

IN THE HIGH COURT OF BOMBAY AT GOA

**CIVIL REVISION APPLICATION NOS. 4
AND 12 OF 2017**

CIVIL REVISION APPLICATION NO. 4/2017

M/S Riverside Homes Developers Pvt. Ltd. ... Petitioner

Versus

Smt. Elizabeth Flora Dias e Luis & 29 Ors. ... Respondents

Shri Ashwin D. Bhobe, Advocate for the Petitioner.

Shri Jose Filipe Melo, Advocate for Respondent Nos. 1 and 2.

Shri Jagannath J. Mulgaonkar, Advocate for Respondent Nos. 17, 18, and 25 to 30.

CIVIL REVISION APPLICATION NO. 12/2017

Mr. Ramchandra Vithal Kenkre & 7 Ors. ... Petitioners

Versus

Smt. Elizabeth Flora Dias e Luis & 22 Ors. ... Respondents

Shri Jagannath J. Mulgaonkar, Advocate for the Petitioners.

Shri Jose Filipe Melo, Advocate for Respondent Nos. 1 and 2.

Shri Ashwin D. Bhobe, Advocate for Respondent No. 3.

CORAM:- C. V. BHADANG, J.

DATE:- 14th JUNE, 2017

ORAL ORDER:

Both these Revision Applications arise out of the order dated 06.12.2016, passed by the learned Senior Civil Judge at Mapusa in Special Civil Suit No. 81/2015/C. As such, both these Revision Applications are being disposed of by this common order.

2. The original defendant no. 1 filed an application (Exhibit-D/9) and the original defendant nos. 16, 17 and 24 to 29 filed application (Exhibit-D/15), seeking rejection of the plaint under Order VII Rule 11(a) and (d) of CPC, inter alia on the ground that the plaint does not disclose cause of action and that, it is barred by limitation. The learned Trial Court by the impugned order has rejected both these applications, which order is subject matter of challenge in these Revision Applications.

3. Undisputedly, respondent nos. 1 and 2, who are the plaintiffs have filed an application for amendment of the plaint in February, 2017, which is pending before the Trial Court. The learned Counsel for the respondent nos. 1 and 2 has placed reliance on the Division Bench judgment of this Court in the case of **Gaganmal Ramchand Vs. The Hongkong and**

Shanghai Banking Corporation, AIR (37) 1950 BOMBAY 345, in order to submit that the power of the Court to allow the amendment of pleadings under Order VI, Rule 17 of CPC, is not in any way restricted or controlled by Order VII, Rule 11 of CPC. In the said decision, it is inter alia held that although, the Court is bound to reject the plaint under Order VII, Rule 11(a), on the ground that it does not disclose any cause of action, however the Court has the power to allow amendment of the plaint.

4. The learned Counsel for the respondent nos. 1 and 2 has also placed reliance on the judgment of the Division Bench of this Court in the case of **Rajeshri alias Rajani U. Bhakta & Others Vs. Maria Elsa de Noronha Wolfango Da Silva & Others, 2010(3) Bom. C.R.65** and the judgment of the Supreme Court in the case of **Union of India Vs. Suresh J. Thanawala & Others, (2001) 8 SCC 185**.

5. The learned Counsel for the petitioner/s in both the Revision Applications, in all fairness do not dispute the legal proposition that the Trial Court can consider the application for amendment.

6. In such circumstances, the parties submit that the application filed by the petitioner seeking rejection of the plaint may be sent back to the Trial Court for deciding it afresh in accordance with law.

7. In the result, the Revision Applications are disposed of in the following terms, by consent of parties:

(a) The Civil Revision Application Nos. 4/2017 and 12/2017, are allowed.

(b) The impugned order is hereby set aside.

(c) Applications at Exhibit Nos. D/9 and D/15, are remitted back to the Trial Court for deciding them afresh, in accordance with law, after deciding the application for amendment.

(d) The respondent nos. 1 and 2 shall be at liberty to file a reply to the applications for rejection of plaint, within two weeks from today.

(e) Rival contentions of the parties are left open.

C. V. BHADANG, J.