

Jose

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.49 OF 2019

WITH

CIVIL APPLICATION NO.227 OF 2019

IN

CIVIL REVISION APPLICATION NO.49 OF 2019

Goa Pollution Control Board,
Through its Member Secretary,
Having its office at
Saligao, Bardez, Goa.

... Applicant.

Versus

1. Government of Goa,
Through its Chief Secretary,
Secretariat, Porvorim,
Bardez, Goa.

2. Goa Meat Complex,
A company registered under Indian Companies Act,
Through its managing director, having
its Office at Sesa Ghor, Patto, Panaji, Goa.

3. Goa Meat Complex Ltd. (Usgao plant),
Through its Manager/Incharge,
Having its office at Marvassa wada, Usgao,
Ponda, Goa.

4. Directorate of Foods and Drugs Administration,
Through its Director,
Having office at Dhanwantari,
Opposite Holy cross,
Bambolim, Tiswadi, Goa.

5. Inspector of Factories and Boilers,
Through its Inspector,
Having its office at Altinho, Panaji, Goa.

6. Directorate of Animal Husbandry
And Veterinary Services,
Through its Director,
Having its office at
Patto, Panaji, Goa.

7. Veterinary Officer,
Ante Mortem Cell (State-Cell),
Goa Meat Complex Ltd. (Usgao plant),
Marvassa wada, Usgao,
Ponda, Goa.

8. Miss. Anjali Anand,
D/o Rajindar Anand,
Aged about 35 years,
Spinster, Indian National,
Honorary Animal Welfare Officer,
Animal Welfare Board of India,
Resident of c/o Vishwas Nak, H.No. 52/B,
Vaghume, Ponda, Goa.

... Respondents.

Mr Joaquim Godinho, Advocate for the Applicant.

Mr J.A. Lobo, Advocate for Respondent No.2.

**Mr Manish Salkar, Government Advocate for Respondent Nos.1,
4, 5, 6 and 7.**

**Mr D. Zaveri with Mr M. Mahamal, Advocates for Respondent
No.8.**

CORAM:

BHARAT P. DESHPANDE, J.

RESERVED ON:

02 February, 2023

PRONOUNCED ON:

09 February, 2023

JUDGMENT:

Heard learned Counsel Mr Joaquim Godinho for the Applicant, learned Counsel Mr J.A. Lobo for Respondent No.2, Mr Manish Salkar, learned Government Advocate, for Respondent Nos.1, 4, 5, 6 and 7 and learned Counsel Mr D. Zaveri with Mr M. Mahamal for Respondent No.8.

2. Admit. Heard finally with consent.
3. With the consent of learned Counsel for the respective parties, present revision is taken up for final disposal at the admission stage itself.
4. Applicant herein is the original Defendant No.6 in Civil Suit No. 22/2018 filed before the District Court at Panaji which was allotted to District Judge-2, Panaji sitting at Ponda.
5. The Applicant filed an application under Order 7 Rule 11 CPC as well as raised preliminary objection to the jurisdiction of the Court. The said application was resisted by the Original Plaintiff/Respondent No.8. The learned Trial Court vide its impugned order dated 26.09.2019, rejected such application. Hence, the present revision.
6. The short question which cropped up in the present revision is whether plaint could be rejected qua Defendant No.6 under Order 7 Rule 11 (d) of CPC.
7. Mr Godinho appearing for the Applicant submitted that Applicant is a Board constituted under statutory provisions and is part of Government of Goa. He, therefore, submitted that the prayers for

injunction against the statutory authorities would not lie. He pointed out the prayers in the suit which refer to the prayer for granting of permanent injunction against the Applicant/Defendant No.6 thereby restraining the Board from issuing permissions, licences, etc. to Defendant Nos.2 and 3. He then submitted that Section 46 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 58 of the Water (Prevention and Control of Pollution) Act, 1974 specifically bars jurisdiction of Civil Court to entertain any suit or proceedings in respect of any matter which an appellate authority constituted under the said Acts is empowered by or under the said Act to determine. It is his contention that application for rejection of plaint under Order 7 Rule 11 (d) filed by the Applicant/Defendant No.6 is basically for rejection of plaint as a whole qua Applicant/Defendant No.6. Such power is available with the Civil Court as suit is specifically barred under the above provisions and further, no injunction could be granted against the statutory authorities thereby preventing them from performing their duties under the Act.

