

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 210 OF 2020**

1. Mr. Neville Juvenal Pinto,
Son of late Mr. Luis Joao Pinto,
43 years of age,
Business
 2. Mrs. Freeda DCosta Pinto,
Age 40 years,
House wife,
Wife of Mr. Neville Juvenal Pinto,
 3. Mrs. Maria E Caldeira Pinto,
79 years of age,
Occupation Retd. Teacher,
- All residents of House No.E-2/12,
Naikwaddo, Calangute,
Bardez-Goa.

... Petitioners

V e r s u s

1. M/s. Virgo Resorts Pvt. Ltd.
Company registered under the Companies Act,
Having Office at A-2, 286,
Shah and Mahar Ind. Estate,
Dhanraj Mill Compound,
Lower Parel Mumbai-400013,
Through its Managing Director,
Mr. Stewart De Souza,
r/o. Phonenix Towers B,
Flat No.1504,
Lower Parel (W) Mumbai-400013.
2. Meritas Auberge LLP,
A Limited Liability Partnership firm,
Through its Partner,
C/o Mr. Asif Maredia,
401, Meher Avenue,
S. V. Road Dahisar East,
Mumbai 400068.
3. North Goa Planning and Development Authority,
Through its Member Secretary,

Archdiocese Building,
1st floor, Mala Link Road,
Panaji-Goa.

4. The Village Panchayat of Calangute,
Through its Secretary,
Calangute, Bardez-Goa.

.... Respondents

Ms. Correia Maria Simone Judith, Advocate for the Petitioners.

Mr. B. Sardessai, Advocate with Adv. Ms. Manasvi M. Shirodkar for
Respondent nos.1 & 2.

None for Respondent nos.3 and 4.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 19th March 2020

Oral Order:

The petitioners initially filed Regular Civil Suit No.109/2015/F, before the Civil Judge, Junior Division, at Mapusa. The respondents, as the defendants, entered their appearance and applied under Order VII Rule 11 of C.P.C to have the plaint rejected. Then the trial Court rejected the plaint. Aggrieved, the petitioners appealed before the Ad hoc District Judge-I, at Mapusa.

2. Pending the Regular Civil Appeal No.72/2017, the petitioners, on legal advice, wanted to file a fresh suit on the same cause of action; they do not want to pursue the appellate remedy against the trial Court's order rejecting the plaint. So the petitioners filed a fresh suit with Stamp No.1280/2019. In that suit, they affirmed that they would be withdrawing the pending appeal.

3. On 21/10/2019, the trial Court passed the following order:

“Register upon placing on record order of DJ-2 Mapusa in RCA No.72/2017 granting liberty to withdraw RCA No.72/2017 with liberty to file a fresh suit on the same cause of action”.

4. As explained in their Writ Petition, the petitioners could not immediately withdraw the appeal. The reasons are not germane here. True, eventually, with some delay, the petitioners withdrew the appeal and placed the proof before the trial Court. But, in the meanwhile, on 20/12/2019, the trial Court rejected the plaint “for not clearing the office objections and file”. Aggrieved, the petitioners have filed this Writ petition.

5. Heard the learned counsel for the petitioners and the respondents.

6. The petitioners' counsel contends that the trial Court initially did not fix any time frame for the petitioners to withdraw the pending appeal. Therefore, according to her, the delay, if any, in the petitioners' withdrawing the appeal should not deter the trial Court from entertaining the fresh suit.

7. On the other hand, both the learned counsel for the respondents have contended that by the time the petitioners filed the second suit on the same cause of action, they did not even apply to the appellate Court to withdraw the appeal, yet they pleaded in the fresh suit as if they had applied. According to them, the petitioners mislead the trial Court.

8. I reckon the whole issue hinges on technicalities. Indisputably, the plaintiff can sue on the same cause of action once the plaint in the earlier suit is rejected under Order VII Rule 11 of C.P.C. Of course, that suing for the second time on the same cause of action must be after curing the defects pointed out by the trial Court in its order rejecting the plaint. Here, in the

meanwhile, the petitioners appealed and later undertook to withdraw that, so they could sustain the second suit on the same cause of action. There was, indeed, some delay in their withdrawing the appeal, but that delay could not be fatal.

Under these circumstances, I set aside the impugned order, dated 20/12/2019, and allow this Writ Petition. As a result, the trial Court will number the suit and proceed with the matter on merits. Of course, the respondents, as the defendants, will have all their pleas in the fresh suit intact.

DAMA SESHADRI NAIDU, J.

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