

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.40 OF 2016

Mr. Sachin Yalloji Mense,
Son of Late Yalloji Mense,
Major in age,
Prop. of M/s. Superprints,
Flat No.15, S1 Kamat Gardens,
Near St. Xavier's College, Altinho,
Mapusa Goa.

... Applicant.

Versus

1. Shri Sunil Noronha,
Director, M/s. Stafford Equipment (Goa) Pvt. Ltd.,
r/o. 15-A, Shiriji Complex,
Next to Manoshanti Hotel,
Dada Vaidya road, Panaji-Goa

2. Shri Jude G. Tandon,
Managing Director,
M/s. Stafford Equipment (Goa) Pvt. Ltd.,
12th Road, Pacons Villa,
Catholic Colony, Chembur,
Mumbai – 400 071.

3. M/s. Stafford Equipment (Goa) Pvt. Ltd.,
A Company registered under the
Companies Act, 1956,
With registered office at
No.3, Mahalaxmi Co-operative Housing
Society, 1st Floor,
Opposite Hotel Palacio de Goa,
Panaji Goa 403 001 Or
At D-310, Tivim Industrial estate,
Karaswado, Mapusa Goa.

... Respondents.

Shri S.S. Kantak, Senior Advocate with Ms. Neha Kholkar,
Advocate for the Applicant/Petitioner.

Shri Anthony Joe D'Silva with Ms. K Gracias, Advocates for
Respondent No.1.

WITH
WRIT PETITION NO.148 OF 2017

SACHIN Y. MENSE,
Son of Shri Yalloji N. Mense,
major, married, resident of
Flat No.15-S1 Kamat Gardens,
Near St. Xavier's College, Altinho,
Mapusa Goa.

... Petitioner.

Versus

1. SUNIL NORONHA,
major, resident of 15-A, Shiriji Complex,
next to Manoshanti Hotel, Dada Vaidya Road,
Panaji, Goa.

2. JUDE G. TANDON,
major, resident of Pacons Villa,
12th Road, Catholic Colony, Chembur,
Mumbai.

3. M/s. STAFFORD EQUIPMENTS (GOA)
PRIVATE LIMITED,
A company having its registered
office at 15-A, Shiriji Complex,
next to Manoshanti Hotel,
Dada Vaidya Road, Panaji Goa.

... Respondents.

Shri S.S. Kantak, Senior Advocate with Ms. Neha Kholkar,
Advocate for the Applicant/Petitioner.

Shri Anthony Joe D'Silva with Ms. K Gracias, Advocates for
Respondent No.1.

WITH
WRIT PETITION NO.193 OF 2017

1. JUDE G. TANDON,
of 55 yrs. age, resident of Pacons Villa,
12th Road, Catholic Colony, Chembur,
Mumbai.

2. M/s. STAFFORD EQUIPMENTS (GOA)
PRIVATE LIMITED,
a company having its registered
office at 15-A, Shiriji Complex,
next to Manoshanti Hotel,
Dada Vaidya Road, Panaji Goa.
Also at D-310, Tivim Industrial Estate,
Karaswada, Mapusa, Goa through its Managing
director Shri. Jude Tandon

... Petitioners.

Versus

1. SUNIL NORONHA,
of major age, resident of
15-A, Shiriji Complex,
next to Manoshanti Hotel,
Dada Vaidya Road,
Panaji, Goa.

2. SACHIN Y. MENSE,
Son of Shri Yalloji N. Mense,
of major age, married, resident of
Flat No.15-S1, Kamat Gardens,
Near St. Xavier's College, Altinho,
Mapusa Goa.

... Respondents.

Shri V.A. Lawande with Shri P. Redkar, Advocates for the
Applicants/Petitioners.

Shri Anthony Joe D'Silva with Ms. K Gracias, Advocates for
Respondent No.1.

WITH
CIVIL REVISION APPLICATION NO.26 OF 2017

1. JUDE G. TANDON,
of 55 yrs. age, resident of Pacons Villa,
12th Road, Catholic Colony, Chembur,
Mumbai.

2. M/s. STAFFORD EQUIPMENTS (GOA)
PRIVATE LIMITED,
a company having its registered
office at 15-A, Shiriji Complex,
next to Manoshanti Hotel,
Dada Vaidya Road, Panaji Goa.
Also at D-310, Tivim Industrial Estate,
Karaswada, Mapusa, Goa through its Managing
director Shri. Jude Tandon

... Applicants.

