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IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 40 OF 2019

HIRABAI K. KAVLEKAR ... APPLICANT

Versus

ARTURO C. D'SOUZA & 3 OTHERS ... RESPONDENTS

Ms. Natasha Volvoikar, Advocate for the Applicant.

Ms. Barbara Andrade, Advocate for Respondent No. 1.

Mr. Ryan Menezes with Mr. Nigel Fernandes, Advocates
for Respondent No. 4.

CORAM: B.P. DESHPANDE, J.

DATED: 27th JULY 2023

P.C.

1. Heard Ms. Natasha Volvoikar, learned Counsel for the Applicant, Ms. Andrade, learned Counsel for Respondent No. 1 and Mr. Menezes for Comunidade of Calapur [Respondent No. 4].

2. Civil Revision Application No. 40 of 2017, filed by the present Respondent No. 4 i.e. Comunidade of Calapur against

the Applicant and others, was decided by this Court vide judgment dated 22.06.2023, holding that the dispute therein is squarely covered under the Agricultural Tenancy Act and therefore, the Civil Court has no jurisdiction.

3. Mr. Menezes points out that the present Revision is filed against the dismissal of the Application under Order VII Rule 11 of CPC filed by the original Plaintiff for rejection of the counterclaim.

4. Since the plaint in Regular Civil Suit No. 67/2017/C has been rejected, only the counterclaim remains to be adjudicated. However, in the counterclaim, the Comunidade of Calapur/Respondent No. 4 therein, is claiming to be the owner of the said property which was not disputed by the Plaintiff in the said suit.

5. Mr. Menezes would submit that by keeping open the questions, which have been raised in the counterclaim and the claim of the tenancy raised by the original Plaintiff, this Revision Application could be disposed of and the parties be given liberty to file the appropriate proceedings as and when necessary before the appropriate forum.

6. The findings in Civil Revision Application No. 40 of 2017 are squarely applicable to the matter in hand. The counterclaim was filed only because the original Plaintiff claimed tenancy and the consequential reliefs in the civil suit. Accordingly, no purpose would be served in keeping the counterclaim alive as the plaint would be barred under Order VII Rule 11(d) of the CPC.

7. Accordingly, the present Revision stands allowed. The impugned order is quashed and set aside. The Application under Order VII Rule 11 of CPC filed on behalf of the Plaintiff stands allowed. However, it is made clear that all the questions raised in the counterclaim as well as the claims raised by the original Plaintiff regarding tenancy are kept open to be decided by the appropriate forum.

8. Parties are at liberty to approach the appropriate forum.

9. Civil Revision Application stands disposed of.

B.P. DESHPANDE, J.