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IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 56 OF 2024

1. Mr. Peter Rodrigues, s/o late Mr. John F. Rodrigues, 74 years of age, c/o Mr. Samson Dias, son of Pacheco Dias, r/o H. No. 250, Bella Vista Waddo, Sangolda, Bardez-Goa. ... APPELLANT

VERSUS

1. Goa Land Realtors Club Pvt. Ltd., (incorporated under the Companies Act 1956) Having registered office: Sequeira Hermitage, H. No. 232, Alto, Ribandar, Ilhas Goa. Represented by Mrs. Daphne Sequeira, Residing at M/s Goa Land Realtors, B-2, St. Mary's Colony, Next to Stella Maris Chapel, Miramar — Goa.

2. Mr. Eric Sequeira (since deceased) Through legal heirs:

   2(a) Mr. Martina Sequeira, Major of age, d/o Eric Sequeira, Sequeira Enclave, Ribandar — Goa.

2(b) Ms. Melody Sequeira, Major of age, d/o Eric Sequeira, Sequeira Enclave, Ribandar — Goa.

   Both r/o M/s Goa Land Realtors, B-2, St. Mary's Colony, Next to Stella Maris Chapel, Miramar - Goa.

3. Mr. Pascoal Irineu Trindade (since deceased) Through legal heirs:

   3(a) Mrs. Albertina Trindade, w/o late Pascoal Irineu Trindade, major of age, r/o Villa Pastina, Dona Paula, Goa.

3(b) Mr. Riva Anthony Trindade, s/o late Mr. Pascoal Irineu Trindade, major of age, r/o Villa Pastina, Dona Paula, Goa.

3(c) Mrs. Kartia Riva Trindade, w/o Riva Anthony Trindade, major of age, r/o Villa Pastina, Dona Paula, Goa.

4. Mrs. Leila Athaide, Major of age, r/o 8, Prabhat, 28 B Road, Church Gate, Mumbai 400 020.

5. Mrs. Daphne Sequeira, Widow of late Mr. Eric Sequeira, Major of age, r/o M/s Goa Land Realtors, B-2, St. Mary's Colony, Next to Stella Maris Chapel, Miramar — Goa. ... RESPONDENTS

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Mr. John Abreu Lobo, Advocate for the Appellant.

Mr. Ressano Hector Noronha, Advocate for Respondent Nos. 1 and 5.

Mr. Neelesh Takkekar with Ms. Tanvi Naik, Advocates for Respondent Nos. 3(a) to 3(c).

CORAM: BHARATI DANGRE, J.

DATED: 20th JUNE 2025

ORAL JUDGMENT:

1. The substantial questions of law formulated in the Second Appeal is to the following effect:

> a) *Whether both the Courts below were right in holding the suit to be barred by limitation on the face of the documents referred and relied by the Appellant in support of the case to the effect that the Respondents had acknowledged the debt and consequently there was an extension of the limitation period ?*

b) Whether on the facts of the case, the contention of the Respondents 1 and 5 with regards to limitation was/involved mixed questions of law and fact, thereby warranting framing of an issue and consequent leading of evidence ?

c) Whether the conclusions/findings of both the Courts below that the suit was barred by limitation suffer from perversity ?

d) Whether the Appellate Court was justified in holding a mini trial while adjudicating the appeal which was essentially testing the validity of an order passed by the learned Trial Court at Exhibit D-51 which was in the context of Order VII Rule 11 of CPC ?

e) Whether both the Courts below have acted in excess of jurisdiction while adjudicating the application under Order VII Rule 11(d) by travelling beyond the parameters on which such an application under Order VII Rule 11(d) is required to be tested and restricted i.e. to find out whether the suit was barred by limitation on the averments made in the plaint ?

f) Any other substantial question of law that may be urged with the leave of this Hon'ble Court.

2. However, Mr. Lobo has specifically relied upon the questions of law at (a) and (b) above.

The Appeal is Admitted and taken up for hearing by consent of respective Counsel.

