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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 351 OF 2021

JOYCE CECILIA ROMALIA DE SOUZA
AND ANR. ...PETITIONERS
VS
CARL J. M. DE SOUZA AND 2 ORS. ...RESPONDENTS

Mr. R.G. Ramani, Senior Advocate with Mr. Pranav Kakodkar, Advocate *for the Petitioners*.

Mr. J.P. Mulgaonkar, Senior Advocate with Mr. J.J. Mulgaonkar and Ms. Asmita Tirodkar, Advocates *for Respondent Nos. 1 and 2*.

Mr. Manish Salkar, Advocate *for Respondent No. 3*.

CORAM: MANISH PITALE, J.

DATED: 1st MARCH 2022

P.C.:

1. By this Writ Petition, the petitioners have challenged order dated 25.02.2021, passed by the Court of Senior Civil Judge, Mapusa (hereinafter referred to as the Trial Court), whereby Applications for rejection of plaint at Exhibit D-13 (filed by the petitioners) and Exhibit D-15 (filed by the respondent no. 3) were dismissed. The petitioners before this Court are the original

defendant nos. 1 and 2, who had filed Application for rejection of the plaint at Exhibit D-13.

2. The ground raised on behalf of the petitioners before the Trial Court, while seeking rejection of the plaint under Order VII, Rule 11(d) of the Civil Procedure Code, 1908 (CPC), was that the plaint was not verified or affirmed in terms of the mandatory requirements of Order VI, Rule 15 of the CPC. It was claimed that the said defect went to the root of the matter, thereby showing that the plaint was liable to be rejected as being barred by law. The respondent nos. 1 and 2 (original plaintiffs) filed their replies, opposing the said Application.

3. By the impugned order, the Trial Court rejected the Applications, after considering the contentions raised on behalf of the rival parties. The Trial Court referred to the judgments, on which reliance was placed on behalf of the petitioners and after considering the contentions raised in the context of the provisions of the CPC and Section 14 of the Notaries Act, 1952, found that the Applications deserved to be dismissed.

4. Mr. Ramani, learned Senior Counsel appearing for the petitioners submitted that the Trial Court committed an error in dismissing the Applications for rejection of plaint. He placed reliance on Sections 26 and 139 of the CPC, as also Order VI,

Rule 1 and Order VI, Rule 15 of the CPC. Reliance was also placed on Clause 8(d)(iv) of Chapter II of the Civil Manual and Section 14 of the Notaries Act, to contend that a conjoint reading of the aforesaid provisions would show that the verification was completely defective. It was submitted that there was nothing placed on record to show that a Notification was issued by the Central Government, as contemplated under Section 14 of the Notaries Act, concerning reciprocal arrangement between Canada and India, to show that the verification executed before Notary Public in Canada satisfied the requirements of law. Reliance was placed on the judgments of the Calcutta High Court, **In re, K. K. Ray (Private) Ltd., AIR 1967 Calcutta 636** and in the matter of **Rei Agro Ltd. & Others, AIR 2015 Calcutta 54**.

5. On the other hand, Mr. Mulgaonkar, learned Senior Counsel appearing for the respondent nos. 1 and 2 submitted that there was no substance in the contentions raised on behalf of the petitioners. It was brought to the notice of this Court that as far back as in the year 1961, a Division Bench of this Court in the case of **All India Reporter Ltd. & Another Vs. Ramchandra Dhondo Datar, AIR 1961 BOM 292**, had held that improper verification of the plaint, at worst, was a curable defect and that it could not be said that a plaint suffering from such irregularities, was not filed in the eyes of law. On this basis,

it was submitted that the defect, if any, was curable and on this basis, the Application under Order VII, Rule 11 of the CPC was not maintainable. On the merits of the matter, the learned Senior Counsel appearing for the respondent nos. 1 and 2 submitted that the position of law was covered in favour of the respondents as per the judgment of a learned Single Judge of this Court in **Zhejiang Medicines and Health Products Import and Export Co. Ltd. Vs. Devanshi Impex Pvt. Ltd., 2016 SCC Online Bom 10041**. He submitted that the provisions of the CPC, the Evidence Act and particularly, Section 14 of the Notaries Act, were taken into consideration in the said judgement. The judgments of the Calcutta High Court, upon which the petitioners had placed reliance, were also considered and it was found that a verification, notarized outside India could not be said to be a defective verification, warranting rejection of a petition/plaint at the threshold. On the question as to what was the effect of the amendments brought in the CPC over the years, particularly in the year 1999 w.e.f. 2002, the learned Senior Counsel relied on the judgment of the Supreme Court in the case of **Vidyawati Gupta & Others Vs. Bhakti Hari Nayak & Others, (2006) 2 SCC 777**.

