

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO.9 OF 2018.

Dattaprasad R. Shirodkar .. Petitioner.

Vs

Vinod Dwarkanath Khaparde
and anr. .. Respondents.

Shri Dinesh Naik, Advocate for the petitioner.

Shri Sudin Usgaonkar, Senior Advocate with Ms. V. Paleykar,
Advocate for the respondent no.1.

Shri A. Kakodkar, Advocate for the respondent no.2.

CORAM :- C. V. BHADANG, J.

DATE: 12th June, 2018

ORAL ORDER :

This revision application challenges the order dated 31/10/2017, passed by the Trial Court, rejecting the application under Order VII, Rule 11 of CPC, filed by the petitioner/ defendant for rejection of plaint.

2. By consent of parties, the petition is taken up for final disposal.

3. I have heard Shri Naik, the learned Counsel for the

petitioner, Shri Usgaonkar, the learned Senior Counsel for the first respondent and Shri Kakodkar, the learned Counsel for the second respondent- Village Panchayat.

4. The respondent no.1 has filed a suit against the petitioner and the second respondent under Section 34, 36 and 37 read with Section 3(a) of the Specific Relief Act, for permanent and mandatory injunction. The first respondent is *inter alia*, claiming permanent injunction restraining the petitioner from doing any construction in the parking space of the building 'Axle Height' situated at Penha de Franca, Bardez, Goa and for a mandatory injunction directing the petitioner to demolish the walls erected in the parking space. There are certain other reliefs also claimed in the suit. In short, according to the first respondent, he has purchased the flat in the suit building and one of the parking space out of the three parking spaces available, is allotted to him.

5. According to the petitioner, there are six flats in the building and only three parking spaces. It is pointed out that the petitioner has purchased the flat somewhere in the year 2007 while the first respondent has purchased the flat in the year 2014. The learned Counsel for the petitioner has submitted that the sale deed does not show that the first respondent has purchased any

parking space. In such circumstances, the petitioner filed an application purportedly under Order VII, Rule 11 of CPC, for rejection of plaint. A perusal of the application shows that rejection of the plaint was sought only on two grounds, namely that the plaint is written on a paper insufficiently stamped, which is covered by Order VII, Rule 11(b) of CPC and that the plaint is barred by the provisions of law within the meaning of Order VII, Rule 11(d) of CPC.

6. The first respondent filed a reply and opposed the application.

7. The learned Trial Court, by a detailed order has dismissed the application, which brings the petitioner to this Court.

8. Shri Naik, the learned Counsel for the petitioner has restricted his claim for rejection of plaint only under Order VII, Rule 11(d) of CPC i.e. on the ground that the plaint is barred by the provisions of law. In other words, the grounds under Order VII, Rule 11(a) and (b) are not pressed.

9. Shri Naik, the learned Counsel for the petitioner

strenuously urged that 'law', within the meaning of Order VII, Rule 11(d) not only takes into its ambit the statutory and codified law but also the judicial pronouncements of the High Courts and the Supreme Court, which are binding precedents. Reliance in this regard is placed on the decision of the Supreme Court in the case of ***Bharvagi Constructions and another Vs. Kothakapu Muthyam Reddy & Ors.***; 2018(1)ALL MR 459(S.C.). In so far as the suit is concerned, reliance is placed on the provisions of Section 226(2) of the Goa Panchayat Raj Act (the Act, for short), in order to submit that the suit would be barred under the said provisions as no suit or other legal proceedings can lie against the officers of the V.P. for anything done or purported to have been done lawfully and in good faith under the Act. Reliance is then placed on the decision of the Supreme Court in the case of ***T. Arivandandam Vs. T. V. Satyapal and another***; AIR 1977 SC 2421, ***Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal***; 2017 ALL SCR 2194, ***Ramrameshwari Devi and Others vs. Nirmala Devi and Others***; (2011)8 SCC 249 and on the decision of this Court in the case of ***M/s Cyrus Marine Services Vs. K. A. Shivaraman***; 2017(1) Goa L.R. 38 (Bom) (PB). The learned Counsel was at pains to point out that ex-facie the plaint is barred by the provisions of subsection (2) of Section 226 of the Act and the Trial Court was in error in refusing to reject the plaint.

