

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 11 OF 2018

CAPT. GERALD JOHN FERNANDES., ... Petitioner

Versus

**DAVID ANTHONY EDGELL, THR. HIS
CONST. ATTORNEY, JOSEPH FERNNADES
AND 3 ORS.,** ... Respondents

Shri Jagannath Jayant Mulgaonkar, Advocate for the Petitioner.

Shri Anirudha A.S. Borkar, Advocate for the Respondent No. 1.

Shri Diggaj Tendulkar, Advocate for the Respondent Nos. 3 and 4.

Coram:- C. V. BHADANG, J.

Date:- 25th July 2018

ORAL ORDER:

Heard the learned Counsel for the parties.

2. The petitioner, who is the defendant no. 1, in a suit filed by the respondent no. 1-plaintiff, is challenging the order dated 06.01.2010 (below Exhibit-D/74), by which, an application filed by the petitioner, under Order VII, Rule 11(a) and (d) of CPC, for rejection of the plaint, is dismissed.

3. On hearing the learned Counsel for the parties, I do not find that any case for interference is made out.

4. The plaintiff has filed the said suit for mandatory injunction and for recovery of money, against the defendant no. 1 and his wife Mrs. Merelyn Fernandes. In short, the case made out in the plaint is that the plaintiff is a citizen of UK and has been visiting Goa, since 16 years prior to filing of the suit. The plaintiff visits Goa on a business visa, as he had a restaurant in Calangute. A property known as 'Lavon Vithaldas or Cond Vithaldas' at Morjim, is the subject matter of dispute. The plaintiff had learnt that the owner of the suit property is intending to sell it. It was contended that the defendant no.1 represented the plaintiff that the plaintiff being a UK National, would not be able to purchase the property as per the requirements of the Foreign Exchange Management Act, 1999 (FEMA). The defendant no. 1 suggested for registering a Company in Goa, in which, the plaintiff would be a shareholder/director with another Indian citizen as a shareholder/director. As such, the defendant no. 1 was showed as director/shareholder along with the plaintiff. Thus, according to the plaintiff with implicit faith and confidence, he paid a sum of Rs.38,000/- for purchasing stamp duty and another sum of Rs.1,50,000/- as earnest money towards the purchase of the suit property. The plaintiff also transferred Rs. 7,52,832/- through his Bank to the Bank Account of defendant no. 1 in HDFC Bank at Panaji. The plaintiff however, learnt that the defendant no. 1 had got the property purchased in his name, which led the

plaintiff to file the aforesaid suit, for various reliefs, including a relief for conveyance of the suit property in favour of the plaintiff, or in the alternative for refund of the amount along with interest with some other reliefs.

5. The petitioner filed an application, purportedly, under Order VII, Rule 11(a) and (d) of CPC, claiming that the suit is not maintainable, as it does not disclose any cause of action and it is also barred by law. However, during the course of the arguments at bar, the learned Counsel for the petitioner submitted that he is not pressing the application under Order VII, Rule 11(d) of CPC. In other words, the application is pressed only under Order VII, Rule 11(a) of CPC, as the plaint does not disclose any cause of action.

6. The learned Trial Court by the impugned order, has found that para 36 of the plaint, indeed discloses a cause of action, for filing the suit and in that view of the matter has dismissed the application.

7. I have carefully gone through the plaint, as well as the application under Order VII, Rule 11(a) and (d) of CPC, as also the impugned order. In my considered view, the learned Trial Court after considering the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India)

Regulations, 2000 and Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000, has rightly come to the conclusion that no case for rejection of the plaint is made out.

8. A perusal of para 44 of the plaint also shows that the plaint sets the cause of action having accrued on 28.09.2006 and again on 20.04.2008. It is trite that in a claim for rejection of the plaint, the Court has to confine to the averments in the plaint alone. Considering the overall circumstances, no case for interference, under the revisional jurisdiction, is made out. At this stage, Shri Mulgaonkar, the learned Counsel for the petitioner submits that the suit is of the year 2009 and it may be expedited. In the result, the civil revision application is dismissed, with no order as to costs. The learned Trial Court shall decide the suit as expeditiously as possible and preferably within a period of one year from the receipt hereof. The rival contentions of the parties are left open.

C. V. BHADANG, J.

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