

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 821 OF 2017

GERA DEVELOPMENTS PVT. LTD., THR.
ITS CHAIRMAN, KUMAR PRITADAS
GERA.,

... Petitioner

Versus

B. CHITRA AND ANR.,

... Respondents

Mr. Anthony Joe D'Silva, Advocate for the petitioner.

Coram:- C. V. BHADANG, J.

Date:- 12th September 2017

P.C.

Heard Shri D'Silva, the learned Counsel for the petitioner.

2. The petitioner is a builder. The respondent had agreed to purchase a flat from the petitioner. The respondent approached the Consumer Forum, alleging that the area of the flat is less than what was agreed to be sold by the petitioner. It appears that the Consumer Forum appointed a Commissioner to measure the flat, in which, it was found that the area of the flat was in fact more than what was agreed to be sold by the petitioner. Hence, the petitioner filed a suit against the respondent for recovery of the amount representing the price of the excess area. The respondent filed a written statement and raised a counterclaim seeking mandatory injunction, inter alia, seeking a direction to the

petitioner to execute sale deed of the flat and the car parking area.

3. The respondent also filed an application seeking interim relief for a direction to the petitioner to execute the sale deed. That application is rejected by the learned Trial Court on 02/01/2016. The learned Trial Court made certain observations indicating that the counterclaim is in fact in the nature of relief for specific performance, which is camouflaged as a suit for mandatory injunction.

4. The learned Trial Court framed issues, out of which issue no.8 reads as under :

"8. Whether the defendants prove that they are entitled for direction to the plaintiff to execute the sale deed and also depict the car parking?"

5. The petitioner filed an application, seeking to frame an additional issue about the compliance by the respondent with Section 16(c) of the Specific Relief Act, which has been rejected by the learned Trial Court by order dated 22/08/2017, which is subject matter of challenge in this petition.

6. I have heard Shri D'Silva, the learned Counsel for the

petitioner and perused record.

7. It is contended by the learned Counsel for the petitioner that in the order rejecting the application for interim injunction filed by the respondent, the Trial Court had clearly observed that the relief sought in the counterclaim is in the nature of specific performance of contract and in para 20, it has been observed that the respondent is required to prove their readiness and willingness to perform their part of the contract. This, according to the learned Counsel for the petitioner, is sufficient for framing of an additional issue as to the compliance with the ingredients of Section 16(c) of the Specific Relief Act.

8. I have carefully considered the circumstances and the submissions made.

9. The learned Trial Court has observed that in the counterclaim, there is no pleading about the readiness and willingness of the respondent and that the counterclaim is couched in the nature of a suit for mandatory injunction. The learned Trial Court has also observed that issue no.8, as referred to above, is wide enough to cover all the aspects of the reliefs claimed. Not only that, in para 8 of the order, the learned Trial Court has observed that in deciding whether the counterclaim can be treated as a suit for specific performance of contract, the

Court will have to examine Section 16 of the Specific Relief Act and in the absence of necessary averments in the plaint, no amount of proof will suffice. In such circumstances, the learned Trial Court has found it not necessary to frame the issue.

10. In my considered view, the impugned order does not demonstrate any infirmity, so as to require interference. The counterclaim as is framed and filed seeks relief of mandatory injunction. The observations in the order dated 02/01/2016 were made at the prima facie stage, while dealing with an application for interim mandatory injunction, filed by the respondent. Issue no.8 has rightly been found to be wide enough to cover all the aspects of the matter and the Trial Court has also observed that while considering the prayer in the counterclaim, (if it is to be treated as suit for specific performance of contract), the Court will have to look into the requirements of Section 16 of the Specific Relief Act. In such circumstances, the apprehension, if any, on behalf of the petitioner, in my considered view, is duly taken care of. No case for interference is made out. The petition is accordingly disposed of.

C. V. BHADANG, J.

SMA