3. The Plaintiff instituted a Special Civil Suit No. 36/2012/A against the Defendants seeking recovery of money to the tune of Rs.90,20,000/-.

4. It is the pleaded case of the Plaintiff that he had advanced money by way of investment in Defendant No. 1 through Defendant No. 2. It is also pleaded that initially an amount of Rs.5,50,000/- was credited into the Account of Defendant No. 2 on 17.12.1996 and thereafter, an amount of Rs.3,75,000/- was credited on 15.07.1997 and a sum of Rs.75,000/- was paid in cash on 18.07.1997. For the amounts paid by cheques, receipts were also issued. According to the Plaintiff, from the money paid by the Plaintiff by way of investment, as well as from other investors, the Defendants purchased two properties and a memorandum of understanding was entered with the Plaintiff on 01.01.1997. Defendant No. 2 even issued two share certificates dated 07.03.2021 of 500 shares each in the name of the Plaintiff.

5. The suit is instituted by setting out the reasons from paragraphs 20 onwards where the Plaintiff complained that though the other investors were paid money in the year 2007 as a return to his investments, not a single farthing came to the Plaintiff and in fact, whenever the Plaintiff came to Goa from Mumbai he met Defendant No. 2 and he was persuaded to accept that his money was growing rapidly and he would be definitely paid handsome amount at the end of the year 2010.

6. Once again, at the end of the year 2010, the Plaintiff made inquiries with Defendant No. 2 about his money, who came up with the idea of allotting one flat to him in the project 'Kamla Mills' and also apprised him that the flat would be worth of Rs.67 lakhs and the remaining amount of Rs.33 lakhs would be paid to the Plaintiff. This was on the assumption that an amount of Rs.1 crore was due to the Plaintiff from Defendant No. 2.

Thereafter, the Plaintiff made necessary inquiries and realized that Defendant No. 2 is trying to mislead him and he had no intention of returning the investment and therefore, he questioned Defendant No. 2 about the manner in which flat could be transferred to him as Defendant No. 2 had dealing with 'Kamla Mills' and the Plaintiff was assured that an allotment letter would be sent to him. However, since nothing came to the Plaintiff, in the month of February, 2012, he approached the office of Defendant No. 2 and informed that he is not interested in the flat and he should instead, return his entire amount of Rs.1 crore, which was agreed upon.

Thereafter, Defendant No. 2 gave a letter to the Plaintiff confirming allotment of two bedroom flat in the project "Emperor's Boulevard" at Bambolim and convinced him that an amount of Rs.33 lakhs would be paid and his Account would be settled on or before 15.07.2012. The Plaintiff accepted the letter believing it to be given effect to, but when he realized that nothing was coming to him, he met Defendant No. 2 in July 2012 and inquired about the money and flat and on realizing that he had no intention to honour the memorandum of understanding, he filed a suit for recovery of the aforesaid amount alongwith interest on the said amount at the rate of 18% from the date of the institution of the suit till its realisation.

The aforesaid suit was instituted on 01.10.2012.

7. Contesting the pleadings in the suit, Defendant Nos. 1, 2 and 5 filed their written statement on 26.03.2013. Before the issues could be settled in the suit, based on the counter pleadings in the plaint and the written statement, Defendant Nos. 1 and 5 took out an Application under Order VII Rule 11(a) of CPC, for rejection of the plaint, on the ground that the suit is barred by limitation.

8. The basis of the Application is found in paragraphs 5 and 6 to the following effect:

> *"5. In para 20 of the plaint the Plaintiff has stated that in the year 2007 the defendant No. 2 told the Plaintiff that they found the buyer and sold the entire property to "Kamla Mills" and further in para 21 of the Plaint the Plaintiff have stated that after receiving the money from the "Kamla Mills" all the Investors*

were paid Rs.56 Lakhs each in 2007. However the Plaintiff was not paid by the Defendant No. 2.