8. Mr Godinho placed reliance on the following decisions:-

- a) *Church of Christ Charitable Trust and Educational Charitable Society vs. Ponniamman Educational Trust*¹,
- b) *Chetana Shankar Manapure & Anr. vs. Bandu s/o. Tanaji Barapatre*², and
- c) *Sheela Ram Vidhani & anr. vs. S.K. Trading Company & ors.*³,

9. Mr Lobo appearing for Respondent No.2 would submit that the licences and other permissions were granted to Respondent Nos.2 and 3

¹ (2012) 8 SCC 706

² 2020 (3) ALL MR 254

³ 2021 (5) Bom.C.R. 409

as per the procedure and also as per the order passed by this Court in earlier petition. However, he clearly admitted that Respondent Nos.2 and 3 did not file any application for rejection of plaint.

10. Mr Manish Salkar appearing for Respondent Nos.1, 4 to 7 would submit that the impugned order needs interference as there is specific bar to entertain such suit against Respondent No.6 which is the Board constituted under the said Acts.

11. Mr D. Zaveri appearing for Respondent No.8/Plaintiff would submit that first of all the application filed by Applicant is not tenable as it is well settled that the plaint cannot be rejected piecemeal. He would submit that the application filed before the Trial Court is not maintainable as the Applicant is claiming that suit is barred against all the Defendants. He placed reliance on the following decisions:-

- a) *Capt. Lance Irwin Lobo and Another vs. Leila Almeida and Another*⁴,
- b) *Sejal Glass Limited vs. Navilan Merchants Private Limited*⁵,
- c) *Madhav Prasad Aggarwal and Another vs. Axis Bank Limited and Another*⁶, and
- d) *Lena Khan, through Power of Attorney-Mr. Kenneth Khan vs. Gammon India Limited and Others*⁷.

12. The rival contentions fall for consideration of this Court.

13. It is well settled proposition of law that in order to find out whether plaint requires to be rejected under Order 7 Rule 11 CPC, it is

4 2018 SCC OnLine Bom 1504

5 (2018) 11 SCC 780

6 (2019) 7 SCC 158

7 2020 SCC OnLine Bom 688

necessary to read the plaint as a whole along with the documents relied upon therein. No other material could be used or supplemented for the purpose of deciding such application.

14. For the sake of convenience, the parties are hereinafter called as Plaintiff and Defendant No.6 as they are arraigned before the Trial Court.

15. The Plaintiff filed the suit against the Government of Goa through Chief Secretary, Goa Meat Complex, Directorate of Food and Drugs Administration, Inspector of Factories and Boilers, Goa Pollution Control Board (Defendant No.6), Directorate of Animal Husbandry and Veterinary Services and the Veterinary Officer respectively as Defendant Nos. 1 to 8. The title of the suit is for declaration, permanent injunction, temporary injunction and consequential reliefs under Section 34, 37 and 38 of Specific Relief Act. The prayers in the suit read thus:

“a) For an order of declaration that the functioning of GMCL i.e., defendant no. 3 from the year 2014 till today be declared as absolutely illegal.

b) For an order for permanent injunction against the defendant nos. 4 to 8, restraining them from issuing permissions, licences, etc., to the GMCL i.e., defendant nos. 2 and 3 permanently.

c) For an order of permanent injunction against the GMCL from carrying out operations of slaughter house etc., and also restraining GMCL from slaughtering the animals.

d) For an order of temporary injunction against the GMCL from carrying out operations of slaughter house and also restraining GMCL from slaughtering the animals till the decision of suit on merits.

e) For an order of temporary injunction against the defendants no. 4 to 8, restraining them from issuing any permissions, licence etc., to the GMCL till the decision of suit on merits.

f) Ex-parte ad-interim reliefs in terms of prayer d and e above.

g) For costs.”

16. The Plaintiff claimed that she is an Honorary Animal Welfare Officer, Animal Welfare Board of India and actively involved in welfare of animals in the State of Goa. She noticed number of instances of illegal slaughtering/killing of animals in the State, which she brought to the notice of various authorities as well as Courts. She was also involved in doing investigation at her personal level leading the way to the doors of Goa Meat Complex, hereinafter called as “GMCL” which is the only recognized corporation in Goa having autonomous status to function as slaughter house. GMCL is having its plant at Usgao, Ponda, Goa. According to the Plaintiff, the functioning of such plant at Usgao, Ponda, Goa is manifestly illegal without having requisite permissions/licences from the various authorities and it is operating in violation of the orders of the High Court in Writ Petition No.296/2013. It is her allegation that GMCL is hand-in-glove with certain class of persons/traders for conducting meat business and ultimately doing slaughtering and selling of meat procured by illegally killing cows, she buffaloes, bulls, etc.

