

Jose

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.7 OF 2022

ANU TRIPATHI AND 3 ORS. ... Applicants.

Versus

REAR ADMIRAL SUDARSHAN
SHRIKHANDE AND 5 ORS. ... Respondents.

Ms Marie Rosette Pereira, Advocate for the Applicants.

Mr A. Kamat, Advocate for Respondent Nos.1 to 6.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 02 March, 2023

P.C:

Heard learned Counsel for the parties.

2. Present revision application is filed challenging the impugned order dated 07.06.2022 whereby the application under Order 7 Rule 11 of CPC filed by the Defendants is dismissed.

3. Learned Counsel for the Applicants would point out that dispute as mentioned in the plaint is touching to the management of the Society and that no such aspect has been considered by the Trial Court in the order while exercising powers vested under Order 7 Rule 11 CPC.

4. Mr Kamat appearing for the Respondents would submit that the suit is filed against the Defendants in their personal capacity and not as the members of the Society.

5. On perusal of the impugned order, one thing is clear that there is absolutely no discussion with regard to contentions raised by the Applicants in their application under Order 7 Rule 11 CPC and more specifically provisions of Section 83 of the Co-operative Societies Act, 2001.

6. Mr Kamat would submit that Section 83 of the Co-operative Societies Act is not applicable.

7. The impugned order is cryptic and clearly shows non-application of mind. The learned Trial Court has failed to consider relevant provisions as well as pleadings in order to come to the conclusion that Order 7 Rule 11 CPC is not applicable.

8. The approach of the learned Trial Court in rejecting such application would show the refusal to exercise jurisdiction by considering the provisions and the contentions raised in the application for rejection of plaint. It was expected that learned Trial Court would have at least discussed provisions of the Co-operative Societies Act qua other pleadings in the plaint. Since the impugned order suffers from non-application of mind and further it shows that there is absolutely no discussion with regard to the pleadings, the only option with this Court is to quash and set aside such order and to remand the matter to the Trial Court to decide the application under Order 7 Rule 11 CPC filed by the Defendants afresh by giving opportunity to both the sides to argue the matter.

9. The revision is therefore allowed. The impugned order is quashed and set aside. Application under Order 7 Rule 11 CPC is restored to the

file of the Trial Court. The said application shall be decided afresh on merit by giving opportunity to both the parties. Parties shall appear before the Trial Court on the next date already fixed by the Trial Court.

10. Parties shall act on the authenticated copy of this order.

BHARAT P. DESHPANDE, J.

JOSE
FRANCISCO
DSOUZA

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Date: 2023.03.02
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