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IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 7 OF 2024

INDIA OCEANWORLD PVT. LTD. REP
THR. ITS AUTH. REP. HARPREET
SINGH CHHABRA

... APPLICANT

Versus

BRAHMA REALITIES REP. THR. ITS
PARTNER SANJAY AUSARMAL THR.
POA RAMKUMAR AGARWAL & 2 ORS.

... RESPONDENTS

Mr. S.D. Lotlikar, Senior Advocate with Mr. Jatin Ramaiya
and Mr. Omkar Parab, Advocates for the Applicant.

Mr. Vishnuprasad A. Lawande with Mr. Parimal Redkar
and Ms. Smita Redkar, Advocates for the Respondents.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 20th NOVEMBER 2024

ORAL ORDER:

1. Heard Mr. Lotlikar, the learned Senior Counsel for the Applicant and Mr. Lawande for the Respondents.
2. The present Revision is filed challenging the order passed by the Trial Court thereby rejecting an Application under Order VII Rule 11 (a) and (d) of CPC.

3. The Respondents/Plaintiffs filed a suit for specific performance of a contract in connection with an agreement which was executed in the year 2011. The suit is filed in the year 2022. The prayer in the suit is to declare the sale deed executed between Defendant Nos. 1 and 2 and Defendant No. 3 in the year 2022, as null and void and direct Defendant Nos. 1 and 2 to comply with terms of the agreement dated 22.10.2011, along with other reliefs.

4. The Applicant/Defendant on appearance before the Trial Court filed an Application for rejection of plaint under Order VII Rule 11 (a) and (d) of CPC.

5. Mr. Lotlikar would submit that the specific case raised by the Applicant is that there is no actual cause of action for the Plaintiffs to file a suit and secondly, the suit is barred by limitation. He submits that a written arguments along with relevant judgments were placed before the Trial Court and even detailed oral arguments were advanced. However, the learned Trial Court even though framed two points, observed that whether there is actual cause of action and whether the suit is within limitation will have to be decided on merits. He submits that such observations of the Trial Court are clearly against the settled proposition of law as laid down by the Apex Court and this Court.

6. Mr. Lotlikar placed reliance on the decisions of this Court in the case of **Avinash Tanu Govekar & Others Vs. Mrs. Anjani A. Govekar & Others, 2024 (4) ALL MR 444** and **Anil Bhanudas Bhamaikar & Others Vs. Gurudas Bhamaikar, 2024 (4) ALL MR 409**, wherein this Court discussed in detail as to what is the actual cause of action and how the aspect has to be considered. He submits that if there is an illusory cause of action, the plaint has to be rejected.

7. Mr. Lotlikar would further submit that the suit itself is barred by limitation since the Plaintiffs are trying to enforce the agreement of the year 2011, however, the learned Trial Court observed that the question of limitation is a mixed question of law and facts and failed to decide it.

8. Per contra, Mr. Lawande appearing for the Respondents/ Plaintiffs would submit that the Trial Court has rightly considered the contentions raised by the parties and decided the cause of action. He would submit that the learned Trial Court has rightly observed that the issue of limitation is a mixed question of facts and law and therefore, it has to be decided at the trial. Mr. Lawande would submit that the Plaintiffs filed a suit and the injunction Application is still pending for adjudication.

9. A perusal of the impugned order would go to show that though two points are framed as found in paragraph 10, there is no clear finding as to whether the cause of action which is mentioned in the suit is either illusory or actual. Paragraph 19 of the impugned order would go to show that the observations of the Trial Court are in fact contrary to the settled proposition of law. In various decisions passed by the Apex Court, it is now well settled that if the plaint discloses an illusory cause of action, the same has to be rejected. It is no doubt true that the cause of action is considered as a bundle of facts, giving rise to an action against the opposite side. However, simply mentioning some cause of action in the plaint would not be sufficient enough for entertaining the plaint. The provisions of Order VII Rule 11 of CPC is specifically to curb unwarranted litigation and matters which are already barred by limitation.

10. The matter in hand would clearly go to show that the learned Trial Court instead of adjudicating on the contentions raised by the Defendant that the cause of action shown in the plaint is illusory, deliberated upon the provisions of clause (a) and observed that it only says non-disclosure of the cause of action and not real cause of action. The learned Trial Court has lost sight of the settled proposition of law as laid down in various decisions of

the Apex Court including in the case of **T. Arivandandam Vs. T.V. Satyapal, (1977) 4 SCC 467** and in the case of **Hardesh Ores Pvt. Ltd. Vs. Hede & Company, (2007) 5 SCC 614** that it should be a meaningful reading of the plaint and if it is found that the suit is manifestly vexatious and without merits and it does not disclose the right to sue the Court would be justified in exercising power under Order VII Rule 11 of CPC.

11. This Court in the case of **Anil Bhanudas Bhamaikar** (supra) while considering the decision passed by the Apex Court clearly observed that the Court has to consider the pleadings in a meaningful manner and only after coming to the conclusion that the right to sue and actual cause of action exists, can entertain the plaint.

12. The second aspect is with regard to the limitation and it is contented by the Applicant/Defendant that the suit is barred by law of limitation. It is contended that since the cause of action shown in the plaint is illusory, the suit is beyond imagination. Though the learned Trial Court framed a point to that effect, it goes on discussing this aspect and finally concluded that the question of limitation is a mixed question of facts and law and will have to be gone during the trial.

13. The duty of the Court is to consider whether the suit is within limitation as per the meaningful reading of the plaint and the documents relied upon the plaint. If it is found that the suit is not within limitation, the Court has the power to reject such a plaint as barred by limitation. However, in the present matter, the learned Trial Court seems to have avoided to decide such a question by simply observing that limitation is a mixed question of facts and law.

14. It is also a fact that detailed written submissions were filed on behalf of the Respondent together with citations. However, such contentions raised by the Defendant are not found reflected in the impugned order. Thus, the impugned order suffers from jurisdictional error as it failed to consider the vital contentions as well as the settled proposition of law.

15. The Application for injunction is pending adjudication and it is the contention of Mr. Lawande that because of the pendency of the present Revision, the said Application is kept pending.

16. Since various contentions were raised before the Trial Court and the same were not found properly adjudicated, the recourse available to this Court would be to quash and set aside the

impugned order by remanding the matter to the Trial Court to decide it afresh.

17. Since the injunction Application is also pending, the learned Trial Court should take up both the Applications i.e. the injunction Application as well as the Application filed by the Defendants under Order VII Rule 11(a) and (d) of the CPC. Both these Applications shall be heard together and the Court may either pass a common order or a separate order, accordingly. However, it is made clear that the parties shall not be allowed to argue only one Application at a time since the injunction Application is also pending from the date of filing of the suit. In case the Court comes to a finding that the plaint is required to be rejected, then the Application for temporary injunction could be disposed of as not tenable.

18. It is made clear that this Court has not gone into the merits of the Application and the arguments advanced by the parties and thus, all contentions of all parties are kept open.

19. The Trial Court shall now hear both the Applications on the next date which is fixed for hearing and decide it in accordance with law. The Trial Court shall not be influenced by the

observations of its earlier orders or any observations made by this Court. The Applications shall be decided independently and on hearing the parties afresh.

20. The Revision Application stands disposed of in the above terms.

21. Parties to act on an authenticated copy of this Order.

BHARAT P. DESHPANDE, J.