

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.254 OF 2017

CPI-GERA Reality India Pvt. Ltd. & anr.
(Later known as GERA Reality India Pvt. Ltd.
Now merged with Gea Developments Pvt. Ltd.) ... Applicant

Vs.

Shri Anoop Kumar & Ors ... Respondents

Mr.D.J. Dalal for the Applicant
Mr.P.S. Patil i/b Triyama Legal for Respondent Nos.1 to 6
Mr.A.P. Kulkarni for Resp. No.13

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 10, 2017**

P.C. :

1. This Civil Revision Application is directed against the order dated 25.1.2017 passed below exhibit 358 ad 409 in Special Civil Suit No.1409 of 2016 by the 6th Joint Civil Judge, Senior Division at Pune. Respondent Nos.1 to 6 are the original plaintiffs, who filed the suit for cancellation of the approved plan and for cancellation of the agreements, which were entered into by the applicants i.e., defendant No.1 with the other defendants i.e., the respondents, who are mainly the bungalow owners and also for other reliefs of injunction. In the said suit, the original defendant No.1 i.e., the

applicants herein, who are the Builders/Developers, have moved an application below exhibit 358 and the other defendants also moved an application below exhibit 409 raising preliminary issue. The present applicants vide their application below exhibit 358 raised an issue that the suit is multifarious and necessary Court fees which is required to be paid under the Maharashtra Court Fees Act 1959 on each of the reliefs is not paid and thus, the suit is barred under the law. Under exhibit 409, the other defendants raised the issue on the same ground i.e., insufficient Court Fees and also under section 149 of the Maharashtra Regional Town Planning Act that the civil Court is not a proper authority and that the suit is time barred. The trial Court decided both the applications by a common order and rejected the same. The other defendants, who had moved the application below exhibit 409, did not challenge the said order. However, defendant Nos.1 and 2 challenged the said order by this Civil Revision Application.

2. The learned Counsel for the applicants has submitted that the applicants have asked for different reliefs i.e., cancellation of the agreements of many persons i.e., 93 bungalow owners; so also the challenge is to the approved plan of the Corporation.

Thus, distinct reliefs are sought and, therefore, it falls under section 18 of the Maharashtra Court Fees Act and on each relief, the plaintiffs are required to pay separate Court fees.

3. In support of his submissions, the learned Counsel relied on the judgment of this Court in the case of **Pushpaben Vishwambarlal Khetan & Ors. vs. Heena Narendra Patel**¹. The learned Counsel relied on this judgment and submitted that in the present suit also, 93 agreements are challenged and, therefore, as per the amount of consideration of those agreements, Court fees is to be paid.

4. He has further submitted that the cancellation of agreements which are asked for, only 9 agreements are of 2013 but all other agreements are prior to 3 years and thus, the suit is time barred. He further submitted that there is also a challenge to the jurisdiction of the trial Court on the point of non-issuance of necessary notice under section 487 of the Maharashtra Municipal Corporation Act and also he raised objection under section 149 of the Maharashtra Regional Town Planning Act. He submitted that though these two points are raised by the applicants before the

¹ (2015) Bom. CR 614

trial Court, it has not referred to the submissions and has not given reasoning on these two issues. He further submitted that in his application i.e., exhibit 358, though the applicant has not raised the issue of statutory obligation under section 487 of Maharashtra Municipal Corporations Act, the issue of law can be raised at any stage before the Court. The learned Counsel appearing for the applicant also submitted on the point of limitation that no reasoning is given by the trial Judge. In support of his submissions, the learned Counsel relied on **National Textile Corporation Ltd. vs. Nareshkumar Badrikumar Jagad & Ors.**².

5. Learned Counsel for the respondents submitted that the other defendants who have filed application below exhibit 409, have not challenged this order. That means they have accepted it and, therefore, the issue of limitation cannot be raised at this stage. The only point raised is that defendant Nos.1 and 2 have filed their application below exhibit 358 on the point of multifarious suit and Maharashtra Court Fees Act. He relied on the prayers made in the plaint and has submitted that this suit is filed in a representative capacity by six flat owners in the society and it is under Maharashtra Ownership Flats Act and under Specific relief

² (2011) 2 SCC 695

Act. In support thereof, he relied on the judgment of this court in the case of **Maria Phitomina Pereira vs. Rodrigues Construction**³.

6. Heard submissions. The submission of the learned Counsel for the applicant that it is a multifarious suit is not correct because it is not a suit embracing two or more distinct subjects but plaintiff Nos.1 to 6 have filed the suit in their representative capacity and basically challenge is given under the Maharashtra Ownership of Flats Act and the Specific Relief Act. Thus, the suit is filed for enforcement of statutory obligations by other owners against the Builder/Developer. In this suit, the maximum Court fees of Rs.3 lakhs is paid and, therefore, it is not correct to say that court fees ad-valorem of the consideration amounts of all the 93 agreements of bungalow owners is to be paid. The view taken by the learned trial Judge cannot be faulted with on this point.

7. It is true that in respect of the issue of limitation, there is not much discussion by the trial Court. However, as this issue is argued before this Court. In para 31 of the plaint, the plaintiffs have mentioned that the cause of action arose on 27.10.2016

³ 199 0 2 Bom CR 77

when they received the documents under Right to information Act from Pune Municipal Corporation and again on 9.11.2016 when the defendants tried to put a barricade on the portion of the open lawns and the suit is filed in 2016 itself. Moreover, the issue of limitation is based on facts and law and the said issue can be framed if the Court thinks fit at the time of settlement of issues under Order XIV of the Civil Procedure Code. The objection raised in respect of issuance of notice u/s 487 of Maharashtra Municipal Corporations Act also cannot be sustained because this objection is not raised by the Corporation. Moreover, there is a pleading in respect of the waiver of the requisite notice u/s 487 of the Maharashtra Municipal Corporations Act on the ground of urgency. On the said point also, if the Court thinks fit, the issue can be framed. U/s 149 of the MRTP Act, as it is submitted that apart from the challenge to the approved plans, the other reliefs are also prayed in respect of the cancellation of the agreements and also for injunction under MOFA and the Specific Relief Act, then, the reliefs can be clubbed and the objection cannot be sustained u/s 149 of the MRTP Act.

8. In the case of **Pushpaben Vishwambarlal Khetan & Ors. (supra)**, the learned Single Judge of this Court while dealing with the case of defamation found that 8 persons have filed one suit for their respective claims of damages for torts. However, a common court fee was paid only for one relief. Thus, the learned Judge has rightly held that the case falls u/s 18 of the Court Fees Act for multifarious suit and the suit was valued for a lesser amount and the Court held that individual claim of each plaintiff cannot be aggregated for the purpose of Court fees and each claim has to be valued separately and accordingly Court fees is to be paid where the suit embraces two or more subjects.

9. **National Textile Corporation Ltd. vs. Nareshkumar Badrikumar Jagad & Ors. (supra)**, the Supreme Court held that a pure legal issue for which no enquiry or proof is required can be permitted to be raised by the Court at any stage of the proceedings. This is a settled position of law and the Courts are bound by law.

10. In **Maria Phitomina Pereira vs. Rodrigues Construction (supra)**, the learned Single Judge has taken a view that the suit under MOFA is filed to enforce the obligation may be arisen out of

agreement as such and therefore, such suit would not fall within the scope of 6 (xi) of the Bombay Court Fees Act, 1959 but it is a statutory obligation which is being enforced and hence, the notional valuation under 6(iv)(j) of the Act would be proper.

11. Under such circumstances, I am of the view that the Civil Revision Application should fail and is accordingly rejected.

(MRIDULA BHATKAR, J.)