Versus

1. SUNIL NORONHA,
of major age, resident of
15-A, Shiriji Complex,
next to Manoshanti Hotel,
Dada Vaidya Road,
Panaji, Goa.

2. SACHIN Y. MENSE,
Son of Shri Yalloji N. Mense,
of major age, married, resident of
Flat No.15-S1, Kamat Gardens,
Near St. Xavier's College, Altinho,
Mapusa Goa.

... Respondents.

Shri V.A. Lawande with Shri P. Redkar, Advocates for the
Applicants/Petitioners.

Shri Anthony Joe D'Silva with Ms. K Gracias, Advocates for
Respondent No.1.

CORAM: BHARAT P. DESHPANDE,J.

RESERVED ON : 19th JANUARY, 2023

PRONOUNCED ON : 27rd JANUARY,2023

JUDGMENT:

1. All the above matters are taken up for final disposal as both the orders challenged in the Revision Applications and in the Writ Petitions are arising out of the same suit between same parties. The Writ Petitions are basically challenging the order of learned trial Court allowing the amendment application. The revision applications are basically challenging the order passed by the learned trial Court thereby rejecting applications filed under Order 7 Rule 11 of CPC for rejection of plaint.

2. For the sake of convenience, the parties are hereinafter referred as plaintiff, defendants No.1 and 2 and defendant No.3 as they arrayed before the trial Court.

3. Civil Revision Application No.40 of 2016 is filed by the defendant No.3 challenging the order dated 19/08/2016 of the learned trial Court by which the application filed by the defence including that of defendant No.3 vide Exhibits 55 and 58 under Order 7 Rule 11 CPC were rejected. Civil Revision Appeal No.26 of 2017 is filed by original defendants No.1 and 2 thereby challenging the same order dated 19/08/2016 challenging the dismissal of their application under Order 7 Rule 11 of CPC.

4. Writ Petition No.148 of 2017 is filed by original defendant No.3 whereas Writ Petition No.193 of 2017 is filed by original defendants No.1 and 2 thereby challenging the order dated 06/05/2016 whereby learned trial Court allowed the application filed by the plaintiff for amendment of the plaint.

5. Heard Shri S.S. Kantak, learned Senior Advocate with Ms. Neha Kholkar, learned Advocate for the Applicant/Petitioner and Shri Anthony Joe D'Silva with Ms. K Gracias, learned Advocates for Respondent No.1 in Civil Revision Application No.40 of 2016 with Writ Petition No.148 of 2017. Shri V.A. Lawande with Shri P. Redkar, learned Advocates for the Applicants/Petitioners, and Shri Anthony Joe D'Silva with Ms. K Gracias, learned Advocates for Respondent No.1 in Civil Revision Application No.26 of 2017 with Writ Petition No.193 of 2017.

6. With the assistance of the learned Counsel for the respective parties, I have perused the record and more specifically the impugned orders.

7. Shri Kantak, learned Senior Counsel appearing for original defendant No.3 in the Revision Application as well as in the Writ Petition submitted that first of all amendment itself is time barred and the prayers in the said amendment could not have been allowed to be amended to the suit. He would submit that the plaint itself needs to be rejected as the reliefs claimed by the plaintiff apart from declaration that he is the Director of the company, cannot be granted as even if plaintiff

is considered as a Director, he cannot be declared as owner of the properties belonging to the company. He would submit that the main prayer in the suit is to declare the plaintiff as owner of the properties of the company and relief of declaration of him being a Director is only consequential. If the entire reliefs along with the pleadings in the plaint are considered the plaint needs to be rejected as no such relief could be granted to the plaintiff. Shri Kantak then would submit that if the amendment is rejected and more specifically the amended prayer clauses, the defendant No.3 would not have any grievance as such amendment prayer clauses are clearly barred by law of limitation. He further submitted that in the written statements filed by defendants No.1 and 2 in the month of July 2004, they disclosed that the shed and the plot of the company was disposed of vide Sale Deed dated 09/03/2004 in favour of defendant No.3 and that too with intervention of GIDC. Therefore knowledge of the plaintiff regarding Sale Deed has to be construed from the date of filing of the written statement i.e.09/03/2004. Accordingly, he submitted that amendment application filed to the plaint and more specifically the prayer clauses for declaring such Sale Deed as null and void, in February 2016 are hopelessly barred by law of limitation. He, therefore, would submit that Revision Application as well as Writ Petition needs to be allowed.

