

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 175 OF 2020

Mr. Farid Veljee,
 Major of age, Indian National,
 Resident of Heritage Symphony,
 Near St. Francis Xavier Chapel,
 Caranzalem- Goa.

.... Petitioner's

V e r s u s

1. Mr. Paresh Pai,
 Major of age, Indian National,
 Resident of B-101, Heritage Symphony,
 Opp. Syndicate Bank,
 Caranzalem- Goa and 4 others.

..... Respondents

Mr. Prasheen Lotlikar, Advocate for the Petitioner.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 24th February 2020.

P.C.:

The petitioner has purchased a part of the building constructed by the first respondent. In the course of time, the first respondent-builder faced an allegation: raising an illegal structure. It was based on the complaint made by the other residents of the same building. Those residents are shown as the third respondent in this writ petition.

2. Initially, the Deputy Commissioner of the second respondent-Corporation heard the parties and passed an order. It directed the builder to rectify or demolish the illegal structure. Aggrieved, the petitioner approached the District Court. But the District Court did not entertain the

appeal because of certain technical hurdles. Then, the petitioner filed Civil Revision Application No.31/2016 before this Court.

3. Pending that Civil Revision application, the petitioner filed an appeal before the Hon'ble Minister for Urban Development. In the light of that development, the petitioner sought this Court's leave to withdraw the Civil Revision Application and proceed with the appeal. This Court, in turn, through its order, dated 7/12/2016, granted the leave.

4. On the parallel lines, the Builder too filed an appeal before the Hon'ble Minister. In fact, the petitioner has filed the appeal with a delay of one year, eight months, and two days; therefore, he has applied for delay condonation as well.

5. Later, the petitioner has applied to the Hon'ble Minister for having his appeal and the Builder's heard together. It was ordered. Nevertheless, once the petitioner has argued, as the learned counsel puts it, his application for delay condonation, the learned appellate authority merged both the appeals. With this merger, first the appellate authority has passed no order in the delay condonation petition; second, he has insisted on the petitioner and the builder leading their arguments in one appeal. In the merged appeal, the petitioner was shown as the second appellant.

6. Under these circumstances, assailing the appellate authority's order, dated 4.2.2020, the petitioner has filed this writ petition.

7. Heard the learned counsel for the petitioner.

8. The appellate authority has noted that the dispute arose in 2013 and still been pending at the appellate stage. Decrying what can be called the delaying tactics adopted by the parties, the appellate authority has insisted that the parties should advance their arguments in the merged appeal. The righteous indignation at the dilatory devices the parties adopt is justified. But does the merging of appeals pass the judicial muster? We shall see.

9. The learned counsel for the petitioner has contended that it is, indeed, the petitioner that wanted a joint hearing. But it does not mean, according to him, that joint hearing should be in a merged appeal. He contends that the grounds advanced by the petitioner on the one hand and those advanced by the builder on the other hand are distinct and even different. In his view, the petitioner would be prejudiced if the appellate authority wanted to hear both the appeals as merged.

10. Though it is prudent for the Court to put the respondents on notice, I reckon the appellate authority got the matter posted for arguments on 24/2/2020 at 3p.m.—that is, today. Besides, when I queried with the petitioner's counsel what prejudice the impugned order would cause to the petitioner, he has submitted that the petitioner should not lose an opportunity of establishing his case and sustaining his plea, independently.

11. To elaborate, the learned counsel has submitted that in a merged appeal, the petitioner loses his identity, even his plea and pleadings may not be considered, separately.

12. Under these circumstances, it will suffice if this Court clarifies the issue, allaying the petitioner's apprehensions. I reiterate this Court does not interfere with the impugned order but intends to clarify it. I dispense with the notice to the respondents for this adjudication would not affect the rights of any party. So I dispose of the writ petition at the admission stage.

13. True, this Court has consistently followed the policy of having as the plaintiffs or the appellants those with common interest. If at all there is any conflict of interest among the plaintiffs or the appellants, the group with commonality must be the plaintiff or the appellant and the other group with conflict must be treated as the respondent, along with other defendants or respondents. For the law allows the defendants of disparate interests, but not the plaintiffs.

14. Here, the very petitioner has asked for a common disposal of both the appeals. Indeed, that could have been done without the appellate authority's merging the appeals. In fact, the merging of appeals is too drastic a step to be taken only under exceptional circumstances. A common hearing of two connected appeals is an easier, plainer method of adjudication. But the merger, I reckon, is only a technicality.

15. It will suffice if the appellate authority proceeds even with the merged appeal by hearing both the parties based on their distinct pleadings in the appeals. Thus, in the merged appeal, the pleadings of both the petitioner and the first respondent remain intact.

16. Needless to observe that once the appellant, the first respondent, and the other stake holders in the dispute advance their arguments, the appellate authority will decide “the merged appeals” after considering the pleas advanced by all the parties concerned.

The Writ Petition stands disposed of.

DAMA SESHADRI NAIDU, J.

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