IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 17 OF 2018

SHIRKA CONSTRUCTIONS, A PROP. FIRM, REP. BY ITS PROP., SHISRISH V. KAMAT AND ANR., ... Petitioners

Versus

APPOLLO ENGINEERS AND CONTRACTORS PVT. LTD. AND ANR., ... Respondents

Coram:- C. V. BHADANG, J.
Date:- 30th July 2018

Mr. V. R. Tamba, Advocate with Adv. Paresh Sawant for the Petitioner.

Oral Order:

The petitioner, who is the original defendant in Special Civil Suit No. 39/2015/III pending on the file of the learned Senior Civil Judge at Margao is challenging the order dated 15/12/2016 passed by the learned trial court refusing to reject the plaint under Order VII Rule 11(d) of C.P.C. The petitioner had sought rejection of the plaint on the ground that the suit is barred by limitation.

2. The respondents have filed the aforesaid suit for declaration that the Memorandum of Understanding (MOU, for short) dated 24/3/2009 entered

into between the parties stands terminated and that the petitioners are not entitled to carry on any further work on the site, in terms of the said MOU. The respondents also sought permanent injunction restraining the petitioners from interfering in the suit property and from carrying out any further work of construction in the same and for damages.

3. The petitioners filed an application under Order VII Rule 11(d) of C.P.C. on the ground that the suit in so far as the relief of declaration is concerned, (which is the main relief) is barred by limitation.

4. The learned trial court has found that previously there was a similar application filed, which was rejected and even on facts has found that the plaint cannot be rejected as being barred by limitation.

5. I have heard Shri Tamba, the learned counsel for the petitioner on the previous date and the civil revision application was fixed today in order to enable the learned counsel to take instructions and to make appropriate statement. However, today the learned counsel appearing for the petitioner submits that this Court may decide the civil revision application on its own merits and pass appropriate order.

6. On hearing the learned counsel for the petitioners and on perusal of the plaint, the application under Order VII Rule 11 (d) of C.P.C. and the impugned order passed, I do not find that any case for interference is made out. The suit is essentially for a declaration that the MOU which has been entered into by the parties on 24/3/2009 stands terminated. A perusal of para 50 of the plaint would show that according to the respondent the cause of action for the suit arose in the month of February 2015, when a notice of termination of the said MOU was sent and received by the petitioners. The suit is filed on 3/7/2015.

7. A suit for declaration is governed by Article 58 of the Limitation Act which provides a limitation of three years from the time when the right to sue first accrues. It was contended on behalf of the petitioners that the first part of the MOU was to be performed by 24/3/2012 (36 months from the execution of the MOU) and the second part by the year 2010. In short it was contended that the last date for performing of the first part being 24/3/2012, the suit having been filed on 3/7/2015 is barred by imitation. The contention in my considered view cannot be accepted for the simple reason that the suit is not for seeking specific performance of the MOU but for a declaration that it stands terminated which would prima facie accrue on the date on which the MOU was sought to be terminated by issuing a notice. There is also a delay

in filing this petition inasmuch as, the impugned order was passed on 15/12/016. This is an additional reason why I am not inclined to entertain the civil revision application. In that view of the matter, the civil revision application is dismissed with no order as to costs.

C. V. BHADANG, J.

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