

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11887 OF 2012

Sanjay Sonawane

..Petitioner

V/s.

Sultan Akbar Maldar and Ors.

..Respondents

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CHAVAN

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Mr. S.S. Patwardhan for the Petitioner.

Mr. Nishant Tripathi i/b M/s. M. Tripathi and Co. for the
Respondent No.1.

CORAM : ROHIT B. DEO, J.

DATE : 7 JUNE 2022

P.C.

1. The Petitioner is the Plaintiff in Special Civil Suit No. 371 of 2012, which is brought for a decree of declaration that the plaintiff is entitled to developed the suit property, that the Development Agreement executed by Defendants 2 and 3 in favour of the Plaintiff and Defendant 1 be declared binding and that the sale deed executed by Defendant 2 and 3 in favour of Defendant No.1 be declared illegal.

2. Defendant 1 preferred an application (Exh. 18) under Section 9A read with Order VII Rule 11 of the Code of Civil Procedure, 1908 ('Code'). The prayer clauses of the said application read thus:

“a) That preliminary issue be framed to decide whether the present suit is maintainable.

b) That this Hon’ble Court be pleased to pass such other and further orders that the facts and circumstances of the case require.

c) The cost of this Application may be provided for.”

3. The application invoking the provisions of Section 9A and Order VII Rule 11 is *inter alia* premised on the bar incorporating in Section 69 of the Indian Partnership Act, 1932. Certain other grounds are also raised to which elaborate reference is not necessary in the context of the order which I propose to make.

4. The learned Trial Judge allowed the application Exh. 18 by a cryptic order which observes that considering the submissions, the Judge is of the view that preliminary issue is required to be framed in the following form :

“Whether the suit is maintainable in present form for specific performance on the basis of suit agreement?”

5. Having heard the learned counsel for the Petitioner-original Plaintiff and the learned counsel for Defendant 1, I am satisfied that the order impugned is unsustainable in law. It is difficult to comprehend what exactly weighed with the learned Trial Judge. Whether the suit is maintainable in the present form is too laconic an expression to put the parties on notice as to the nature

and extent of the evidence which the parties are expected to adduce. That apart, while the observation is that the submissions are considered, the order is unreasoned. While the learned counsel for the Defendant does not seriously dispute that the order impugned is not happily worded, the learned counsel would submit that the ultimate conclusion is right. I am afraid that if a judicial order is unreasoned, the fact that ultimate conclusion is correct, assuming that the conclusion is correct, is of no relevance. Reasons furnish the link between the material on record and the findings and absence of reasons erodes the confidence of the litigants in the justice dispensation system. The order impugned is liable to be set aside on the short ground that neither are the submissions considered nor is the preliminary issue framed appropriately.

6. The learned counsel for Defendant 1 would however submit that what in essence was invoked was jurisdiction under Order VII Rule 11 since according to the Defendant 1, the suit as is framed is barred by provisions of law, to wit Section 69 of the Indian Partnership Act. The learned counsel for the Defendant 1 would submit that since the said aspect is not considered at all, Defendant 1 may be granted liberty to apply afresh under Order VII Rule 11. The learned counsel for the Petitioner would submit that if liberty is granted, the Trial Court may consider the application which may be preferred, on its own merits.

7. The order impugned is set aside with liberty to Defendant 1 to prefer fresh application under Order VII Rule 11 and if such application is preferred, the same shall be considered by the Trial Court on its own merits within a period of six weeks from the date of filing of the application.

8. Considering that the suit pertains to the year 2012, subject to the decision on the application under Order VII Rule 11 if such application is preferred, the suit shall be expedited and decided within next 12 months.

9. The petition is disposed of in the aforestated terms.

(ROHIT B. DEO, J.)