17. The Plaintiff further claimed that in order to function legally, GMCL requires permission from Food and Drugs Administration Department, Department of Factories and Boilers, the Department of Town and Country Planning, permission from Goa Pollution Board, permission from the Health Officer and from the Fire Service

Department. It is her case that GMCL is operating from last four years illegally without obtaining requisite permissions which are mandatory in nature and specifically when such permissions expired and no renewal is granted till date. In the above said backdrop, the Plaintiff filed the said suit with the prayers as disclosed above.

18. Defendant No. 6 accordingly filed an application under Order 7 Rule 11 CPC thereby specifically claiming that the plaint needs to be rejected as such suit is barred under the provisions of Air Act, 1981 and Water Act, 1974 and also under the Specific Relief Act as no injunction could be granted against the authorities from performing their statutory duties.

19. Section 58 of Water Act, 1974 reads thus:-

“58. Bar of jurisdiction.-No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an appellate authority constituted under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

20. Section 46 of the Air Act, 1981 reads thus:-

“46. Bar of jurisdiction.-No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Appellate Authority constituted under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

21. Section 4 of Air Act, 1981 deals with constitution of State Pollution Control Board. Similarly, Section 17 deals with functions of State Board which reads thus:-

“17. Functions of State Boards. —(1) Subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974), the functions of a State Board shall be—

(a) to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;

(b) to advise the State Government on any matter concerning the prevention, control or abatement of air pollution;

(c) to collect and disseminate information relating to air pollution;

(d) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise mass-education programme relating thereto;

(e) to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution;

(f) to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;

(g) to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft:

Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants;

(h) to advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;

(i) to Perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government;

(j) to do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.

(2) A State Board may establish or recognise a laboratory or laboratories to enable the State Board to perform its functions under this section efficiently.”

22. In the light of above powers given to the Board which is Defendant No.6 herein, the provisions of Section 46 as quoted above needs to be looked into.

23. Similar provisions appear in Water Act, 1974 wherein the constitution of State Board is found in Section 4 and functions of the State Board are also found in Section 17, which are *pari materia* with the Air Act, 1974. Similarly, a bar of jurisdiction of Civil Court under Section 58 quoted above, needs to be looked into.

24. The suit is filed under the provisions of Specific Relief Act and the application for injunction is filed under Order 39 Rule 1 and 2 of CPC. It is well settled proposition of law that no permanent or mandatory

injunction could be granted by the Civil Court against the statutory authority thereby restraining them from performing such duties as provided under the statute. Prayer clause (b) as quoted above in the suit speaks of grant of permanent injunction against Defendant Nos.4 to 8, which include Defendant No.6 thereby restraining them from issuing permissions, licences to GMCL. The powers of Defendant No.6 as a State Board are specifically disclosed in Section 17 of Water Act, 1974 and Air Act, 1981. The Board has to function as per the statutory powers given to them and if there are violations of any provisions of the Act, remedy against it lies elsewhere as there is clear bar of jurisdiction of the Civil Court to entertain any suit or proceedings in respect of the matter which an appellate authority constituted under the said Act is empowered by or under the said Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the said Act.

25. Wordings of both above Sections of the Water Act, 1974 and Air Act, 1981 clearly bar jurisdiction of Civil Court from entertaining any suit and more specifically seeking permanent injunction against the authorities under the said Act from performing their duties as provided under the statute.

26. Application filed on behalf of Defendant No.6 clearly shows that the suit qua Defendant No.6 is barred under the Act and therefore, the entire suit qua Defendant No.6 needs to be rejected.

27. The learned Counsel Mr Zaveri appearing for the Plaintiff strongly contended that the issue regarding rejection of plaint in piecemeal and against particular Defendants was set at rest by the Apex Court in the case of *Sejal Glass Limited* (supra) wherein it was observed that though the plaint does not disclose a cause of action, Order 7 Rule 11 CPC springs into being and interdicts a suit from proceedings. The suit/plaint cannot be rejected qua a particular Defendant and to continue against other Defendants. The powers under Order 7 Rule 11 is to reject a plaint as a whole alone and not in piecemeal.