8. Learned Counsel Shri V.A. Lawande appearing for defendants No.1 and 2 while supporting the contentions raised by learned Senior Counsel Shri Kantak submitted that though defendants No.1 and 2

have no objection with regard to amendment of internal paragraphs of the plaint, they objected for amendment to the prayer clauses as such relief is clearly barred by law of limitation. He would submit that even the main prayers in the suit cannot be granted as the plaintiff who was already disqualified as a Director of the company, would not have any right over the properties of the company, which is a separate legal entity in itself. Both the learned Counsel appearing for the defendants would submit that the findings of the learned trial Court in both impugned orders are perverse and, therefore, needs to be quashed and set aside.

9. Shri Anthony Joe D'Silva appearing for the plaintiff while supporting findings of the learned trial Court submitted that cause of action for filing the amendment arose only after the High Court in the Writ Petition Nos.279, 362 and 626 of 2006 decided on 16/01/2015 quashed and set aside the impugned order dated 28/10/2005 passed by the First Appellate Court and modified the order of the trial Court and only thereafter amendment application was filed to include the prayer for quashing and setting aside the Sale Deed and the Lease Deed executed in favour of defendant No.3.

10. Shri Katak placed reliance in the case of Chetana Shankar Manapure v/s. Bandu v/s. Tanaji Barapatre¹ . Shri V.A Lawande placed reliance in the case of Rajendra Bajoria and others v/s. Hemant Kumar Jalan². Shri Anthony D'Silva placed reliance in the case of Raghu Thilak

1 2020(4) Mh.L.J. 481

2 2021 SCC Online SC 764

D. John v/s. S.Rayappan and others³ and Gurdev Singh v/s Harvinder Singh⁴.

11. Rival contention fall for determination of this Court.

12. First of all I would like to deal with the order dated 06/05/2016 passed by the learned trial Court whereby allowing amendment application of the plaintiff, which is challenged by Defendants No. 1 and 2 in Writ Petition No.193 of 2017 and by Defendant No.3 in Writ Petition No.148 of 2017.

13. The amendment application was filed on 03/02/2016. The plaintiff prayed for amending paragraph 16 by adding a, b and c and paragraph 18 together with two prayer clauses. Firstly by adding paragraph 16 (a), (b) and (c), the plaintiff wanted to bring on record the pleading with regard to subsequent event i.e. the sale of factory shed by defendants No.1 and 2 in favour of defendant No.3 vide Sale Deed dated 09/03/2004 and tripartite Lease Deed dated 16/04/2004. This contention of the plaintiff that such documents have been fabricated and execution as well as registration of these documents were fraudulently and illegally carried out only to defeat the right of plaintiff and hence the plaintiff is entitled for the decree to cancel Sale Deed and tripartite Lease Deed. By way of addition to the prayer clauses, the plaintiff prayed for decree to declare the Sale Deed and tripartite Deed as null and void and

3 2001(2) SCC 472

4 2022 Live Law (SC) 963

to direct the sub-Registrar to cancel such deeds. Similarly, defendant No.3 be directed to hand over possession of the factory shed to the plaintiff.

14. Defendant No.3 filed a reply to the amendment application and there is very specific averment in paragraphs 1 and 2 itself that defendant No.3 is not objecting to the amendment as proposed in paragraphs 4 and 5 in the amendment application thereby inserting paragraphs 16 and 18 to the plaint. However, he raised strong objection with regard to paragraph 6 of the proposed application wherein the plaintiff wanted to amend the prayer clauses. Such objection is basically on the ground that the Sale Deed and tripartite Lease Deed were executed in the year 2004 itself and the plaintiff was aware about it and therefore by way of amendment in the year 2016 such prayers cannot be granted as barred by law of limitation.

15. The defendants No.1 and 2 also raised similar objections.

16. The learned trial Court by the impugned order allowed the entire amendment application including the prayer clauses and observed that the aspect of limitation need not be gone at that stage and could be taken up during trial. It is further observed that the First Appellate Court while allowing the Misc. Civil Appeal directed for cancellation of both the Deeds in the year 2005 itself. However, such order was quashed and set aside by the High Court in its decision dated 16/01/2015 and

therefore there is an arguable issue with regard to the law of limitation as it is a mixed question of law and fact.