10. Shri Usgaonkar, the learned Senior Counsel for the first respondent submits that the probable defence of the petitioner/ defendant, cannot be gone into and would not be relevant at the stage of deciding the issue of rejection of plaint. It is submitted that the allegations in the plaint as they stand, cannot show that the plaint is barred under any of the provisions of the law. The learned Senior Counsel has taken me through the impugned order, in order to show that the Trial Court has at length dealt with the contentions including, the one, under Order VII, Rule 11(d) based on Section 226(2) of the Act. It is submitted that subsection (2) of Section 226 bars any suit challenging anything done or purported to have been done under the Act and in the present case, the plaintiff is not challenging anything which is done or purported to have been done by the Officers under the Act.

11. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out.

12. The law relating to consideration of a prayer for rejection of plaint under Order VII, Rule 11 of CPC is too well

settled to be restated. At the stage of consideration of any such request, the Court has to confine to the allegations in the plaint. The defence either actually led or probable defence cannot be gone into. As noticed earlier, the petitioner has restricted the challenge for rejection of the plaint only under Order VII, Rule 11(d) of CPC, namely that the plaint being barred by the provisions of law. The Supreme Court in the case of ***Bharvagi Constructions*** (supra), has held that the proper interpretation of the express 'law' in clause (d) of Order VII, Rule 11 of CPC, would not only mean the enacted and codified law, but also the binding judicial precedents.

13. It would now be necessary to examine the challenge in the context of Section 226(2) of the act and the binding precedents if any. Subsection (2) of Section 226 of the Act, which is relevant for the purpose, reads thus :

***“226. Bar of suits, etc.— (1)
 (2) No suit or other legal proceeding shall lie against the Chief Executive Officer or Secretary or any other officer of the Government or a Panchayat or Zilla Panchayat concerned or any member, officer, servant or agent of such Panchayat, or Zilla Panchayat acting under its direction in respect of anything done or purporting to have been lawfully done and in good faith under this Act or any rule, regulation, bye-law or order made thereunder***

except with the previous sanction of the Zilla Panchayat or such officers as the Zilla Panchayat may specify.”

It can thus be seen that all that the said Section prohibits is a suit or legal proceedings against any officer of the Village Panchayat challenging anything 'done or purported to have been done lawfully and in good faith', under the Act. A bare perusal of the plaint shows that the plaintiff is not challenging anything done or purported to have been done by the officers or the authorities under the Act, as has been rightly held by the learned Trial Court.

14. In so far as various judgments cited on behalf of the petitioners are concerned, they lay down the settled principles governing the prayer for rejection of plaint under Order VII, Rule 11 of CPC. It is difficult to accept that the plaint can be rejected in the present case on the ground that it is barred by any law, as has been laid down in the aforesaid judgments.

15. In the case of **Madnuri Sri Rama Chandra Murthy** (supra), it has been *inter alia*, held that the plaint can be rejected under Order VII, Rule 11 of CPC, if the conditions enumerated in the said provisions are fulfilled and that such power can be

exercised by Court at any stage of the suit. The said judgment reiterates the well settled principle that relevant facts, which can be looked into for deciding the application, are the averments of the plaint only.

16. In the case of ***Ramrameshwari Devi*** (supra), the Court has taken notice of the abuse of the process of the Court and dilatory tactics employed by the parties, which results into harassment of the parties, wastage of Court's time and benefit to the wrongdoer. It is evident that whether a particular suit is filed by way of abuse of process of law or whether the party has engaged into dilatory tactics, would be a question, which would solely depend upon the facts and circumstances of each case. Prima facie, at this stage, the first respondent is claiming that one of the parking spaces is allotted to him. This is not the stage where the evidence can be gone into or the matter can be examined on merits. On perusal of the plaint, it is difficult to accept that the suit is by way of abuse of process of the Court.

17. The case of ***Ramrameshwari Devi*** (supra), in my considered view, turned on its own facts. Similar is the case in ***M/s. Cyrus Marine Services*** (supra). In that case, on facts, it was found that the plaintiff had not disclosed any cause of action

in a suit for recovery of amount due from the defendant.

18. I have carefully gone through the impugned order and I do not find that it suffers from any jurisdictional error or infirmity so as to require interference under Section 115 of CPC. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

SMA