

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.4 OF 2021

COMMISSIONER OF
CUSTOMS AND CENTRAL
EXCISE, PANAJI AND ANR

..... APPLICANTS

VS

ANANDIBAI VENKATESH
SAWANT, REP. BY THEIR
CONST. ATTORNEY, BY
RES. NO. 10 AND 17 ORS

..... RESPONDENTS

Ms. Asha Desai, Senior Standing Counsel for the Petitioners.
Mr. A. Salatry, Advocate for the Respondents nos.3, 4 (a & b), 5 to 7, 8
(a) to (d), 9 to 18.

CORAM: MANISH PITALE, J.
DATE: 26th October, 2021.

Oral Order.:

By this application, the applicants (original defendants) have challenged the impugned order whereby the Court of District Judge, North Goa at Panaji has dismissed an application for rejection of the plaint filed on behalf of the petitioners under Order 7 Rule 11(d) of the Code of Civil Procedure 1908.

2. According to Ms. Desai, the learned Senior Standing Counsel appearing for the applicants, the impugned order is unsustainable for the reason that as per the settled law, an application for rejection of

the plaint could be filed at any stage of the proceedings. The Court below has emphasized on the stage at which the suit filed in the year 2014 is pending, which according to the learned counsel was wholly irrelevant. It is submitted that even if the suit reached the stage of recording of evidence, the application filed for rejection of the plaint ought to have been considered on merits. It is brought to the notice of this Court that even in the written statement filed on behalf of the petitioners, the existence of the Arbitration Clause in the rent agreement was highlighted and it was stated that the suit deserved to be dismissed only on the basis of the said arbitration clause. In fact the same was taken as a preliminary objection, which the Court below failed to appreciate.

3. On the other hand, Mr. A. Salatry, the learned counsel appearing of the contesting respondents submitted that the Court below correctly took into consideration the provisions of the Arbitration and Conciliation Act, 1996, particularly, section 8 thereof to hold in favour of the respondent.

4. Heard the learned counsel for the parties and perused the material on record.

5. It is an undisputed position that the suit was filed in the year 2014 and the application for rejection of the plaint was filed in the year

2019. The stage at which the said application was filed was when the evidence was being recorded after the Court below had framed the issues.

6. It is settled position of law that an application for rejection of the plaint ought not to be dismissed merely on the ground that it has been filed at a stage when the written statement is already on record and the matter has gone to trial. But, in the present case, the ground on which the applicants claim that the suit is barred by law under Order 7 Rule 11 (d) of the C.P.C, is of some significance. It is claimed that there is an arbitration clause in the rent agreement executed between the parties and the same was highlighted in the preliminary objection taken in the written statement itself. It is submitted that when such a specific objection was already taken on record, the Court below ought to have allowed the application for rejection of the plaint filed on behalf of the applicant.

7. Perusal of section 8 of the Arbitration and Conciliation Act 1996 particularly, sub section (1) thereof shows that the party to the proceedings claiming that the Arbitration Agreement exists between the parties must apply to the Court not later than the date of submitting its first statement in the dispute and under sub section (2), such an application can be entertained only when it is accompanied by the original arbitration agreement or a duly certified copy thereof.

In the present case, admittedly the applicants failed to abide by the requirements of section 8 of the Arbitration and Conciliation Act. This aspect of the matter was appreciated by the Court below in para 9 of the impugned order. This Court is of the opinion that no fault can be found with the reasoning adopted by the Court below while passing the impugned order.

8. In view of the above, it is found that there is no merit in the present application and accordingly it is dismissed.

MANISH PITALE, J.

AP/-

MARIA
AURA
PEREIRA



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by MARIA AURA
PEREIRA
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