28. He then would submit that in the case of *Madhav Prasad Aggarwal* (supra), the Hon'ble Apex Court reiterated same proposition and claimed that rejection of plaint in part/only against one of the Defendants in exercise of powers under Order 7 Rule 11 (d) is impermissible and remedy of such Defendant lies elsewhere including Order 6 Rule 16 of CPC at the appropriate stage.

29. Mr Zaveri then submitted that this Court in the case of *Lena Khan* (supra) relied upon Apex Court decisions and observed that the plaint cannot be rejected in piecemeal qua some of the Defendants.

30. Mr Godinho would submit that the decisions in the case of *Sejal Glass Limited* (supra) and *Madhav Prasad Aggarwal* (supra) consist of a Division Bench of the Apex Court. However, in both these decisions, the decision in the case of *Church of Christ Charitable Trust* (supra) of the Division Bench of the Apex Court delivered in the year 2012 was not considered at all. He submitted that in *Church of Christ Charitable Trust* (supra), a Coordinate Bench of the Apex Court clearly observed that

plaint could be rejected against some of the Defendants as a whole if it does not disclose cause of action or there is clear bar to prosecute.

31. Mr Godinho then would submit that this Court in the case of *Chetana Shankar Manapure* (supra), considered all the above decisions of the Apex Court and observed that the decision in the case of *Church of Christ Charitable Trust* (supra) being earlier in point of time would prevail as same was not at all considered by the subsequent Bench of co-equal strength.

32. Mr Godinho then would submit that the Division Bench of this Court in the case of *Sheela Ram Vidhani* (supra) considered the provisions of Order 7 Rule 11 (a) of CPC and after interpreting all the above decisions of the Apex Court, came to the conclusion that plaint could be rejected as a whole against one of the Defendants if such plaint does not disclose cause of action or the plaint is barred under the provisions of law.

33. First of all, it is necessary to note that Mr Zaveri appearing for the Plaintiff, did not dispute about the specific bar to entertain any suit as provided under the provisions of Section 58 of Water Act, 1974 and Section 46 of Air Act, 1981 qua Defendant No.6 which is the Board constituted under the above statutes by the State Government. No arguments were advanced that such bar is not absolute. Therefore, the only question that remains to be answered is whether plaint could be rejected qua Defendant No.6 as a whole and the suit could continue against other Defendants.

34. The Apex Court in the case of *Church of Christ Charitable Trust* (supra) extensively dealt with provisions of Order 7 Rule 11(a) of CPC. Some brief facts in the case needs to be taken into account. Appellant Society (Original Defendant No.1) entered into an agreement of sale of property in favour of one S. Velayutham (Defendant No.2) on the condition that the transaction should be completed within six months after obtaining clearance from the Income Tax and other departments. Similarly, Appellant Society executed a registered power of attorney in favour of S. Velayutham for the limited purpose of empowering him to represent the Society before statutory authorities. Subsequently, Appellant Society revoked the said power of attorney executed in favour of S. Velayutham on specific reasons. The agreement for sale was also cancelled. Accordingly, S. Velayutham instituted a civil suit against the Appellant Society for specific performance of the agreement wherein injunction was granted against the Appellant Society from alienating the property. It so happened that the sister concern of Respondent Trust M/s Karthik Granites Pvt. Ltd. filed a civil suit for specific performance of agreement to sell alleging that agreement was entered into with S. Velayutham. Another suit was filed by the Respondent for specific performance of agreement dated 04.08.2001. The Appellant Society filed an application under Order 7 Rule 11 CPC for rejection of plaint. The learned Single Judge of Madras High Court rejected the plaint in so far as the Appellant Trust is concerned and directed the suit to proceed against S. Velayutham (Defendant No.2). This order of the Single Judge was challenged in appeal before the Division Bench. Said appeal was allowed by the Division Bench and the order of rejection of plaint was set aside.

The Appellant Trust being aggrieved with such order of the Division Bench carried the matter before the Apex Court. While considering the above aspect, the Apex Court framed a specific point for consideration in para 9(a) which reads thus:-

“9.(a) Whether the learned Single Judge of the High Court was justified in ordering rejection of the plaint insofar as the first defendant (the appellant herein) is concerned?”

