

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1023 OF 2017**

Rozendo G. D'Souza,
of major age, Indian National,
residing at Flat No. A-1, Shangrilla Apartments,
Miramar, Panaji-Goa.
(Registered Address)

.... Petitioner

V e r s u s

- 1) Shangrilla Apartments Co-operative Housing Society Ltd.,
a Housing Society, registered under the Maharashtra Co-operative Societies Act and having its Office at Shangrilla Apartments, Miramar, Panaji-Goa, represented through its Chairperson, Mrs. Luiza Fernandes,
Flat No. B-12, 2nd floor, Shangrilla Apartments, Miramar, Panaji-Goa-403 001.
- 2) John Rodrigues,
of major age, service, resident of Flat No.B-11, Shangrilla Apartments, Miramar, Panaji-Goa-403001.
- 3) Pauline Rodrigues,
of major age, wife of John Rodrigues, resident of Flat No.B-11, Shangrilla Apartments, Miramar, Panaji-Goa-403001.
- 4) Luiza D'Souza,
of major age,
housewife, resident of Flat No.B-5, Shangrilla Apartments, Miramar, Panaji-Goa-403001.

5) Kennedy Fernandes,
of major age, service, son of
Rui Fernandes, resident of Flat No.B-6,
Shangrilla Apartments, Miramar,
Panaji-Goa-403001.

6) Casmiro S. A. Correia,
of major age, landlord, resident,
of Bondir, St. Cruz, Ilhas-Goa.

.... Respondents

(Registered Addresses)

Shri C. A. Ferreira with Shri D. Zaveri, Advocates for the Petitioner.

Shri J. A. Lobo, Advocate for the Respondent no.1.

CORAM: C. V. BHADANG, J.

Reserved on : 23/03/2018.

Pronounced on : 13/04/2018.

O r d e r:

The challenge in this petition under Article 227 of the Constitution of India is to the order dated 31/10/2017 passed by the learned trial court refusing to stay the subsequent suit under section 10 of the Code of Civil Procedure (C.P.C., for short).

2. The first respondent/Shangrilla Apartments Co-operative Housing Society Ltd. along with its seven members who are the purchasers of the flats and shops have filed Special Civil Suit No.130/2000/B (referred to as the previous suit) against M/s. Rinvin Builders and five others being the owners

of the land on which the shops and flats are constructed, which are comprised in four buildings being Block nos. A, B, C and D. The first respondent happens to be the plaintiff no.8 in the said suit. That suit is filed for specific performance, injunction and consequential reliefs. The specific performance is in respect of seven contracts dated 10/5/1988, 8/3/1986, 23/7/1986, 4/1/1987, 15/1/1987, 3/10/1987 and 29/3/1988. The cause of action is shown to have accrued when the defendants in the said suit failed to execute the sale deed in respect of the suit property in favour of the plaintiffs inspite of a notice dated 21/7/2000 issued by the first respondent/society.

3. Subsequently the first respondent being the sole plaintiff, has filed Regular Civil Suit No.26/2008 (referred to as the present suit) against one John Rodrigues and five others for permanent and mandatory injunction . The petitioner happens to be defendant no.6 in Regular Civil Suit No.26/2008 (present suit). The injunction sought is for restraining the defendants in the said suit or anybody on their behalf from interfering with the existing water supply pipe line from the suit water ground well to the suit overhead tank of building “B” in the housing complex.

4. The petitioner filed an application purportedly under section 10 of C.P.C for stay of the present suit on the ground that the matter in issue in the

present suit is substantially the same as that of the previous suit and praying for stay of the present suit. That application has been dismissed by the trial court by the impugned order dated 31/10/2017 inter alia on the ground that the parties in the two suits are not the same. The learned trial court has also found that the subject matter and the reliefs sought in the two suits are different and the issue involved in the subsequent suit is in no manner connected directly or substantially with the issue in the previous suit.

5. I have heard Shri Ferreira, the learned counsel for the petitioner and Shri Lobo, the learned counsel appearing for the first respondent, which is the contesting party. Perused record.

6. It is submitted by Shri Ferreira, the learned counsel for the petitioner that an application under section 10 of C.P.C can be filed at any stage. Reliance in this regard is placed on the decision of the Patna High Court, in the case of **Shri Ram Tiwary and another Vs. Bholi Devi and another AIR 1994 Pat. 76**. It is submitted that section 10 of C.P.C contemplates substantial identity of the matter in issue in the two suits. It is submitted that it is not the identity of main issue or all issues but the identity of matter in issue which is the determining test. For this, reliance is placed on the decision of the Delhi High in the case of **M/s. Arjies Aluminum Udyog Vs. Sudhir**

Batra, AIR 1997 Del 232. It is submitted that the identity of the parties or a complete identity of the subject matter is not the requirement of section 10 of C.P.C. Reliance in this regard is placed on the decision of then Nagpur High Court in the case of **The Laxmi Bank Ltd., Akola and others Vs. Harikisan and others, AIR 1948 Nag 297.** It is submitted that the learned trial court was in error in dismissing the application.

7. On the contrary, Shri Lobo, the learned counsel for the first respondent has supported the impugned order. It is submitted that the subject matter of the two suits, the reliefs claimed and the parties are different and the requirements of section 10 of C.P.C., are not satisfied for staying the present suit. On behalf of the first respondent, reliance is placed on the decision of this Court in a batch of **Writ Petitions no. 8397 of 2017 and others decided on 8/1/2018** and yet another decision of this Court in the case of **Sadguru Constructions Vs. Jaimeet Kaur Nirmasingh Sial, Writ Petition No.8110/2005 decided on 23/12/2005.**

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

9. As noticed earlier, the previous suit is for specific performance of a

contract for sale and that suit is directed against the builder, who is the defendant no.1 in the previous suit and the defendants nos. 2 to 5 who are the owners. The subsequent suit is on entirely different cause of action where there was an interference with the ground well and the overhead tank in the building “B” of the Housing complex and there the relief is for restraining the defendants from interfering with the water supply. In such circumstances, it is difficult to accept, as to how 'the matter in issue' in the previous suit can be said to be directly and substantially in issue in the present suit. Apart from this, the parties in the two suits are also not identical.

10. In the case of **Laxmi Bank Ltd., (supra)** the then Nagpur High Court in the facts of the case had held that it is doubtful if for the application of section 10 of C.P.C., there should be a complete identity of parties or a complete identity of the subject matter. In this regard it may be noted that section 10 itself speaks of the matter in issue in the subsequent suit being directly and substantially in issue in the previously instituted suit. The question is not of identity but of the matter in issue being directly and substantially in issue in a previously instituted suit between the same parties or between the parties, under whom they or any of them are litigating under the same title. None of these requirements are satisfied in this case. The principles apart, the decisions cited on behalf of the petitioner turned on their

own facts which are clearly distinguishable. The impugned order does not suffer from any infirmity so as to require interference. The petition is without any merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

Ap/