

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NOS.17 AND 21 Of 2016.

CIVIL REVISION APPLICATION NO.17 Of 2016.

Mrs. Sangeeta Mahesh Sonak .. Petitioner.

Vs

Mrs. Maria Zita Afonso
& 23 Ors. .. Respondents.

Shri Parag S. Rao, Advocate for the petitioner.

Shri Deb J. Basu, Advocate for the respondent nos.1 and 2.

WITH

CIVIL REVISION APPLICATION NO.21 Of 2016.

M/s. Urban Concepts, A Partnership
Firm Rep by its Partner Mr. Amit
M. Sukhthankar and 2 Ors. .. Petitioner.

Vs

Mrs. Maria Zita Afonso
& 23 Ors. .. Respondents.

Shri Ashwin D. Bhobe and Shri S. Sarmalkar, Advocates for the petitioners.

Shri Deb J. Basu, Advocate for the respondent nos.1 and 2.

CORAM :- C. V. BHADANG, J.

DATE: 2nd July, 2018

ORAL ORDER :

On 07/06/2016, a notice for final disposal was issued in

these Revision Applications, both of which arise out of the order dated 24/02/2016, passed by the learned Trial Court in Special Civil Suit No.6/2009/A, refusing to reject the plaint under Order VII, Rule 11(a) and (d) of the Code of Civil Procedure (CPC).

2. It appears that the original defendant nos.21, 22 and 23 (who are the petitioners in CRA No.21/2016) had filed an application Exh.D-54 for rejection of the plaint, on the ground that the plaint does not disclose cause of action and is barred by limitation. The original defendant nos.19 and 20 have filed another application Exh.D-105, for rejection of plaint on similar ground. The defendant no.20 is the petitioner in CRA No.17/2016. The learned Trial Court heard oral arguments on both the applications after which, the parties were allowed to file written notes of argument. It appears that the parties filed written notes of arguments and after which, the applications were again fixed for oral arguments. This is apparent from the order sheet dated 23/09/2015, 20/10/2015 and 01/12/2015. However, without hearing any further oral arguments, both the applications were fixed for orders on 02/02/2016. The Trial Court ultimately dismissed the application Exh.D-105 on 24/02/2016. It is undisputed that there is no separate order passed on Exh.D-54.

3. It further appears that the learned Trial Court while deciding the application Exh.D-105, has recorded the submissions of the learned Counsel Shri D. Agni, who was appearing for the applicants in Application Exh.D-54. Shri Rao, the learned Counsel petitioner also points out that there were about eight judgments cited on behalf of the petitioners in the written submissions, none of which are considered by the learned Trial Court.

4. The learned Counsel for the Revision Petitioners, therefore, submit that both the applications may be sent back to the learned Trial Court, for deciding them afresh in accordance with law.

5. Shri Basu, the learned Counsel for the respondent nos.1 and 2, in all fairness, does not dispute that there is no separate order passed below Exh.D-54. He also does not dispute the fact, (and which is otherwise apparent from the record), that none of the cases, which were cited and on which reliance was placed on behalf of the petitioners, find place or have been considered by the learned Trial Court in the impugned order. Shri Basu further points out that, after passing of the impugned order, the respondent nos.1 and 2/ plaintiffs, have filed an application for amendment of the plaint in June, 2016, which application is

pending before the Trial Court. He, therefore, submits that this Court may pass appropriate order in the matter. He, however, submits that in the event this Court is inclined to send the applications back to the Trial Court, the application for amendment will have to be considered first prior to deciding the application for rejection of plaint. For this, Shri Basu has placed reliance on the decision of the Delhi High Court in the case of **Anita Kumari Gupta Vs. Late Ved Bhushan (Deceased Thr. LRS) & Ors;** 2014 0 Supreme (Del) 1262 and in particular para 11 thereof. He submits that this Court, in the circumstances, may pass appropriate orders.

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

7. I do find that the Trial Court has neither passed any formal order on the application Exh.D-54 filed by the petitioners in Civil Revision Application No.21/2016 nor the impugned order finds any reference to the cases cited on behalf of the petitioner in Civil Revision Application No.17/2016. Furthermore, the application for amendment filed by the respondent nos.1 and 2/ plaintiffs for amendment of the plaint is also pending before the Trial Court. In the overall circumstances of the case, I find it

appropriate that the learned Trial Court considers the applications afresh and decides the same after hearing the parties. Needless to mention that the Trial Court shall first decide the application for amendment of the plaint and shall then take up the two applications for rejection of plaint. A useful reference in this regard may be made to the Division Bench judgment of this Court in the case of ***Gaganmal Ramchand Vs. The Hongkong and Shanghai Banking Corporation***, AIR (37) 1950 Bombay 345, in which this Court has, *inter alia*, held that the power of the Court to allow an amendment of pleadings under Order VI, Rule 17 of CPC is not in any manner restricted or controlled by Order VII, Rule 11 of CPC.

8. In such circumstances, the following order is passed :

- (i) Both the Civil Revision Applications are partly allowed.
- (ii) The impugned order is hereby set aside.
- (iii) The learned Trial Court shall decide the applications Exhs.D-54 and D-105 afresh in accordance with law and uninfluenced by the observations made in the impugned order, after deciding the application for amendment of plaint.
- (iv) The learned Trial Court shall decide the applications as expeditiously as possible and preferably, within a period of

six months from receipt hereof.

(v) Rival contentions of the parties on merits are left open.

(vi) The Revision Applications are disposed of in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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