IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 712 OF 2016

M/S. PRIMOS BUILDERS, REP. BY
THEIR PARTNER, MR. ISIDORE
FRUMENCIO FERNANDES. ... Petitioner

Versus

MS. BANU BI AND 8 ORS. ... Respondents

Mr. Ajit R. Kantak with Ms. Rajas A. Kantak, Advocates for the Petitioner.
Mr. P.A. Kamat, Advocate for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 11th January, 2017

P.C:

Heard.

2. The respondents have filed a suit for specific performance of two agreements dated 21.01.1997 and 23.04.2007 and for some ancillary reliefs, in which the petitioner has lodged a counter claim again for specific performance of the very same agreements and for damages. The petitioner wants the transfer of the land, on which the building is constructed, while the respondents are seeking execution of confirmation/sale deeds and formation of a co-operative society etc. In the counter claim, the petitioner filed an application (Exhibit-10), under Order I, Rule 8(2) of CPC, for permission to sue in a representative capacity. That application, has been rejected by the Trial Court by order dated 04.05.2016, which is subject matter of challenge in this petition.

3. The learned Trial Court has inter alia held that the suit being a suit for specific performance, issue of examination of the question of reciprocal promises will arise and it will have to be examined whether, the petitioner (plaintiff in the counter claim) has performed his part of obligation towards each co-owner. In that view of the matter, the Trial Court has come to the conclusion that there is no community of interest and the order passed against one cannot be enforced against the other in representative capacity and therefore, permission to sue the original plaintiffs in the suit, in a representative capacity, cannot be granted.

4. During the course of pendency of the present petition, the respondents have furnished the detailed names and addresses of the co-owners, to the learned Counsel for the petitioner and a copy is also produced on record. In that view of the matter, the learned Counsel for the petitioner, on instructions, seeks permission to withdraw the writ petition, with a request that impleadment of these parties/co-owners may be allowed in the counter claim, before the Trial Court.

5. The learned Counsel for the respondents has no objection for the same.

6. In such circumstances, the petition is disposed of as withdrawn. The learned Trial Court shall permit the addition of the parties/co-owners on a formal application being made in that regard, within a period of two weeks from today.

In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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