

**IN THE HIGH COURT OF BOMBAY AT GOA****CIVIL REVISION APPLICATION NO.1 OF 2021**

DINAR TARCAR  
RESOURCES (INDIA) PVT.  
LTD., REP. BY ASHOK  
ANTONIO COTTA

..... APPLICANT

VS

SESA RESOURCES LTD.,  
AND 2 ORS.,

..... RESPONDENTS.

Mr. S. G. Bhobe, Advocate for the Applicant.  
Mr. Shivan Desai, Advocate for the Respondent no.1.  
Mr. V. A Lawande, Advocate for Respondent no. 2 and 3.

**CORAM: DAMA SESHADRI NAIDU, J.**  
**Date: 16th March 2021**

**ORDER:****Facts:**

The applicant is the plaintiff in Commercial Suit No.15/2020 before the Commercial Court, South Goa, at Quepem. The applicant has purchased the property, which is in the first respondent's possession. The first respondent, in fact, claims to be the lessee.

2. To have that lessee evicted, the purchaser filed a suit. But the trial Court initially rejected that plaint on a technical objection. Before the purchaser could re-submit the plaint, the lessee filed Commercial Suit No.15/2020 before the same Court at Quepem. In that suit, he has sought the relief of declaration that the notice of termination, dated 4/9/2020, issued by the owners is void. Besides that, the lessee has also sought other reliefs.

3. In the suit filed by the lessee, that is Commercial Suit No.15/2020,

the purchaser is the third defendant. The purchaser applied to the trial Court under Order 7 Rule 11 CPC to have the lessee's plaint rejected. In that application, he has pleaded that the lessee had no cause of action and that the alleged lease deed admittedly being unregistered, no rights flow out of it. Even that lease must be treated as one under the Portuguese Decree 43525.

4. Through the impugned order dated 7/12/2020, the trial Court rejected the purchaser's plea under Order 7 Rule 11. Aggrieved, the purchaser has filed this Civil Revision Application.

**Submissions:**

**Applicant:**

5. Shri S. G. Bhohe, the learned counsel for the purchaser, has submitted that the lessee pleaded in his suit that the lease was under Portuguese Decree. If that were so, then, under section 10 of the Portuguese Decree, registration of the lease deed is a must. But as the lease deed remained unregistered, the lessee had no cause of action, and a suit based on an unregistered lease deed is not maintainable. Then, the learned counsel has argued about what follows an unregistered or an insufficiently stamped document. According to him, in either event, no rights flow out of that unregistered or insufficiently stamped document. So as per section 10 of the Portuguese Decree, the very document is void. According to the learned counsel, viewed from either perspective, the suit suffers and must be rejected under Order 7 Rule 11 (a) and (d) of CPC.

**Respondent No.1:**

6. On the other hand, Shri Shivan Desai, the learned counsel for the tenant, has submitted that the trial court has rightly confined its findings to the plaint averments. It has, then, found no statutory lacuna non-suiting the tenant. It is premature at this stage, Shri Desai insists, for the purchaser to agitate on the merits of the matter based on his defence. That said, Shri

Desai has also insisted that the tenant contests the purchaser's claim that the deed of lease requires registration under the Portuguese Decree.

7. In the end, Shri Desai has submitted that the pleas the purchasers have taken to non-suit the tenant are the contentions on the merits, and they have to be gone into only during the trial. Therefore, without that process being undertaken, the trial Court has rightly been disinclined to reject the tenant's plaint.

8. Shri Lawande, the learned counsel for the owners, has adopted the submissions advanced by the learned counsel for the purchaser.

9. Heard Shri S. G. Bhobe, the learned counsel for the applicant; Shri Shivam Desai, the learned counsel for respondent no.1; and Shri Lawande, the learned counsel for the respondent nos. 2 and 3.

**Discussion:**

10. Indeed, the trial Court has rightly rejected the applicant's plea under Order 7 Rule 11 CPC, but with wrong reasons. It has held that unless the defendants are given a chance to file their written statement, any ruling under Order 7 Rule 11 before that stage will offend natural justice principles. I am afraid this proposition of law does not seem to be correct.

11. Once the statute is clear, the common law principles of natural justice have no role to play. Order 7 Rule 11 of CPC requires the Court to decide the matter essentially and exclusively based on the plaint averments and nothing else. Plaint averments, of course, include the documents that accompany the plaint. So, the trial Court's insistence that the other parties should also be allowed to place their defence on the record before it could rule on the suit maintainability is incorrect. It offends an established principle of law.

12. The other plea that has weighed with the trial Court is this: to decide whether "the cause of action is frivolous or vexatious", the trial Court must examine the parties. Again, the trial Court has erred in concluding so.

Any objection on the ground that the suit is frivolous or vexatious cannot be a ground for plaint rejection under Order 7 Rule 11 of CPC. It may have been an aspect to be considered under the Goa Vexatious Litigation (Prevention) Act 2007. That is a principle of equity transported into statute books.

13. Under Goa Vexatious Litigation (Prevention) Act 2007, the Advocate General or any other person facing civil or criminal prosecution may ask the High Court to declare the person that has initiated the litigation to be declared a vexatious litigant. If such a declaration occurs, the person so declared must seek the court's leave to institute or continue any civil or criminal proceedings. Thus, there is altogether a different mechanism for treating any litigation as vexatious. That apart, a person may be declared a vexatious litigant, but the not the case per se. In other words, the Vexatious Litigation Act is person-specific, not case-specific.

14. Here, the applicant has raised two objections: (i) unregistered document does not give any cause of action for a suitor to approach the court. As I understand, no law bars a party from litigating based on an unregistered document. Section 49 of the Registration Act answers that. Perhaps, a person may have a weak case or no case, but his case's strength is not a reckoning factor for the court to decide whether that person has a right to approach the Court. The right to sue is a matter of law; to sue rightly is a matter of wisdom. Here, we are concerned with the former, not the latter.

15. The second objection concerns the value of an unregistered document. According to the appellant, an unregistered document is void, and no right flows from it. So he contends that there can be no suit based on such a document. I am afraid even this plea must fail. Again, Section 49 of the Registration Act answers this. Even if a statute—for example, the Registration Act—compels a document to be registered, the non-

registration does not render that document void for all purposes. For a limited purpose, such as specific performance or for indefinable collateral purposes, the party can rely on the document.

16. How about an insufficiently stamped document? If no party wants to mark it in evidence, it remains a piece of paper on record. Here, I do not intend to address the intricacies of impounding. Nor such a document adds credibility to the documents until it has been duly marked and proved. To sum up, an unstamped or insufficiently stamped document presents a curable defect: payment of deficit stamp duty with a penalty, subject to a time limit. On the other hand, the unregistered document presents an incurable defect: it can be used for collateral purposes in general or other statutorily permissible purposes. Neither insufficiency of stamp nor non-registration has anything to do with the rejection of plain under Rule 11 of Order 7, CPC.

17. At any rate, as the trial Court has rightly concluded, these are the matters of merit but not the matters of maintainability.

18. Under these circumstances, I am disinclined to interfere with the impugned Judgment. I, therefore, dismiss the Civil Revision Application.

**DAMA SESHADRI NAIDU, J.**

**AP/-**

MARIA  
AURA  
PEREIRA

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