17. In order to understand the above aspects, facts admitted along with dates are very much necessary, which are as under:

18. The suit for declaration and ownership was filed by the plaintiff on 03/04/2004. The prayer in the suit is two fold. The first prayer is to declare the plaintiff to be the Director of defendant No.2 - Company and consequently the owner of its assets.

19. The second prayer is that the defendant be permanently restrained from alienating/encumbering/transferring in any manner the assets of the defendant No.2-Company and particularly the said factory shed located in the Thivim Industrial Estate.

20. Upon receipt of suit summons, defendants No.1 and 2 appeared and filed the written statement on 15/07/2004. In the said written statement defendants No.1 and 2 disclosed that the factory shed existing at Thivim Industrial Estate was transferred by way of Sale Deed in favour of defendant No.3 on 19/03/2004. Similarly, on 16/04/2004 the Tripartite Agreement including GIDC was also executed.

21. The learned Civil Court dismissed the temporary injunction application after hearing the parties on 12/04/2005. The plaintiff thereafter preferred Misc. Civil Appeal before the First Appellate Court bearing Misc Civil Appeal No.46 of 2005 which was decided on

28/10/2005. The First Appellate Court while allowing the said Misc. Appeal filed by the plaintiff passed the following order:

“ *Appeal is allowed with costs of Rs.1000/-.*

The impugned order dated 12.4.2004 in Civil Misc. Application No. 162/04/A in Regular Civil Suit No. 69/2004/A is hereby quashed and set aside . The registration of the sale deed done under No. 868 on 19.05.2004 and the tripartite lease deed executed on 16.04.2004 registered under No. 886 on 20.05.2005 stands cancelled. Necessary letters shall be issued to the Sub-REgistrar, Bardez , for making necessary entries of cancellation of Registration of Sale and the tripartite lease agreement in his books.

The application for temporary injunction is granted. The defendants, their agents, servants, etc. are hereby restrained by way of temporary injunction from alienating, transferring, encumbering in any manner with the possession of the factory shed bearing No. D, 3-10 of the Goa Industrial Development Corporation located at Tivim Industrial Estate, Karaswada, Mapusa standing on property bearing Survey No. 500 (part) and 501(part) admeasuring 160 sq.mtrs. pending the disposal of the suit.”

22. Thus, the First Appellate Court while allowing the said Misc. Civil Appeal not only granted temporary injunction but directed that the registration of Sale Deed and the tripartite Lease Deed stands cancelled and necessary entries to be made in the office of sub-Registrar of Bardez. Thus, by such order dated 28/10/2005, the Sale Deed and the tripartite Deed were stood cancelled.

23. The defendants filed three writ petitions challenging the order of the First Appellate Court bearing Nos.279, 362 and 626 of 2006. This Court in Writ Petition No.279 of 2006 filed by the defendant No.3 passed the following order dated 04/10/2006:

“Heard learned Counsel for the Petitioner and the learned Counsel for the Respondents No.1, 2 and 3.

The learned Counsel for the Respondent No.1 undertakes to file Wakalatnama within a period of two weeks.

*Rule. There shall be an interim relief in terms of prayer clause (B).
The learned Counsel for the respondents waive service.”*

24. The said Writ Petition No.279 of 2006 and more specifically prayer clause ‘b’ reads thus:

“B. Pending hearing and final disposal of this petition on merits, the operation of the Impugned Order dated 28/10/2005 passed by the Court of Hon'ble 2nd Additional Ad-hoc District Judge(Fast Track) at Panaji in Miscellaneous Civil Appeal No. 46/2005 be stayed”

25. Therefore, vide order dated 04/10/2006, this Court stayed the operation of the impugned order dated 28/10/2005 passed by the First Appellate Court. It is therefore clear that the directions issued by the First Appellate Court in Misc. Civil Appeal No. 46 of 2005 was stayed.

26. Petitions filed by the defendants before this Court bearing Writ Petition Nos.279, 362 and 626 of 2006 were disposed of vide order dated 16/01/2015 and the operative part reads thus:

(I) The impugned Orders dated 28.10.2005 passed by the Lower Appellate Court and the Order dated 02.09.2006 passed by the learned Trial Court, stands modified.