6. Heard the learned Counsel for the parties and perused the material on record. In the present case, the respondent nos. 1 and

2 have filed a suit for declaration and injunction against the petitioners and respondent no. 3. It is an admitted position that the verification of the plaint has been done before a Notary Public in Canada. The signature, stamp and seal of the Notary Public at Canada is found in the copy of the plaint placed on record. The petitioners filed the aforesaid Application for rejection of the plaint under Order VII, Rule 11(d) of CPC, claiming that such verification and affirmation in front of a Notary Public in Canada did not satisfy the mandatory requirements of CPC, particularly, Order VI, Rule 15 thereof read with the relevant provisions of the Notaries Act and that therefore, the plaint deserved to be rejected as barred by law.

7. The central question that arises for determination is, as to whether the plaint in the present case can be said to be barred by law, in view of the fact that the plaint was verified, admittedly, before the Notary Public in Canada. The sheet anchor of the arguments presented on behalf of the petitioners is that since there is no Notification placed on record to indicate that there is reciprocal arrangement between Canada and India, insofar as the acts of Notary Public are concerned as per Section 14 of the Notaries Act, the verification in the present case cannot be recognized by the Courts in India. It is further submitted that the respondent nos. 1 and 2 made no efforts to place on record

material to show that in the absence of any such Notification, there was a practice in the two countries viz. Canada and India to recognize such acts of Notary in a reciprocal manner. Much emphasis was placed on the provisions of the CPC to contend that in the present case, the mandatory requirements were not satisfied and that therefore, such a plaint could not be even looked at by the Trial Court and that it deserved to be rejected at the threshold.

8. The aforesaid arguments made on behalf of the petitioners proceed on the basis that verification in the presence of the Notary Public in Canada is a defect, which is incurable and that since such defect goes to the root of the matter, the plaint deserves to be rejected as barred by law. This Court has perused Sections 26 and 139 of the CPC as well as Order VI, Rule 15 of the CPC, in conjunction with Section 14 of the Notaries Act. This Court is not convinced that the requirements of the said provisions are not satisfied in the present case, merely because the verification is done in the presence of the Notary Public in Canada. The question as to what would be the effect of such verification has been dealt with in detail in the aforesaid judgment of this Court in **Zhejiang Medicines and Health Products Import and Export Co. Ltd. Vs. Devanshi Impex Pvt. Ltd.** (supra). The learned Single Judge of this Court considered similar arguments and in the context of Section 85 of

the Evidence Act, 1872, pertaining to Powers of Attorney, held that notwithstanding Section 14 of the Notaries Act, verification done before the Notary Public in a country, in respect of which, no Notification was issued by the Central Government under Section 14 of the Notaries Act, could not be said to be violating the mandatory provisions of law. Such verification was held to be proper and objections similar to those in the present case, stood rejected. The relevant portion of the said judgment reads as follows:

“6. Section 85 of the Evidence Act creates a legal presumption in favour of execution and authentication of a document purporting to be a power of attorney executed before, or authenticated by, a Notary Public. There are a number of judgments of different High Courts, which hold that Section 85 applies to powers of attorney executed before and authenticated by all Notaries and not necessarily Notaries defined under the Notaries Act, 1952. Delhi High Court in the case of National and Grindlays Bank Ltd. vs. M/s. World Science News and others (AIR 1976 Delhi 263), Allahabad High Court in the case of Abdul Jabbar vs. IInd Addl. District Judge, Orai (AIR 1980 Allahabad 369) and Calcutta High Court in the case of in Re K.K. Ray (Private) Pvt. Ltd. (AIR 1967 Calcutta 636) have held so. Even the judgment of the Supreme Court in the case of Jugraj Singh vs. Jaswant Singh (1970 (2) Supreme Court Cases 386) suggests that a power of attorney executed before a Notary Public not covered by the Notaries Act, 1952 comes within the expression

“Notary Public” under Section 85, though this case does not in terms deal with this question.

7. We also need to consider the effect of Section 57 of the Evidence Act, which requires the Court to take judicial notice of all seals of Notaries Public. Once again, these Notaries Public include Notaries operating in other countries as well and are not confined to Notaries under the Notaries Act, 1952.

