

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO.156 OF 2018

Sunil s/o Vinayak Kokje and others

Vs.

M/s. Shewalkar Hotels through its Managing Partner Shri Ashutosh Ram Shewalkar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. P. Bhandarkar, Advocate for the applicants.

CORAM : AVINASH G. GHAROTE, J.

DATE : 01/08/2022

1. Heard Mr. Bhandarkar, learned counsel for the petitioners. None appears for the respondent though served.

2. The revision purports to challenge the order dated. 19.9.2018 passed by the learned trial Court whereby the rejection of the application under Order XIV Rule 5(2) of the CPC for striking off issues framed at Exh.83 has been challenged. The issues which are sought to be deleted are spelt out in para 1 of the application (page 76). The matter has been admitted on 9.10.2019. Mr. Bhandarkar, learned counsel for the applicants contends that considering that there was a compromise between the original plaintiff and the defendant no.4 under the terms of which the claim for specific performance has been given up by the original plaintiff (respondent herein) the question of preliminary

issue regarding non-compliance with the terms of the agreement dated 26.12.2008 and consequent entitlement for damages would not be available to the plaintiff. He further submits that the entire proceedings now are at the behest of the original defendant no.4 which is indicated from the application for transposition of the defendant no.4 as the plaintiff (page 67) which came to be rejected. It is therefore, contended that there is no rhyme or reason for the suit to be proceeded on the basis of the issues framed as against the applicants (original defendant nos.1 to 3).

3. I am afraid that I am not able to agree to this proposition for the reason that the plaintiff in the original suit itself had claimed a relief of damages against the defendant nos.1 to 3 vide alternate prayer clause (d) (page 57). The settlement between the plaintiff and the defendant no.4 as spelt out from para 4 of the application under Order XIV Rule 5(2) of the CPC specifically reserves the right in the plaintiff to proceed with the alternate claim of damages. The provisions of Order 2 Rule 2 and Order XXIII Rule 1 of CPC permit the plaintiff to give up a part of the suit claim, which may even be the result of a compromise between the plaintiff and one of the defendants, which in this case is with the defendant no.4. That however would not mean that claim for damages made by the plaintiff in the plaint as against defendant nos.1 to 3 i.e. applicants as originally

(3)

1.cra.156.2018

claimed in suit herein cannot be held to be maintainable. I therefore do not see any merits in the revision and accordingly it is dismissed.

4. Even otherwise, in view of the amendment to the CPC the revision itself was not tenable.

JUDGE

Sarkate