

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO. 18 OF 2019

1. Mr. Surendra M. T. Bhosle,

2. Mr. Gurudas B. Velip,

3. Mrs. Bhagyashree Fadte,
All are of major age,
S-1, Renuka Residency,
Behind K.T.C Bus Stand,
Fatorda, Margao,
Salette Goa.

.... Petitioners

V e r s u s

1. Shri Suvarna Rajaram Bandekar
Age 63 years, Industrialist,
H. No.15/275/A(5),
1st floor, RAJ-TARA,
F. L. Gomes Road,
Vasco da Gama, Goa.

2. Goa Paryavaran Savrakshan
Sangharsh Samitee,
Through its President,
Mr. Bruno Rodrigues,
S-1, Renuka Residency
Behind KTC Bus Stand
Fatorda, Margao
Salcete Goa.

3. Mr. Burno Rodrigues,
Major, Businessman,
S-1, Renuka Residency,
Behind KTC Bus Stand,
Fatorda, Margao, Goa.

..... Respondents

Adv. S. M. Walvaikar for the Applicants.

Adv. Ashwin D. Bhobe for Respondent no.1.

Coram:- C. V. BHADANG, J.

Date:- 19th March 2019.

Oral Order :

By this revision application the petitioners, who are the original defendant nos. 2 to 4 are taking exception to the order dated 13/12/2016 passed by the trial court, by which, an application (Exhibit 25-D) filed by the petitioners, for rejection of the plaint under Order VII Rule 11 (a) and (d) of C.P.C has been dismissed.

2. The first respondent has filed a suit against the second respondent and the petitioners seeking damages on the ground of defamation. It is contended that the second respondent had caused a news item to be published in daily 'Tarun Bharat' about the first respondent having carried out illegal mining in breach of the order of the Hon'ble Supreme Court during the period from 2007 to 2012.

3. The second respondent happens to be a Society registered under the Societies Registration Act, 1860 and the applicants are admittedly the office bearers of the said Society.

4. The petitioners filed application (Exhibit 25-D) for rejection of the plaint under Order VII Rule 11 of C.P.C (a) and (d) of C.P.C on the ground that the plaint does not disclose cause of action and it is barred by law. A bare perusal of the application shows that the petitioner had placed reliance on the decision of the Hon'ble Supreme Court in Writ Petition no.435 of 2012 holding that all the mining leases in Goa which included the purported mining lease of the first respondent, had expired as on 27/11/2007. Thus in short, according to the petitioners, the complaint made to the police as well as the news article was based on the supporting documents including the decision of the Supreme Court . It was next contended that there was hardly any malice or malicious prosecution in the matter at the instance of petitioners, who were just informants of the commission of the offence. It was next contended that mere filing of the complaint to the police does not amount to prosecution and unless and until the matter is investigated, charge sheet is filed and the first respondent is acquitted, no cause of action would arise for filing a suit, seeking damages as claimed. In the application, the petitioner sought liberty to refer to the preliminary objection raised in the written statement.

5. The application was opposed on behalf of the first respondent.

6. The learned trial court by the impugned order has dismissed the petition.

7. I have heard Shri Walvaikar, the learned counsel for the applicants and Shri Bhobe, the learned counsel for the contesting respondent no.1. None appears for the second respondent.

8. The learned counsel for the applicants has placed reliance on section 8 of the Societies Registration Act, in order to submit that a decree cannot be executed against the person or the property of the office bearers of the society. It is submitted that such a decree if passed against the petitioners as office bearer of the society, is a nullity, as held by the Andhra Pradesh High Court in the case **Someswara Swamy Vari Devathanam Vs. Dasam Suryanarayna and others 2004 AIR (A.P.) 223**. It is submitted that the learned trial court has failed to properly appreciate the provisions of section 8 of the Societies Registration Act, which would clearly show that the suit as framed and filed, did not disclose any cause of action and was barred by law.

9. Mr. Bhobe, the learned counsel for the respondents has supported the impugned order. It is submitted that under section 6 of the Societies Registration Act, a society can be sued through its President, Chairman or

Principal secretary or trustees. It is submitted that the society being a juristic person has to be represented by some natural person to be sued. It is submitted that the entire argument of the applicant is based on a situation if the trial court grants the decree jointly and severally against the defendants. It is submitted that it will be open to the plaintiffs to show that the applicants are also personally liable along with the society. In any event this matter can be gone into at the trial after the trial court frames proper issues and which cannot be a ground to reject the plaint.

10. I have carefully considered the rival contentions and the submissions made and I do not find that any case for interference is made out. Section 8 of the Act on which heavy reliance is placed on behalf of the petitioner pertains to enforcement of judgment, against a society which reads thus:

8. Enforcement of judgment against society.—If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, movable or immovable, or against the body of such person or officer, but against the property of the society. The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society.

It can thus be seen that what section 8 provides is that if the judgment is passed against the person or officer, named on behalf of the society, such a judgment shall not be put in force against property movable or immovable or against the body of such person or officer, but against the property of the society. The said section has to be read along with section 6 which provides that every Society registered under the Act may sue or be sued in the name of the president, chairman or principal secretary, or trustees, as shall be determined by the rules and regulations of the society and in default of such determination, in the name of such person as shall be appointed by the governing body for the said purpose.

11. In my considered view Mr. Bhole the learned counsel for the first respondent is right in contending that the ground on which the application filed by the applicant is based is that if eventually the decree is passed against the society as well as the rest of the defendants, the decree would be a nullity. Section 8 in my considered view only concerns the manner in which the decree is to be executed. It is trite that the Society being a juristic person would require some natural person as co defendant to represent it before the trial court. At this stage it is neither necessary nor appropriate to go into the question as to what decree the trial court would pass eventually. Thus the contention which is based on section 8, of the Societies

Registration Act and the decision of the Andhra Pradesh High Court in the case of **Someswara Swamy Vari (supra)**, to my mind cannot be accepted. Needless to mention that all such grounds as are raised by the applicants both on law and facts, can be gone into after the trial when the trial court frames appropriate issues on the same. It is well settled that for the purpose of determination of an application under Order VII Rule 11 of C.P.C., the Court has to confine itself to allegations in the plaint and on the documents filed along with and it cannot travel beyond the same, or refer to probable defence. In that view of the matter, the impugned order does not suffer from any infirmity so as to require interference. The petition is accordingly dismissed with no order as to costs. Rival contentions of the parties on merits are left open.

C. V. BHADANG, J.

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