

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 111 OF 2016

MANICABAI N. TENDULKAR, THR. HER
LAWFUL ATT., SHRI MOHAN NAMDEV
TENDULKAR.,

... Appellant

Versus

THE CHIEF OFFICER, MHAPSA
MUNICIPAL COUNCIL.,

... Respondent

Mr. Sanman Rajanikant Keny, Advocate for the appellant.
Mr. S. Bhangui, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 5th May, 2017

P.C.

Heard Mr. S. Keny, learned counsel appearing for the appellant and Mr. S. Bhangui, learned counsel appearing for the respondent.

2. The challenge in the above appeal is to the dismissal of the suit for want of notice under Section 289 of the Goa Municipalities Act. Both the Courts below have concurrently come to the conclusion that there was failure on the part of the appellant in issuing notice under Section 289(1) of the Goa Municipalities Act. The learned counsel appearing for the appellant fairly accepts that no notice to that effect was issued but however, points out that no defence was raised with that regard in the written statement filed by the respondent. The

learned counsel as such points out that the Courts below have erroneously come to the conclusion that the suit is not maintainable.

3. On perusal of the judgments passed by the Courts below, there is a categorical finding that as no statutory notice was issued in terms of the said provisions, the suit itself was not maintainable. Apart from that, the contention of the learned counsel appearing for the appellant that no such defence was raised has not been raised before the Courts below. In any event, failure to issue a statutory notice is itself fatal in filing the suit and as such I find that there is no substantial question of law which arises in the present appeal for consideration. The appellant, if so advised may take adequate remedy available in law to get her grievance adjudicated in accordance with law. The appeal stands disposed of accordingly.

F. M. REIS, J.

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