

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 571 OF 2018

RAMESH K. MAYEKAR., ... Petitioner

Versus

GAVIN FERNANDES AND ANR., ... Respondents

Adv. Aldrin Monteiro for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 5th June 2018

Oral Order:

Heard Shri Monteiro, the learned counsel for the petitioner.

2. The challenge in this petition is to the order dated 10/4/2018 passed by the learned District Judge at Mapusa in Regular Civil Appeal No.108/2015. By the impugned order, an application (Exhibit 16) filed by the petitioner/appellant purportedly under Order 6 Rule 14-A(5) of C.P.C for rejection of the plaint, is dismissed.

3. The brief facts are that: the respondents had filed a suit for recovery of money against the petitioner which suit came to be decreed. The petitioner being aggrieved by the said decree has filed the aforesaid appeal before the learned District Judge, in which the petitioner made an attempt to serve the respondents at

their registered address furnished in the suit. There are two reports of the Bailiff produced on record, dated 1/12/2015 and 3/2/2016. The second report dated 3/2/2016 shows that the appellant had gone along with the bailiff to show the house which was the registered address of the respondent furnished in the suit. However, the appellants were not found residing in the said house. This prompted the petitioner to file the aforesaid application for rejection of the plaint. After the application was filed the respondents furnished their address at London before the Appellate Court.

4. Order 6 Rule 14-A(5) (the Bombay Amendment) reads thus:

'Where the registered address of the party is not filed within the specified time or is discovered by the Court to be incomplete, false or fictitious, the Court may, either on its own motion, or on the application of any party, order-

(a) in case where the default in furnishing registered address is by the plaintiff or where such registered address was furnished by a plaintiff, rejection of the plaint, or

(b) in case where the default in furnishing registered address is by the defendant or where such registered address was furnished by a defendant, his defence is struck out and he be placed in the same position as if he had not put any defence.

5. It can thus be seen that under the aforesaid rule, where the

registered address of the party is not filed within the specified time or is incomplete, false or fictitious, the Court may, either on its own motion, or on the application of any party, order the plaint to be rejected where such registered address was furnished by the plaintiff.

6. In the present case, the Trial court during the course of the pendency of the suit did not find that the address furnished by the respondents/appellants was either incomplete or fictitious. It is not possible to discern as to when the respondents started staying at London either permanently or on temporary basis. It is, therefore not possible to come to a conclusion that the address furnished by the respondents before the trial court was either incomplete, false or fictitious. As noticed earlier, in the bailiff report dated 3/2/2016, the appellant had himself accompanied the bailiff and shown the house. It thus cannot be said that the address was fictitious. The possibility of the respondent having shifted to London after the suit having been decreed cannot be ruled out. Rejection of the plaint is an order which invites serious consequences and can be passed only on well founded grounds which are established on record.

7. It is further undisputed that now the respondents have also entered their appearance through an advocate in the appeal. I have carefully gone through the impugned order, and I do not find that

any case for interference is made out in the supervisory jurisdiction of this Court. The petition is accordingly dismissed.

C. V. BHADANG, J.

ap/-