6. These defendants state that the Plaintiff in Para 33 has stated that the Plaintiff is entitled to recover from the defendant an amount of Rs.56 lakhs along with interest @18% per anum from 01/02/2007 till 30/09/2012."

9. The Plaintiff filed his reply opposing the said Application by clearly stating that the filing of the Application is nothing but an attempt to delay the suit as pleadings in the suit are self-explanatory and the circumstances leading to the filing of the suit in the year 2012 are specifically set out in the pleadings.

10. The Civil Judge Senior Division, Panaji allowed the said Application under Order VII Rule 11 of CPC by its order dated 13.01.2022 and when the said order is perused and read in its entirety, it is evident that the learned Judge failed to consider the pleadings in the plaint in its entirety as he formed an opinion on the basis of the Application filed by Defendant Nos. 1 and 5 that the suit is for recovery of the amount paid in 1997 and the limitation for filing such a suit is three years but the suit was filed in the year 2012 and therefore, it is hopelessly barred. The said order is also upheld in the Regular Civil Appeal No. 7/2022.

11. It is trite position in law that as far as the issue of limitation is concerned, it is a mixed question of law and fact. It is pertinent to note that the plaint, which institute a suit shall, as far as practicably framed so as to afford the ground for a final decision upon the subjects in dispute and as per Order II, Rules 1 and 2 the suit shall include the whole of the claim of the Plaintiff, which he is entitled to make in respect of the cause of action.

In terms of Order VI, the "Pleading" would cover the plaint or written statement. Order VI, Rule 2 categorically provide that every pleading shall contain a statement in a concise form of material facts, on which the party relies for his claim or defence, but not the evidence which they are to prove.

12. In light of the aforesaid, when the plaint is perused, which comprise of the sequence of events leading to the filing of the plaint and the case of the Plaintiff is clearly pleaded therein to the effect that though the amount was advanced in 1997, the Plaintiff continuously persuaded Defendant No. 2 to return his investment and the plaint has also specifically narrated as to what transpired between the Plaintiff and Defendant No. 2 till the year 2012 and once the Plaintiff realized that Defendant No. 2 is evading to live up to the commitment as contained in the memorandum of understanding, the suit is instituted.

The necessary pleadings in the plaint make out a case so that the filing of the suit from the cause of action having been accrued to the Plaintiff is specifically justified. As far as the material in support of the pleadings that can only come in the form of evidence, which is to be lead before the Court, including oral evidence, as the Plaintiff would be stepping into the witness box. Despite the relevant material to establish the specific claim raised in the plaint, and which also include the justification for filing of the suit in the year 2012, despite the fact that the amount was advanced in the year 1997, the suit is dismissed by the impugned order.

13. The attempt on the part of Defendant Nos. 1 and 5 to scuttle the proceeding by filing an Application under Order VII Rule 11 of CPC and the decision on the said Application by the Trial Judge as well as the Appellate Court, according to me, is a perfunctory approach adopted, which in any case is not permissible under the Code of Civil Procedure. Upon the written statement being filed, it was open for the learned Judge to formulate an issue on the point of limitation and permit the parties to lead evidence. Having failed to do so, in my considered opinion, the order passed by the Appellate Court as well as the order passed by the Trial Judge on an Application under Order VII, Rule 11 of CPC, cannot be sustained and by setting aside both the orders, the Special Civil Suit No. 36/2012/A is restored to the file of the Civil Judge Senior Division at Panaji for its determination on its merits.

It is open for the learned Judge to formulate the point on limitation and if the Defendants have not taken such defence in the written statement, they will be at liberty to file additional written statements.

14. The Second Appeal is allowed and the questions of law formulated are answered by holding that both the Courts below have erred in holding that the suit is barred by limitation, although limitation is a mixed question of fact and law and it was open for the Trial Court to frame an issue in this regard.

BHARATI DANGRE, J.