8. Now the question is whether Section 14 of the Notaries Act, 1952, which is in the context of reciprocal arrangements for recognition of notarial acts done by foreign Notaries, in any way, controls the interpretation of Sections 85 or 57 of the Evidence Act. Section 14 provides that if the Central Government is satisfied that by the law or practice of any country or place outside India, the notarial acts done by Notaries in India are recognized for all or any limited purposes in that country or place, the Central Government may, by notification in the Official Gazette, declare that the notarial acts lawfully done by the Notaries within that country or place shall be recognized within India for all purposes or, as the case may be, for such limited purposes, as may be specified in the notification. Section 14 no doubt provides for a declaration by the Central Government of recognition within India of all notarial acts done by Notaries of a foreign country but does it imply that no other notarial acts, that is to say, except the acts so recognized by declaration by the Central government, are recognized in India. The query is more pertinent in the context of Sections 85 and

57 of the Evidence Act. In the first place, Sections 85 and 57 particularly deal with powers of attorneys executed before and authenticated by Notaries Public which are presumed to have been duly so executed and authenticated, with the seals of the notaries being judicially noticed, whereas Section 14 generally provides for recognition of “notarial acts”. There is no reason why, as far as powers of attorney with notarial seals are concerned, we should not go by the provisions of Sections 85 and 57, which particularly deal with such matters, rather than the general provisions of Section 14 which bear on recognition of notarial acts generally. (There are various other notarial acts which fall for recognition within India.) For raising the statutory presumption, Sections 85 and 57 do not require any recognition of notarial acts of the country or place, as the case may be, where such power of attorney is executed or authenticated. Secondly, there is nothing in the language of Section 14, which requires that only those notarial acts, which are declared as recognized by the Central Government by notification in the Official Gazette, are to be recognized in India. Delhi High Court in the case of Rajesh Wadhwa vs. Dr. (Mrs.) Sushma Govil (37 (1989) DLT 88) dealt with this aspect. The Court, after considering judgments of various courts in and outside India, came to hold that the provisions of Section 14 of the Notaries Act, 1952, do not create any bar in recognizing the notarial acts of such countries, which are not declared as recognized by a notification of the Central Government. Even the Allahabad High Court in Abdul Jabbars case (supra) held that Section 85 of the Evidence Act applies equally to documents

authenticated by Notaries Public of other countries and there is no reason to import the provisions of Notaries Act for interpreting the provisions of the Evidence Act. Another judgment of Delhi High Court in La Chemise Lacoste vs. Crocodile Indl. Pte. Ltd. (CS (OS) No.894/2001), holds that even though there might not be reciprocity between India and another country within the meaning of Section 14 of the Notaries Act, 1952, acts of Notaries in that foreign country could be given legal recognition by courts and authorities in India. The notification under Section 14 of the Notaries Act, in other words, is not held to be mandatory. I am respectfully inclined to agree with these views of Delhi and Allahabad High Courts.

9. Mr. Andhyarujina, learned Counsel for the Respondent, referred to the cases of Calcutta High Court in REI Agro Ltd. Vs/ UBS AG 2015 (SCC Online 2557) and Chandra Proteco Ltd. and Hopgoodganim (2015 SCC Online Cal 5690) as also the judgment of Allahabad High Court in Tayal Potteries vs. Macroplast (P) Ltd. (1998 SCC Online All 1126) in support of his case that in the absence of recognition of reciprocity as contemplated under Section 14 of the Notaries Act, unilateral recognition of notarial acts done by a foreign Notary by an Indian Court is impermissible. In the first place, the judgment of the Calcutta High Court in the case of REI Agro Ltd. (supra) curiously does not refer to the earlier judgment of that Court in the case of Re K.K. Ray Pvt. Ltd. (supra). In that case, after an elaborate discussion on the various provisions of law, which bear on the subject, a learned Single Judge of Calcutta High Court had come to a conclusion