(II) The directions of the learned Judge to cancel the registration of the Deed of Sale and the Tri-partite Lease Deed registered on 19.05.2004, stands quashed and set aside.

(III) The relief of temporary injunction granted by the learned Lower Appellate Court stands confirmed and would also operate as against defendant no. 3 in the suit.

(IV) The defendant no. 3 shall furnish an undertaking to the satisfaction of the learned Trial Judge to the effect that the defendant no. 3 shall not alienate or transfer nor carry out any activities in the disputed shed until the disposal of the suit filed by the Plaintiff.

(5) The impugned Order dated 02.09.2006 striking off of the defence of the defendants stands quashed and set aside.

(VI) The Defendant no. 1 shall pay a sum of Rs.10,000/- to the Plaintiffs as condition precedent to defend the suit.

(VII) The defendant nos. 1 and 2 are directed to deposit the total amount of consideration received on the basis of the disputed transaction amounting to Rs.6,50,000/- before the learned Trial Court within four weeks from today. After such amount is deposited, the learned Trial Court shall invest such amount in fixed deposit in any Nationalised Bank initially for a period of one year and the same shall be renewed from time to time until the disposal of the suit on merits.

(5III) The learned Judge shall proceed to dispose of Regular Civil Suit No.69 of 2004 as expeditiously as possible preferably on or before 15.06.2016.

(IX) The parties are directed to appear before the learned Trial Judge on 02.03.2015 at 10.00 a.m.

(X)Rule is made absolute in above terms.

(XI) All the Writ Petitions stands disposed of accordingly with no order as to costs.”

27. Perusal of the above order passed by this Court one thing is clear that first of all order dated 28/10/2005 of the First Appellate Court in the Misc. Civil Appeal No. 46 of 2005 was modified to the effect that the directions to cancel registration of the Sale Deed and the tripartite Lease Deed stand quashed and set aside. It is thus clear that from the date of order passed by the First Appellate Court dated 28/10/2005 in Misc. Civil Appeal No.46 of 2005, the order to cancel Sale Deed and Tripartite Deed was in existence though stayed by the High Court.

28. Similarly, temporary injunction granted by the First Appellate Court vide order dated 28/10/2005 to the effect that the defendant No.3 shall not alienate or transfer the shed nor carry out any activity in the disputed shed till the disposal of the suit was confirmed. Apart from it, this Court directed defendants No.1 and 2 to deposit the amount of consideration received by them in the said disputed transaction before the learned trial Court with the direction to the said Court to invest such amount in the nationalised Bank till the disposal of the suit.

29. In this backdrop, the plaintiff filed an application for amendment of the plaint claiming declaration that Sale Deed and tripartite Deed be declared null and void. No doubt by written statement dated 15/07/2004, defendants No.1 and 2 informed the plaintiff about the Sale Deed which can be construed as knowledge of the plaintiff about

such Sale Deed at the first point of time. The period of limitation would start running from that date for claiming declaration of such Deed as null and void. It is also clear and well settled that once the period of limitation starts running it never stops till the period mentioned in the Limitation Act or any special Act expires.

30. However, in this matter there are peculiar circumstances which necessarily need to be taken into account. The fact that the First Appellate Court in Misc. Civil Appeal No.46 of 2005 vide its order dated 28/10/2005 directed that the Sale Deed registered on 19/05/2004 and tripartite Deed dated 16/04/2004 stands cancelled. With this order, the contention of the plaintiff with regard to such documents stands redressed. From the date of such order of the First Appellate Court dated 28/10/2005, the Sale Deed and tripartite Deed were not in existence as declared cancelled by the judicial order.

31. It is no doubt true that such order of the First Appellate Court was stayed in Writ Petition No.279 of 2006 dated 04/10/2006, however, staying such order will not wipe out the main order till the same is either confirmed or modified or set aside. In such circumstances, from the date of the order of First Appellate Court dated 28/10/2005, the question of plaintiff asking for declaration of such Sale Deed and the tripartite Deed as null and void would not arise. For instance, if the Writ Petition filed by the defendants challenging such order of the First Appellate Court dated 28/10/2005 would have been rejected, both the documents i.e. the Sale Deed and the tripartite Deed would have been considered as non

existent documents. However, in case of allowing such Writ Petition, the case for the plaintiff to challenge such Deed would certainly arise further.

