

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO. 42 OF 2018

TARINA SEN AND 2 ORS.,

... Applicants

Versus

**DEEPAK PRABHU ALSO KNOWN AS
RAMNATH PRABHU AND ANR.,**

... Respondents

Adv. Neelesh A. Takkekar for the Applicants.

None for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 19th June 2019.

Order:

The challenge in this revision application is to the order dated 3/2/2018 passed by the learned trial court below application (Exhibit 14) in Special Civil Suit no.3/2013/A. By the impugned order, the application (Exhibit 14) filed by the petitioners, who are the original defendant nos.1, 2 and 3, under Order VII Rule 11 (a) and (d) of the Civil Procedure Code (CPC, for short) has been dismissed.

2. The brief facts are that, the first respondent has filed the aforesaid suit against the petitioners and the second respondent for recovery of a sum of Rs.32,00,188/- along with interest, w.e.f 1.4.2011 till realization. The case made out by the first respondent is that he is in business of undertaking contracts in mining and the activities incidental and ancillary thereto and was

also undertaking contracts of transportation of ore and other related activities, in the name and style as “G. P. Transport”.

3. Now deceased, Mr. Surojit Sen was the proprietor of “Goamincorp”. Mr. Surojit Sen expired on 27/5/2011 and is survived by the petitioners being his widow and children. The second respondent (defendant no.4) was the authorized signatory of “Goamincorp”.

4. The material case is that Mr. Surojit Sen in the name of his firm “Goamincorp “ had purchased iron ore from Imram Traders of Curpem and the contract for transportation of said ore was entrusted to the first respondent. The first respondent accordingly transported the ore from 26/4/2010 to 25/1/2011 and the total charges for the transportation of the ore were Rs.2,35,00,188/-, for which separate bills were raised. Out of the said amount, the first respondent had received an amount of Rs.1,63,00,000/-, on 31/3/2011 and Rs.40,00,000/- in the financial year commencing on 1.4.2011. The suit for Rs.32,00,188/- is towards the balance amount of transportation charges.

4. The petitioners filed an application (Exhibit 14) for rejection of the plaint under Order VII Rule 11(a) and (d) of CPC on the ground that the

particulars of the transaction by which the contract for transportation of ore was allegedly entrusted to the first respondent are not set out and the first respondent has not produced any written contract to that effect. It was contended that the petitioners were neither parties to the said contract nor were parties to any such transaction, as even according to the first respondent, the contract was between him and now deceased Mr. S. Sen. It was thus contended that the plaint does not disclose any cause of action and the cause of action as pleaded in the plaint is vague. Secondly it was contended that the petitioner no.3 (defendant no.3) was minor at the relevant time and a suit against a minor is competent only through a guardian appointed by the Court and in the instant case no such application has been filed and the plaint is liable to be rejected as against the petitioner no.3. Lastly it was contended that in terms of the Goa (Prevention of illegal Mining, Transportation and Storage of Minerals), Rules 2004, (Rules, for short) only a registered transporter can engage into transportation of the ore and the related activities and the first respondent has not shown as to whether any such licence was obtained by him as required by Rule 3 of the aforesaid rules. It was thus contended that the plaint is also barred by law.

5. The application was opposed on behalf of the first respondent as being not maintainable and not within the ambit of Order VII Rule 11 of C.P.C..

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

7. I have heard Shri Takkekar, the learned counsel for the petitioners. None appears for the respondents, though served. Perused record.

8. It is submitted by the learned counsel for the petitioners that the suit against the petitioner no.3, who was a minor was not competent in the absence of a guardian ad litem being appointed. It is submitted that even otherwise, the petitioner nos. 2 and 3 were minors at the time when the alleged contract of transportation of ore was entered into between late Mr. Surojit Sen and the first respondent and thus the suit as framed and filed against the petitioner nos.2 and 3 is in any case not maintainable. Even so far as the petitioner no.1 is concerned, she admittedly is not a party to the alleged contract of transportation of ore. There are no particulars of the alleged contract set out in the plaint, nor a written contract is produced on record. It is next submitted that the first respondent has not produced any licence for transportation of ore as required by Rule 3 of the Rules and in such circumstances the plaint was liable to be rejected.

9. I have considered the circumstances and the submissions made and I

do not find that a case for interference in the impugned order is made out.

10. While considering the question of rejection of plaint the Court has to confine itself to the contents of the plaint and reference to the defence is not permissible. The contentions as recorded on behalf of the petitioners and the grounds on which the rejection of the plaint was sought, in my considered view are part of the defence, which will have to be examined at the trial of the suit. The trial court has also held that the question whether the contract for transportation of ore was a illegal contract is part of the defence which cannot be looked into at this stage.

9. I have carefully gone through the impugned order and I do not find that it suffers 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/-