



Niti

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO.123 OF 2015**

Shri Sahajanand Investment Private
Limited, A company duly
incorporated under the Indian
Companies Act, 1956,
having its office at 9, Diamond
Chambers, 18th June Road, Panaji,
Goa, through its Director,
Shri. Rasiklal Mohanlal Gangani,
son of Mohanlal Raja Gangani,
married, of full age, Civil Engineer,
residing at Galaxy Building, off A. B.
Road, Panaji, Goa. ...Appellant

Versus

1. M/s. Landscape Developers,
A Partnership Firm constituted under
the Indian Partnership Act, 1932
having its office at Sea View Building,
Campal, D.B. Bandodkar Marg,
acting through its Partner,
Shri. Dinar Tarkar,
son of Purushottam Kamat Tarkar,
married, of full age, Developer &
Builder, carrying on business at Sea
View Building, Campal, D.B.
Bandodkar Marg, Panaji, Goa.

2. Shri. Alvaro Jose Teofilo Pinto
son of late Jose Floriano Jereves
Macario Pinto, of full age, landlord,
residing at St. Curz, Ilhas, Goa.
(since deceased) Through Legal
Representatives,

(i) Dr. Jose Pinto, major of age,
son of late Alvaro Pinto mayor of age

(ii) Mrs. Christabel Pinto,
Major of age, wife of Dr. Jose Pinto,
Both residing at 1128, Segundo Bairro,
Santa Cruz, Goa.

(iii) Mrs. Indira Pereira,
major of age, Wife of Mr. Arvind
Pereira, Daughter of late Alvaro Pinto.

(iv) Mr. Arvind Pereira, major of age,
son-in-law of late Alvaro Pinto,
Both residing at 4894, Rose Bush
Road, Mississauga, Ontario, Canada
L5M5M9

(v) Mrs. Michelle D'souza,
major of age, wife of Joel D'souza,
Daughter of Late Alvaro Pinto.

(vi) Mr. Joel D'souza, major of age
Son-in-law of Late Alvaro Pinto,
Both residing at 222, Landscape,
Pinto Park, D. B. Marg, Campal.
Since deceased, rep. thr. LRs
2(vi)(a). Jenelle Joel D'souza,
Daughter of Mr. Joel D'souza, minor,
residing at 222, landscape, Pinto park,
D.B. Marg, Campal, Panaji – Goa.
Represented by her father,
Mr. Joel D'souzo.

3. Smt. Marieta Teresa Petornila de
Fatima Mascarenhas e Pinto,

major of age, wife of Alvaro Jose
Teofilo Pinto, of full age, landlady,
Residing at St. Curz, Ilhas, Goa. ... Respondents

Mr Rohit Bras De Sa with Mr Joel Pinto, Advocates for the
Appellant.

Mr A.S. Kunde, Advocate for Respondent No.1.

Mr J.E. Coelho Pereira, Senior Advocate with Mr Abhishek
Sawant, Mr Jeet Volvoikar, Advocates for Respondent Nos.2(i),
2(ii) & 3.

Mr A.F. Diniz, Senior Advocate with Ms M. Correia, Advocate for
Respondent Nos.2(iii) & 2(iv).

**CORAM : BHARATI DANGRE &
ASHISH S. CHAVAN, JJ.**

DATE : 15th SEPTEMBER 2025

JUDGMENT : (*Per Ashish S. Chavan, J.*)

1. Heard Mr Rohit Bras De Sa, learned Counsel for the Appellant,
Mr A.S. Kunde, learned Counsel for Respondent No.1, Mr J.E. Coelho
Pereira, learned Senior Counsel along with Mr A. Sawant and Mr Jeet
Volvoikar, learned Counsel for Respondent Nos.2(i), 2(ii) & 3 and Mr
A.F. Diniz, learned Senior Counsel along with Ms Maria Correia,
learned Counsel for Respondent Nos.2(iii) & 2(iv).

Admit.

Learned counsel appearing for the respective respondents waive
service.

2. For the sake of convenience, the Appellant will be referred to as the Plaintiff and the Respondents will be referred to as the Defendants hereinafter.

3. The Plaintiff, by way of the present First Appeal, assails an order dated 29.07.2015, passed by the Civil Judge, Senior Division at Panaji, allowing the application of the Respondents for rejection of the plaint under Order VII Rule 11 of CPC.