32. The learned trial Court accepted such arguments on behalf of plaintiff to claim that though in the written statement filed by the defendants No.1 and 2 on 15/07/2004, disclosure was made about executing of the Sale Deed and tripartite Deed, both these documents were cancelled by the order passed by First Appellate Court on 28/10/2005 and therefore, there was no occasion for the plaintiff to ask for such relief in the suit. Though, order of the First Appellate Court was stayed by the High Court, it was only decided finally by the Judgment dated 16/01/2015 whereby order of the First Appellate Court was modified to the extent as discussed above. Thus, the plaintiff was required to challenge such Sale Deed and tripartite Deed as null and void only by way of amending the plaint, as this Court set aside such order of First Appellate Court only on 16.01.2015.

33. The arguable issue in the present matter would be as to whether from the date of staying of the order of the First Appellate Court till the decision of this Court in Writ Petition Nos.279, 362 and 626 of 2006 dated 16/01/2015, the period of limitation would be suspended for challenging the Sale Deed and tripartite Deed in favour of the plaintiff. This is so because by order of the First Appellate Court dated 28/10/2005 both these documents were stand cancelled. Such order was modified only by this Court on 16/01/2015 and both these documents were considered as existing. Thus, considering the overall circumstances

peculiar to the matter in hand, an amendment application filed on 03/02/2016 for declaring Sale Deed and the tripartite Deed as null and void, would be a mixed question of fact and law as far as limitation is concerned. It needs to be answered as to whether the period from the date of the First Appellate Court order dated 28/10/2005 till the High Court order dated 16/01/2015 when such Deeds were ordered to be cancelled as null and void, could be executed from the period of limitation specifically for declaring such Deeds as null and void. If such period is considered as excluded, then the amendment application filed on 03/02/2016 would be within a period of three years from the date of knowledge i.e. filing of the written statement by defendants No.1 and 2 on 15/07/2004. I say so because from 15/07/2004 till 28/10/2005 (First Appellate Court's order) would count around one year and four months. Therefore from 16/01/2015 (High Court's Order) up to 03/02/2016 (date of filing of amendment application) would count around one year and one month. The period from 28/10/2005 till 16/01/2015 when the Writ Petitions were pending before this Court is executed specifically for the reasons disclosed above, then the remaining period would be within three years.

34. It is well settled that while considering the Writ Petitions under Article 227 of the Constitution of India, the scope of this Court is not to disturb or upset the order of the trial Court when such order found to be reasonable and basically not perverse.

35. Considering the above facts peculiar to the matter in hand the fact that amendment application was allowed that too when part of it was not objected, I am of the considered opinion that the learned trial Court was fully justified in observing that issue of limitation with regard to amendment prayer clause is a mixed question of fact and law and has to be decided only on merit.

36. Thus both the Writ Petitions challenging the amendment applications filed by defendants No.1,2 and 3 are devoid of merit.

37. Let's come to a second part of the matter i.e. the revision applications filed by defendants No.1, 2 and 3 thereby challenging the impugned order dated 19/08/2016 passed by the learned trial Court.

38. The impugned order dated 19/08/2016 is a common order by which two applicants at Exhibits 55 and 58 filed by defendant No.3 and defendants No.1 and 2 respectfully under order 7 Rule 11 CPC were rejected.

39. Shri Kantak forcefully submitted that the defendant No.3 filed an application for rejection of plaint stating that plaint does not disclose cause of action. He would submit that the plaintiff is not entitled for the relief claimed in prayer clause 'a' wherein he is claiming to be the owner of the assets of the defendant No.2 - Company.

40. Shri Lawande appearing for defendants No.1 and 2 also raised similar ground with regard to prayer clause 'a' in the plaint. However,

the application filed by defendants No.1 and 2 under Order 7 Rule 11 (a) and (d) claims that the plaint as amended does not disclose cause of action and that the plaint is barred by law of limitation.

