rejecting the plaint on the ground that the suit was barred in terms of Section 50(1) and 50(2) of the CADA Act. The learned Counsel further pointed out that as fraud has been alleged, the contention of the Respondents that there is a protection to the Officers, cannot be accepted. Learned Counsel further pointed out that the earlier Order dated 21.07.2014 was assailed before this Court which came to be disposed of by Judgment dated 25.02.2015. Learned Counsel has thereafter taken me through the findings at paras 14 and 15 of the said Judgment to point out that

as far as the contention of the Respondents that the suit was barred in terms of Section 50(2) of the CADA was concluded, whereby this Court took a view that as fraud and bad faith was alleged, these matters were to be examined on merits. Learned Counsel further submits that the matter was remanded to the learned Judge only to examine whether the suit was barred in terms of Section 50(1) of the CADA Act. Learned Counsel has thereafter taken me through the impugned Order passed by the learned Judge to point out that the learned Judge has in fact rejected the plaint on a spacious ground that the suit was barred under Section 50(2) of the said Act which was already concluded by the learned Single Judge of this Court in the said case.

5. On the other hand, Shri Sagar Dhargalkar,, learned Addl. Government Advocate appearing for the Respondents, has pointed out that the Order passed by the learned Single Judge had in fact remanded the matter to examine the pleadings of the parties to find out whether there was enough material to contend that the suit was filed alleging in bad faith, Learned Addl. Government Advocate further pointed out that there is no finding in the Judgment of the learned Single Judge to the effect that the issue with regard to lack of sanction in terms of Section 50(2) of the Act would have to be examined only on merits. Learned Addl. Government Advocate further pointed out that in terms of Section 50(2) of CADA Act irrespective as to whether the action of the concerned Officers is in bad faith or good faith, sanction is required in terms of the said provisions. Learned Counsel further pointed out that the learned Judge has rightly rejected the plaint filed by the Appellant.

6. On hearing the learned Counsel and on perusal of the record, the following point for determination arises in the present Appeal :

(I) Whether the learned Judge was justified to examine the claim of the Respondent that the suit is barred under Section 50(2) of the CADA despite of the Judgment passed by the learned Single Judge dated 25.02.2015 ?

7. Upon hearing the learned Counsel and on perusal of the record, para 15 of the said Judgment clearly shows that this Court has taken a view that as far as the protection given to the Officers is not available when the suit is filed on the ground the Officers have acted in bad faith. This Court has further held that these aspects would have to be examined on merits. It is not disputed that the protection to the Officers in filing suit is only available in terms of Section 50(2) of the CADA Act. In such circumstances, the finding of the learned Single Judge on this aspect stands concluded to the effect that these aspects would have to be examined on merits at the time of disposal of the suit.

8. In such circumstances, the remand by this Court was only to examine whether the suit was barred in terms of Section 50(1) of the CADA Act. The learned Addl. District Judge whilst passing the impugned Order has clearly come to the conclusion that on perusal of the averments in the plaint, it clearly emerges that the suit has been filed on the ground that the Respondents have acted in bad faith and by fraud. In such circumstances, once the Court has come to such conclusion, the question of thereafter proceeding to examine whether the suit was barred under Section 50(2) of the CADA Act is not at all justified considering the finding of the

learned Single Judge of this Court in the said Judgment. In such circumstances, I find that that the learned Judge was not justified to proceed to examine whether the suit was barred under Section 50(2) of the CADA Act in view of the findings rendered by this Court in the said Judgment dated 25.02.2015. Hence, the impugned Judgment passed by the learned Judge rejecting the plaint of the Appellant is not sustainable and is quashed and set aside. The findings rendered herein above are only for the purpose of examining the application under Order 7 Rule 11 of the Civil Procedure Code. These tentative findings shall not come in the way of the learned Judge whilst disposing of the suit on merits.

9. In view of the above, I pass the following :

ORDER

- (i) The impugned Order dated 29.07.2015 is quashed and set aside.
- (ii) The suit filed by the Appellant being Civil Suit no. 18 of 2014 is restored to the file of the learned District Judge.
- (iii) The learned District Judge is directed to dispose of the suit on its own merits in accordance with law.
- (iv) Needless to say, all the contention of the parties are left open.
- (v) The parties are directed to appear before the learned District Judge on 10.10.2016 at 10.00 a.m.

F .M. REIS, J.

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