4. The facts germane to the present appeal and the grounds raised therein by the Plaintiff can be summarised as under:

(i) It is the case of the Plaintiff that it is a Company incorporated under the Indian Companies Act, 1956, having its office at Panaji. It was constituted as a Company on 18.11.1998 by entities and individuals, who were earlier partners of one M/s. Rasik Constructions, a partnership firm, constituted under the Indian Partnership Act, 1932.

(ii) On 08.06.2006, the Plaintiff filed a suit for specific performance of contract being Special Civil Suit No.46/2006/A.

(iii) On 24.09.2013, the Defendants filed application for rejection of plaint under Order VII Rule 11 of CPC.

(iv) On 29.07.2015, the learned Civil Judge, Senior Division, Panaji, allowed the application of the Defendants for rejection of plaint. Aggrieved by the same, the Plaintiff filed the present Appeal.

5. The grounds raised by the Plaintiff for assailing the impugned order by way of the present Appeal can be summarised as under:

(i) That the impugned order suffers from lack of proper procedure and hence it has resulted in miscarriage of justice.

(ii) The findings arrived at by the Trial Judge are not supported by evidence and in fact are contrary to the provisions of law.

(iii) The learned Trial Judge has not framed proper issues.

(iv) The learned Trial Judge has acted in excess of its jurisdiction.

(v) The learned Trial Judge has decided the issue of limitation, which was a mixed question of law and facts and which ought not to have been decided summarily on an application under Order VII Rule 11.

6. The contentions of the Defendants can be summarised as under:

(i) There is no privity of contract between the Plaintiff and the Defendants.

(ii) There is no document to show that the Plaintiff took over all the assets and liabilities of M/s. Rasik Constructions as narrated in the plaint.

(iii) There is no document to show the transaction of transfer of immovable property to the Plaintiff by M/s. Rasik Construction.

(iv) The Plaintiff has not spelt out as to how it has become the successor of M/s. Rasik Construction in order to maintain the suit by the Plaintiff as against the Defendants for specific performance of contract.

7. We have perused the records, more particularly, the plaint along with its annexures and the impugned order. The entire tone and tenor of the plaint proceeds on various transactions entered into by one M/s. Rasik Constructions with the Defendants for the development and construction of a building. However, save and except for omnibus and bald allegations, there is no document to show that there is any nexus between the Plaintiff and M/s. Rasik Constructions.

8. The Plaintiff claims that it is the successor in business to M/s. Rasik Construction. The Plaintiff is a legal entity, which is incorporated under the Companies Act, 1956, whereas M/s. Rasik Construction is a partnership firm. There is no document relied upon by the Plaintiff and forming part of the suit or its annexures, which can support the contention of the Plaintiff that it was a successor in business to M/s. Rasik Constructions. The illusory nexus between the plaintiff and M/s. Rasik Constructions seems to be ingenious drafting rather than any cogent documentary evidence.

9. The Plaintiff has not made any endeavour to demonstrate what assets and liabilities, if any, of M/s. Rasik Constructions have been taken over by the Plaintiff as averred by him in the plaint. All the documents which form the substratum of the plaint are executed between M/s. Rasik Constructions and the Defendants. The Plaintiff is not a party to any of these documents. Thus, upon a reading of the plaint, it is evident that the Plaintiff has no cause of action against the Defendants.

10. Moreover, the suit for specific performance is based on an agreement executed in January 1999. The limitation for filing a suit based on the aforesaid agreement expires within three years as per the Limitation Act. Even this agreement is only a draft and cannot be acted upon. Thus, the Plaintiff has also miserably failed to make out a case to bring the suit within the law of limitation.

11. Order VII Rule 11 provides for rejection of plaint and envisages various cases in which the plaint can be rejected. In the facts of the present appeal, Order VII Rule 11 [sub-rule (a) and (d)] are clearly attracted.

12. It is a settled position of law that clever drafting creating an illusion of cause of action cannot be substituted for cogent and reliable evidence and the Court can reject the plaint at any stage if, on reading the plaint, no cause of action is disclosed or it is barred by law of limitation.

13. In the wake of the aforesaid facts and circumstances, we have no hesitation in dismissing the present appeal. Hence, the appeal stands dismissed with no order as costs.

ASHISH S. CHAVAN, J.

BHARATI DANGRE, J.