35. After quoting the provisions under Order 7 Rule 11 CPC and discussing the earlier decisions, observed in para 29 as under:-

“Finally, the learned Senior Counsel for the respondent submitted that in view of a decision of this Court in Roop Lal Sathi vs. Nachhattar Singh Gill (1982) 3 SCC 487, rejection of the plaint in respect of one of the defendants is not sustainable. We have gone through the facts in that decision and the materials placed for rejection of plaint in the case on hand. We are satisfied that the principles of the said decision does not apply to the facts of the present case where the appellant-first defendant is not seeking rejection of the plaint in part. On the other hand, the first defendant has prayed for rejection of the plaint as a whole for the reason that it does not disclose a cause of action and not fulfilling the statutory provisions. In addition to the same, it is brought to our notice that this contention was not raised before the High Court and particularly in view of the factual details, the said decision is not applicable to the case on hand.”

36. It is no doubt true that in the case of *Sejal Glass Limited* (supra), the Apex Court has observed that plaint cannot be rejected under Order 7 Rule 11 CPC against a particular defendant. However, it is factually correct that the decision in the case of *Church of Christ Charitable Trust* (supra) of the co-equal Bench was not brought to the notice.

37. In the case of *Madhav Prasad Aggarwal* (supra), Apex Court observed that plaint cannot be rejected in piecemeal and against a particular defendant. This decision is based on the observation in the case of *Sejal Glass Limited* (supra). In this case, again the earlier decision in the case of *Church of Christ Charitable Trust* (supra) of the co-equal Bench of the Apex Court was brought to the notice.

38. This aspect was considered by the learned Single Judge of this Court in the case of *Chetana Shankar Manapure* (supra) and it is observed in para nos.13, 14, 15, 16 and 17 as under:-

“13. As noted above a reading of the judgments of the Hon'ble Supreme Court of Benches of co-equal strength in the cases of Church of Christ Charitable Trust & Educational Charitable Society v. Ponnamman Educational Trust [2012 ALL SCR 2178] (supra), Sejal Glass Limited v. Navilan Merchants (P) Ltd. [2018(1) ALL MR 961 (S.C.)] (supra) and Madhav Prasad Aggarwal v. Axis Bank Ltd. 92019(4) ALL MR 934 (S.C.)] (supra) would show that there is neither any reference to nor any explanation in the subsequent two judgments regarding the judgment rendered earlier in point of time. Thus, there is substance in the contention raised on behalf of the revision applicants that this Court could follow the view of the Hon'ble Supreme Court rendered in the case of Church of Christ Charitable Trust & Educational Charitable Society v. Ponnamman Educational Trust [2012 ALL SCR 2178] (supra). A close look at the said judgment would show that even on facts, it is applicable to the present case. In the said case also the question before the Hon'ble Supreme Court was, as to whether a suit could be permitted to continue against a defendant with which the plaintiff had never entered into an agreement and there was total lack of pleading in the plaint as expected under the relevant provisions of law. It was found that the prayer for grant of a decree of specific performance could not be entertained at all as against the defendant No.1

since there was no agreement between the plaintiff and defendant No.1 in the first place. This was discernible from mere reading of the plaint. On this basis, the Hon'ble Supreme Court found that the plaint deserved to be rejected as against defendant No.1 although the suit could continue as against the other defendant. It was noted that the first defendant in the said case had prayed for rejection of the plaint as a whole against it as there was no disclosure of cause of action against the said defendant. The Hon'ble Supreme Court in the said case set aside the judgment of the Division Bench and restored that of the learned Single Judge of the High Court, whereby it had been held that the suit could continue only against the other defendant while the plaint stood rejected as against the first defendant.

*14. The said judgment of the Hon'ble Supreme Court in the case of **Church of Christ Charitable Trust & Educational Charitable Society v. Ponniammam Educational Trust** [2012 ALL SCR 2178] (supra), wherein it was held that the plaint could be rejected as against one of the defendants and the suit could continue against other, was not brought to the notice of the Hon'ble Supreme Court when judgments were rendered by Benches of co-equal strength in the case of **Sejal Glass Limited v. Navilan Merchants (P) Ltd.** [2018(1) ALL MR 961 (supra) and **Madhav Prasad Aggrawal Vs. Axis Bank Ltd.** [2019(4) ALL MR 934] (supra). Consequently, the earlier judgment in the case of **Church of Christ Charitable Trust & Educational Charitable Society v. Ponniammam Educational Trust** [2012 ALL SCR 2178] (supra) was not explained or dealt with in the aforesaid subsequent judgments rendered by Benches of co-equal strength of the Hon'ble Supreme Court. On facts, the subsequent judgments of the Hon'ble Supreme Court were not dealing with a case for grant of decree of specific performance. In the case of **Sejal Glass Limited v. Navilan Merchants (P) Ltd.** [2018(1) ALL MR 961 (S.C.)] (supra), it was claimed that the plaint was to be bifurcated as it did not disclose cause of action against the Directors i.e. defendant Nos.2 to 4 while the suit could continue against the company i.e. defendant No.1. The suit was for recovery of specific amount against the defendants and for a direction to the*

