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IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO. 30 OF 2019.

SANDESH ANAND KAMAT ...Applicants.
HELEKAR AND 2 ORS.,

Versus

LA MARWEL RESIDENTS
WELFARE ASSOCIATION, REP. BY
ITS PRESIDENT, EVARISTO ...Respondents.
FERNANDES AND 6 ORS.,

Mr. J. J. Mulgaonkar, Advocate *for the applicants.*

Mr. M. Viegas, Advocate *for the respondent no.1.*

Mr. T. Gawas, Addl. Govt. Advocate *for the respondent
nos.2 and 3.*

Mr. H. D. Naik, Advocate *for the respondent no.4.*

Mr. S. Karpe and Mr. A. Sawant, Advocates *for the
respondent no.5.*

WITH

CIVIL REVISION APPLICATION NO. 33 OF 2019.

CORPORATION OF THE CITY OF
PANAJI, THR. ITS COMMISSIONER., ...Applicants.

Versus

LA MARVEL RESIDENTS WELFARE
ASSOCIATION AND 8 ORS., ...Respondents.

Mr. S. Karpe and Mr. A. Sawant, Advocates for the
applicants.

Mr. M. Viegas, Advocate for the respondent no.1.

Mr. T. Gawas, Addl. Govt. Advocate for the respondent
nos.2 and 3.

Mr. H. D. Naik, Advocate for the respondent no.4.

Mr. J. J. Mulgaonkar, Advocate for the respondent nos.5

to 9.

CORAM: MANISH PITALE, J.

DATED: 7th September, 2021.

ORAL ORDER.:

1. These revision applications arise out of orders dated 7.12.2018, passed by the Ad-hoc District Judge-I, Panaji, whereby the applications under Order VII Rule 11 of CPC for rejection of plaint filed on behalf of the revision applicants herein/original defendant nos.4 and 5, have been rejected.

2. The grounds raised for rejection of plaint by the applicants herein are distinct but a similar prayer is made on behalf of the said defendants that on a plain reading of the plaint along with the relevant provisions of law, it becomes evident that the matter does not deserve to go to trial and that this is a fit case for exercise of powers under order VII Rule 11(a) and (d) of CPC for rejection of the plaint.

3. The respondent no.1 in both these applications has filed a suit for permanent injunction against the revision applicants and other defendants claiming various reliefs, including a decree for permanent injunction against the original defendant no. 5 i.e. the revision applicant in CRA No.30 of 2019, from undertaking any construction on the basis of building plan approved by Corporation City of Panaji i.e. the applicant in Criminal Revision Application no. 33 of 2019.

4. It is claimed that, not only is the proposed construction in violation of a specific covenant of sale deed dated 12.10.1967, but the same is also contrary to the relevant provisions of law,

including the provisions of the Goa, City of Corporation of Panaji, Act 2002.

5. The Revision Applicants filed applications under Order VII Rule 11 of CPC for rejection of the plaint. According to the revision applicant in CRA No. 30 of 2019 (Original defendant no.5) it is claimed that reading of the plaint itself would show that there is no cause of action made out for approaching the Civil Court. It is contended that although the revision applicant asserts that he is not bound by the covenant of the aforesaid sale deed on the basis of which the respondent no.1 claims that construction of the building stands restricted only to two floors, it is claimed that even if the contents of the plaint were to be accepted, as per the prevailing position of law manifested in relevant statutory rules, the construction proposed to be undertaken by the said revision applicant (Original defendant no. 5) is restricted only to two floors. It is submitted that these aspects of the relevant rules and regulations, read with contents of the plaint were argued and pointed out at length before the Court below, yet there is no discussion in the impugned order dated 7.12.2018, which is subject matter of challenge in CRA no.30 of 2019. It is pointed out that although contentions of the revision applicant have been mentioned, but there is absolutely no discussion on these aspects and the application under Order VII Rule 11 of CPC has been rejected.

6. In so far as CRA No.33 of 2019 is concerned, it is brought to the notice of this Court that the revision applicant/ Corporation specifically relied on Sections 269 and 270 of the Goa, City of Corporation of Panaji, Act 2002, to contend that the plaint deserved to be rejected as being barred by law under

Order VII Rule 11(d) of the CPC. Section 270 of the said Act pertains to bar on jurisdiction of the Civil Court in respect of the matters covered under the provisions of said Act. It was brought to the notice of this Court that under Section 269(5) of the said Act, if the Corporation or any other person sought injunction for removal or alteration of any building on the ground that it contravened any provision of the said Act or of the bye-laws framed thereunder, such a person could apply to the District Court for reliefs. On this basis it was submitted that the suit filed by respondent no.1 was obviously barred by law.

7. Perusal of the impugned order passed by the Court below on the aforesaid application moved by the Revision applicant/ Corporation would show that in paragraph 2 of the order the said contention is specifically recorded. Thereafter, detailed contentions of the Corporation have been recorded with reference to at least four judgments on which reliance was placed on behalf of the Corporation, but, by the said impugned order dated 7.12.2018, the Court below has failed to discuss any of the said contentions raised on behalf of the Corporation. There is no discussion on Sections 269 and 270 of the said Act and the reasoning can be found only in paragraph 11 of the impugned order. The Court below has rejected the application without discussing these specific contentions raised on behalf of the applicant/Corporation. The approach adopted by the Court below is wholly erroneous and it is unsustainable. An application under Order VII Rule 11 of the CPC seeks to bring a halt to the proceedings before the Civil Court at the threshold and it is necessary for such an application to be decided after taking into consideration the contentions raised by the rival parties. If a matter does not deserve to go for trial, the plaint deserves to be

rejected so that the valuable time of the Court is saved and defendants are not put to unnecessary inconvenience.

8. The Court below in the present case failed to appreciate the manner in which such applications are to be dealt with. A perusal of the roznama shows that arguments on said applications at Exh 22 and 50 were heard on 13.6.2018 and the impugned orders were ultimately passed on 7.12.2018. It is perhaps because of passage of time that the Court below failed to discuss the detailed contentions raised on behalf of the applicants, leading to the impugned orders rejecting the applications without assigning proper reasons.

9. In view of the above, this Court is of the opinion that the impugned orders deserve to be set aside and the matters need to be remanded back to the Court below for considering the applications filed at Exh. 22 and 50 afresh. It is expected that the contentions raised on behalf of the original defendant nos. 4 and 5 shall be taken into consideration by the Court below in detail and after giving proper opportunity of hearing to the rival parties. All the contentions on all points raised by the rival parties are kept open.

10. In view of the above, the impugned orders are set aside and matters are remanded to the Court below. The applications at Exh. 22 and 50 shall be now taken up for consideration afresh, after giving proper opportunity of hearing to all concerned parties. The court below shall decide the applications within a period of eight weeks from today.

11. Applications stand disposed of in above terms.

MANISH PITALE, J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS
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