

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO. 41 OF 2019

1. Bela Rosa Almeida e Colaco & anr. ...Petitioners
Versus
1. Kushali Gaonkar & 6 Ors. ...Respondents

Mr. J. J. Mulgaonkar, Advocate for the Petitioners.
Mr. A. D. Bhobe, Ms. Annelise Fernandes, and Ms. Kalpa Govenkar, Advocates for the Respondents.

CORAM: M. S. SONAK, J
DATED: 26th August 2021

PC:-

1. Heard Mr. Mulgaonkar, learned Counsel for the Petitioners, and Mr. Bhobe, learned Counsel for the Respondent no.1-Plaintiff.

2. The Petitioners challenges the order dated 14.08.2019, by which the learned Trial Judge has dismissed Petitioner's application under Order 7 Rule 11 and Order 15 Rule 1, read with Section 151 of the Civil Procedure Code (CPC), urging, inter alia, the rejection of the plaint.

3. The rejection of the plaint was sought for on the ground that the same is barred by the doctrine of *res judicata*.

4. Recently, the Hon'ble Supreme Court, in the case of **Srihari Hanumandas Totala vs Hemant Vithal Kamat & Ors¹**,

¹ 2021 SCC OnLine SC 565

(Civil Appeal No. 4665 of 2021 decided on 09.08.2021) has held that the plaint cannot be rejected by resort to Order 7 Rule 11 CPC on the ground of *res judicata*.

5. Following the aforesaid judgment, there is no case made out to interfere with the impugned order.

6. Mr. Mulgaonkar, however, pointed out that the impugned order does not even advert to the Petitioner's plea under Order 15 Rule 1 of CPC for framing of a preliminary issue.

7. On the perusal of the impugned order, it does appear that this plea has not even been considered.

8. Therefore, though this revision application is being dismissed, leave is granted to the Petitioners herein to file a fresh application under Order 15 Rule 1 of CPC urging the framing of the preliminary issue. Such application, if filed, will have to be considered and disposed of on its own merits. All contentions of parties on the merits of such application are, however, left open.

9. The revision application is disposed of in the aforesaid terms. There shall be no order as to costs.

10. All concerned to act based on an authenticated copy of this order.

M. S. SONAK, J.