defendants to furnish TDS Certificate. In the backdrop of such facts, the Hon'ble Supreme Court held that the plaint could not be rejected against defendant Nos.2 to 4 only.

15. In the case of **Madhav Prasad Aggarwal v. Axis Bank Ltd.** [2019(4) ALL MR 934 (S.C.)] (supra) a Bench of co-equal strength held that the aforesaid judgment in the case of **Sejal Glass Limited v. Navilan Merchants (P) Ltd.** [2018(1) ALL MR 961 (S.C.)] (supra) was directly on the point. By following the said judgment, it was held that if the plaint survives against certain defendants, Order VII Rule 11(d) of the CPC will have no application and that the suit as a whole must proceed to trial. In the said case, defendant No.1-Bank had claimed that the suit was barred as against it under section 34 of the Act of 2002. It was also claimed that the averments in the plaint did not spell out a case of fraud against the Bank. In such circumstances, it was held by the Hon'ble Supreme Court that the plaint could not have been rejected only as against the defendant-Bank.

16. This Court finds that the judgment of the Hon'ble Supreme Court in the case of **Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust** [2012 ALL SCR 2178] (supra) can be followed as per of the position of law indicating that it is a binding precedent on this Court, in view of absence of any reference to or explanation of the said judgment in the subsequent judgments of Benches of co-equal strength of Hon'ble Supreme Court in the cases of **Sejal Glass Limited v. Navilan Merchants (P) Ltd.** ALL MR 961 (S.C.)] (supra) and **Madhav Prasad Aggarwal v. Axis Bank Ltd.** [2019(4) ALL MR 934 (S.C.)] (supra). Additionally, in the facts of the present case, the judgment of the Hon'ble Supreme Court in the case of **Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust** [2012 ALL SCR 2178] (supra) is directly applicable.

17. Therefore, the facts of the present case need to be appreciated to examine whether the Court below was justified in rejecting the applications for rejection of plaint filed by the revision applicants at Exhibits-83 and 101. The only reason given by the Court below

for rejecting the said applications is that the plaint could not be rejected in piecemeal and the rejection of the plaint must be as a whole and it could not be split for rejection.”

39. In the case of *Sheela Ram Vidhani* (supra), a Division Bench of this Court considered the provisions of Order 7 Rule 11 CPC wherein plaint filed in a suit was rejected by the learned Single Judge thereby allowing notice of motion against Defendants No.4 to 6, for want of cause of action under Order 7 Rule 11(a) of Code of Civil Procedure. In the appeal, same contentions were raised that plaint cannot be rejected against some of the Defendants and reliance was placed on the decisions of *Madhav Prasad Aggarwal* (supra) and *Sejal Glass Limited* (supra) on behalf of Plaintiffs. The Defendants who succeeded in getting rejection of plaint relied upon the decision in the case of *Church of Christ Charitable Trust* (supra) and *Sundeep Kumar Bafna vs. State of Maharashtra*⁸. While relying on the proposition in the case of *Sundeep Kumar Bafna* (supra) that decision rendered by co-equal Bench or Larger Bench, earlier in time, would prevail, it was further observed in para 11 by the Division Bench as under:-

“11. In view of the foregoing settled position, we are of the view that the earlier decision rendered by the Supreme Court in the case of Church of Christ (supra) needs to be followed which has laid down that the plaint as a whole can be rejected against some of the defendants. The Learned Single Judge was therefore correct in holding that there is no legal embargo on rejecting the plaint as a whole against some of the defendants, and we also do hold accordingly.

⁸ (2014) 16 SCC 623

40. Thus, what emerges from the above decisions and more particularly observations of the Division Bench of this Court in the case of *Sheela Ram Vidhani* (supra), which is having a binding precedent, the observations of the learned Single Judge in the case of *Lena Khan* (supra) and *Capt. Lance Irwin Lobo* (supra) cannot be looked into as obiter.