that notification under Section 14 of the Notaries Act recognizing reciprocity of notarial acts was not a legal requirement for recognizing a power of attorney in India. Besides, none of the two judgments of Calcutta High Court cited by Mr. Andhyarujina discusses the existing law on the subject, particularly on the interpretation of Section 85 of the Evidence Act, as noted by several other High Courts as I have indicated above. These two judgments rather approach the subject on a first principle basis. The judgments do not elaborate on why recognition by Indian Courts is impermissible in the absence of recognition of reciprocity as contemplated under Section 14 of the Notaries Act. The only reason, broadly stated, is that “if it is otherwise, the sanctity of the sovereign power being exercised by an Indian Court will be compromised”. One is at a loss to understand why it should be so. After all, it is by law made by the Indian legislature, namely, Section 85 of the Evidence Act, that the Indian Courts recognise all powers of attorney led in evidence in India. The judgment of Allahabad High Court cited by Mr. Andhyarujina does not deal with a power of attorney in connection with verification of a petition. The authority to verify the petition was claimed in that case by a “pairokar”, who was said to be “well acquainted with the facts deposed to below.” The Court found that the affidavit filed by this “pairokar” nowhere stated that the said person was duly authorised by the petitioners to file the affidavit in support of the petition. The facts in that case are, thus, clearly distinguishable.

10. Mr. Andhyarujina, learned Counsel for the Respondent, also submitted that unlike in the case of Re K.K. Ray Pvt. Ltd., where the Court in fact had material before it to find a factual reciprocity between notarial acts in US and India, there is no such factual material available in the present case. I am afraid I cannot accept this argument from the Respondent. It is, firstly, for the Respondent to aver that there is no such factual reciprocity. In the absence of such plea from the Respondent, the Petitioner cannot be required to prove factual reciprocity. Secondly, I have held as a matter of law that Section 14 of the Notaries Act, 1952 has no bearing on the construction to be put on Section 85 of the Evidence Act, in which case factual reciprocity of notarial acts is quite besides the point.”

9. A perusal of the above quoted judgment would show that the judgment of the Calcutta High Court, on which, reliance is placed on behalf of the petitioners has been dealt with and distinguished. An attempt was made on behalf of the petitioners to distinguish the above quoted judgment of this Court, insofar as applicability to the facts of the present case is concerned, by contending that the said judgment pertained to a situation where the verification of Power of Attorney was being debated. In this context, the learned Senior Counsel for the respondent nos. 1 and 2 is justified in contending that although reference is made to Section 85 of the Evidence Act, which pertains to verification of

Power of Attorney executed before the Notary Public, the law laid down in the aforesaid judgment in the case of **Zhejiang Medicines and Health Products Import and Export Co. Ltd. Vs. Devanshi Impex Pvt. Ltd.** (supra) pertains to the act of the Notary Public and its validity in the context of pleadings that could be accepted in the Courts of law in India.

10. It was also submitted on behalf of the petitioners that the aforementioned judgment of this Court in the case of **All India Reporter Ltd. & Another Vs. Ramchandra Dhondo Datar** (supra) could not be relied upon, because it was delivered in 1961 and thereafter, there have been number of amendments in the CPC. The judgment in the case of **Vidyawati Gupta & Others Vs. Bhakti Hari Nayak & Others** (supra) rendered by the Supreme Court shows that this aspect has been considered and it has been laid down that various amendments to the CPC have been aimed at procedural delays in civil matters and such amendments being procedural in nature, are directory and non-compliance therewith would not render the plaint *non est*. The relevant portion of the said judgment reads as follows:

“The intention of the legislature in bringing about the various amendments in the Code with effect from 1st July, 2002 were aimed at eliminating the procedural delays in the disposal of civil matters. The amendments effected to Section 26, Order IV

and Order VI Rule 15, are also geared to achieve such object, but being procedural in nature, they are directory in nature and non-compliance thereof would not automatically render the plaint non-est, as has been held by the Division Bench of the Calcutta High Court.”

11. Therefore, the respondent nos. 1 and 2 are justified in contending that even if the contention raised on behalf of the petitioners was to be accepted, it was merely an irregularity, which was curable and in such a situation, the Application for rejection of the plaint under Order VII, Rule 11(d) of the CPC, could not be granted. Even otherwise, this Court on merits of the matter is satisfied that the position of law is covered in favour of the respondents as per the aforesaid judgment of this Court in **Zhejiang Medicines and Health Products Import and Export Co. Ltd. Vs. Devanshi Impex Pvt. Ltd.** (supra).

12. In the light of the above, it becomes clear that no error can be attributed to the Trial Court in passing the impugned order, whereby the Application for rejection of the plaint filed on behalf of the petitioners (original defendants) was dismissed. Hence, the Writ Petition is found to be without any merit and accordingly, it is dismissed.

13. Pending Applications, if any, stand disposed of.
14. Needless to say, interim relief, if any, granted in this Petition stands vacated.

MANISH PITALE, J.