41. It is a well settled proposition of law that in order to consider whether plaint discloses the cause of action, the entire plaint has to be taken into consideration alone and not the defence. The plaintiff filed a suit for declaration and injunction against defendants No.1 and 2 initially. It is his specific contention that he along with defendant No.1 and wife of defendant No.1 are the first Directors who formed a Private Limited Company i.e. defendant No.2. The Articles of Association of defendant No.2 and more specifically Article 13 shows that the plaintiff and the defendant No.1 and wife of defendant No.1 shall be permanent Directors for life. Article 17 provides that defendant No.1 was constituted as first Managing Director of the Company. The said company obtained on lease a shed bearing No.D/3/10 from Goa Industrial Development Corporation at Thivim for the purpose of setting up a business. Similarly, financial assistance was obtained from Corporation Bank. Serious differences arose between the Directors regarding running affairs of the company due to which business of the company came to a virtual stand still. The plaintiff received a notice dated 03/01/2002 from defendant No.1 thereby making allegations that the plaintiff ceased to be a Director of defendant No.2-Company from 28/06/2001 as per the Resolution passed by the Board of Directors. It is the contention of the plaintiff that he never received any such notice of

the Board of Directors. Subsequently, he apprehended that defendant No.1 is going to dispose of assets by creating third party interest and hence, he filed the suit for declaration that he is the Director of defendant No.2 - Company and consequently owner of its assets. The suit was filed in April, 2004.

42. Thus from the plaint itself one thing is clear that the knowledge of the plaintiff that he has been removed from the post of Director is by way of legal notice dated 03/01/2002. The suit for declaration is filed on 03/04/2004 i.e. within a period of three years from the date of the accrual of cause of action. No doubt, paragraph 16 of the plaint discloses that the cause of action was accrued to the plaintiff on 28/01/2003 when the Corporation Bank proceeded to withdraw its suit. However, it is well settled that the cause of action is a bundle of facts and such facts are to be ascertained from the entire plaint and not by way of one paragraph or one line.

43. The plaintiff is certainly entitled to claim a declaration that he is a Director of defendant No.2 - Company. There is no bar either in any general or special law restricting such claim of the plaintiff. No such provision has been pointed out. Therefore, as far as prayer (a) is concerned regarding declaration of the plaintiff as Director of defendant No.2-Company is concerned, there is cause of action disclosed in the plaint and that such suit is very well within limitation.

44. It is no doubt true that defendant No.2 - Company is a separate legal entity. As per the Companies Act, 1956, the defendant No.2 is entitled to owe in its name the properties movable and immovable. The properties of the company are separate from the properties of the Directors. However when the first prayer with regard to as Director of Defendant No.2 is maintainable, plaint cannot be rejected. Even if other prayer clauses in the plaint are not maintainable or the plaintiff is not entitled for such prayers, the plaint cannot be rejected by taking recourse to Order 7 Rule 11 of CPC.

45. The learned Senior Counsel Shri Kantak as well as learned Counsel Shri V.A. Lawande, appearing for both the defendants, admitted that prayer clause 'a' claiming declaration of the status as Directors is maintainable. Thus, the decision in the case of **Chetana Shankar Manapure** (supra), would not be helpful to the defendants.

46. In the case of **Rajendra Bajoria**(supra), a suit was filed by the legal heirs of the deceased partner of a partnership firm claiming that along with the defendants they are entitled to the assets and properties of the partnership firm. In this context, the Supreme court observed that the legal heirs of the deceased partnership firm are only entitled to the profits of the partnership firm and not to the assets of the said firm. The said case is distinguishable from the facts of the matter in hand. Thus, the said decision is not helpful to the defendants.

47. In the case of **Gurdev Singh**(supra), the Supreme Court observed that the case of the defendant that the plaintiff is not entitled to any relief in the suit, cannot be a ground to reject the plaint under Order 7 Rule 11 CPC. This is precisely the arguments advanced in the present matter by the defendants. However, the fact remains that the main prayer of the plaintiff is to declare him as Director of defendant No.2 - Company. Such prayer is found to be within limitation and not barred by any law. The cause of action for filing such a suit and more specifically declaration as Director is found to be within limitation.

48. Having said so, both the revisions petitions challenging the impugned order need to be rejected.

ORDER

1. Civil Revision Applications No.40 of 2016 and 26 of 2017 and Writ Petitions No. 148 of 2017 and 193 of 2017 are rejected.
2. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J.

MEENA
VISHAL BHOIR

Digitally signed by
MEENA VISHAL BHOIR
Date: 2023.01.30
17:15:41 +05'30'