41. Order 7 Rule 11 deals with rejection of plaint and clause (d) specifically deals where suit appears from the statement in the plaint to be barred by any law. The object and purpose of such provision has been reiterated by the Apex Court in various decisions which could be culled out as under.

42. In the case of *Hardesh Ores (P) Ltd v/s. Hade and Company*⁹, the Apex Court has observed in paragraphs 25, 33 and 34 as under:-

“25. The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint, if taken to be correct in their entirety, a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or

⁹ (2007) 5 SCC 614

change of its apparent grammatical sense. As observed earlier, the language of clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this court in Liverpool & London S.P. & I Association Ltd. Vs. M.V. Sea Success I and another (2004) 9 SCC 512 and Popat and Kotecha Property Vs. State Bank of India Staff Association (2005) 7 SCC 510.”

43. It is necessary to look into that the Court should be vigilant enough to curtail and to prevent the cases which are specifically barred under the provisions of law so as to prevent the abuse of the process and to prevent the Courts from entertaining such unwanted proceedings. Keeping in mind the above-settled proposition, plaint in the present matter qua Defendant No.6 which is a statutory authority has to be looked into as to whether such suit is barred under the specific provisions and entertaining such suit qua Defendant No.6 would be a futile exercise.

44. The prayer clauses in the plaint are already disclosed earlier which clearly go to show that the Plaintiff is asking permanent injunction against a statutory body from exercising their powers under the statute.

45. In the entire plaint, allegations are only against GMCL for carrying out illegal slaughtering of animals and creating pollution in the said area. Finally, in para no.34 of the plaint, the Plaintiff claimed thus:-

“In the context therefore plaintiff has made out prima facie case for grant of injunction in her favour against GMCL. So also the other Govt. authorities are also required to be restrained from issuing any permission, licence or NOC in favour of GMCL for above said reasons.”

46. The functions of the Board/Respondent No.6 are already quoted above which are found in Section 17 of the said Acts. One of such function is to carry out inspection and to grant NOCs to the concerned establishments.

47. Section 25 of the Water Act, 1974 postulates restriction on new outlets and new discharges. It further provides that subject to the provisions of the said Act, no person shall without previous consent of the State Board, (a) establish or take any steps to establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluents into a stream or well or sewer or on land.

48. Thus, it is clear that the functions of the State Board is a statutory function and one of its duties is to consider no objection either for renewal of licence or for grant of licence applied by certain establishments whenever the question arises about the pollution of either water bodies or air as the case may be.

49. The application filed by Defendant No.6 under Order 7 Rule 11(d) is to reject the plaint as a whole qua Defendant No.6, basically on the ground that such plaint is not tenable and the Civil Court has no jurisdiction as barred by specific provisions of the above Acts.

50. In the case of *Church of Christ Charitable Trust* (supra), Apex Court has clearly observed after considering earlier decisions that a plaint as a whole qua a particular defendant could be rejected if any of the conditions under Order 7 Rule 11 CPC is made out. Similarly, a Division

Bench of this Court in the case of *Sheela Ram Vidhani* (supra) reiterated such proposition of law and observed that the decision of the Apex Court delivered by a co-equal Bench, earlier in time, would prevail. Thus, the ratio laid down in the case of *Church of Christ Charitable Trust* (supra) would prevail as it was rendered prior in time than the other two decisions in the case of *Sejal Glass Limited* (supra) and *Madhav Prasad Aggarwal* (supra).

51. To sum up, plaint filed against Defendant No.6 is clearly barred under law and no injunction could be granted against the statutory authority thereby preventing them from exercising their statutory powers. There is no point in keeping the plaint alive qua Defendant No.6 as such reliefs are clearly barred under the above Acts.

52. The learned Trial Court failed to consider above aspect and therefore, impugned order needs interference.

53. Revision stands allowed as per prayer clause (a). The plaint in Regular Civil Suit No.22/2018 pending on the file of District Judge-2 Panaji sitting at Ponda, qua Defendant No.6 stands rejected under Order 7 Rule 11(d) CPC. There shall be no order as to cost.

BHARAT P. DESHPANDE, J.

JOSE
FRANCISCO
DSOUZA

Digitally signed by JOSE
FRANCISCO DSOUZA
Date: 2023.02.10
10:11:46 +05'30'