



(38) WP 381.2024

Sonam

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 381 OF 2024

Gangadhar Narsingdas Agarwal,
S/o late Narasingdas Agarwal,
88 years of age, Industrialist,
R/o “Krishna Kunj, H. No. 1477,
Varde Valaulikar Road,
Margao-Goa-403601.

... Petitioner

Versus

Smt. Deepa Anant Bandekar,
Wife of late Anant Bandekar,
65 years of age, Industrialist,
R/o 3rd floor, Raj-Tara,
F.L. Gomes Road,
Vasco-da-Gama,
Goa-403802.

... Respondent

***Mr. R. Ramani, Senior Advocate with Mr. Vinayak
Nevrekar, Advocate for the Petitioner.***

Mr. Raghunath Shetkar, Advocate for the Respondent.

CORAM:- VALMIKI MENEZES, J.

DATED :- 23RD JANUARY, 2025.

ORAL JUDGMENT:

1. Heard learned Advocates for the parties.
2. Rule.
3. Rule is made returnable forthwith with the consent of the parties.
4. This petition challenges the order dated 31.08.2023, passed by the Civil Judge Senior Division, 'C' Court at Vasco Da Gama, which is at Exhibit D-29 of the record of the Civil Court. The impugned order allowed an application for amendment of the plaint to incorporate a new cause of action and reliefs. The relief sought to be now incorporated as an additional relief is of costs towards damages along with the interest thereon, founded on amended facts /averments stated in paragraph No. 20(a) to 20(d) of the application.
5. The original suit was filed for recovery of the mesne profit and arrears of rent. In that proceeding, a Commissioner was appointed to ascertain the condition of the suit premises. The Commissioner submitted the report to the Court about the condition of the suit premises and more specifically to determine its habitability. A report was submitted before the

Civil Court by the Commissioner not only to determine the habitability of the suit premises but, to incorporate therein various aspects concerning the damages to the suit premises and the value of such damages, which in opinion of the Commissioner was assigned to be payable. The Civil Court has rejected the Commissioner's report to the extent that it assesses the value of the damages caused to the suit premises and it has restricted the report only to the question of habitability of the suit premises.

6. In the meantime, amendment application which came to be filed by the Plaintiff, obviously was based upon that part of the report of the Commissioner which assesses the value of the damage caused to the suit premises, on which basis, the relief of compensation was sought to be incorporated in the plaint. The Trial Court has allowed the amendment thereby, incorporating new cause of action and a new relief which obviously the cause appears for the reasons after the Commissioners report incorporate the quantum of damage to the suit premises. The Trial Court had already restricted the Commissioner's report only to the question of habitable condition of the premises and on that count, the cause of action which was based on this report would not

have been incorporated as amendment of the plaint for which certain reliefs were also prayed.

7. After hearing the matter for some time, since obviously, the amendment application would not be allowed, by consent of the parties to this petition who are parties to the original suit, have consented to the quashing of the impugned order. Accordingly, the impugned order shall stand quashed and set aside. The amendments which are incorporated in the plaint pursuant to passing of the impugned order shall be struck off from the plaint and the Civil Court, shall now proceed in the hearing of the suit in the absence of pleadings and the reliefs sought in the amendment application.

8. Accordingly, the petition is disposed of in the above terms and with directions to the Trial Court as mentioned above.

9. Rule is made absolute in the aforementioned terms. No order as to costs.

VALMIKI MENEZES, J.