



Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO.37 OF 2024

M/s. Dilip Buildcon Pvt. Ltd., thr.
Its Section In Charge, Engineering (STR) .. **Applicant.**

V/s.

Shakuntala R. Parab And 5 Ors. ... **Respondents.**

Mr Prasheen Lotlikar, Advocate *with Mr Bhavesh B. Lotlikar,*
Advocate for the Applicants.

Mr Geetesh Shetye, Additional Government Advocate *for*
Respondents No.3, 4 and 5.

CORAM:- VALMIKI MENEZES, J.

DATED:- 14th January, 2025.

P.C.:

This revision application takes exception to an order dated 18.07.2024 dismissing the Petitioner's application under Order 7 Rule 11 of CPC for rejection of plaint. The application for rejection of the plaint is founded on the plea that the plaint is barred by the provisions of clause (ha) of sub-Section 1 of Section 41 of the Specific Relief Act.

2. It is the submission of the learned Counsel for the Petitioner that the plaint contains averments which state that the construction undertaken by the Defendant No.4, is of the approach road for the new Zuari Bridge, which, it is common knowledge, is an infrastructure project. It is further the submission of the learned Counsel that the construction of the approach road for the bridge is now complete and the bridge is operational and, therefore, the relief sought in the plaint is rendered infructuous. He has taken me through paragraphs 13 and paragraph 30 of the plaint where the Plaintiff has averred that the construction in question has severed the access to his residential house which is situated on a plot bearing Survey No.91/1-B of Village Mercurim, where he has constructed a residential house. It is further submitted that the cause of action that has been pleaded is directly covered by the bar under Section 41 of the Specific Relief Act, which sets down the circumstances under which the Court cannot grant an injunction to a plaint. On that submission, it is contended that the plaint ought to be rejected.

3. I have considered the contents of the plaint and the impugned order rejecting the application under Order 7 Rule 11 filed by the Defendant No.4/Petitioner. It is the case of the Petitioner in the written statement that the project is an infrastructure project of the nature referred to in clause (ha) of Section 41 of the Specific Relief Act. The entire argument for rejection of plaint is founded upon the defence of the Petitioner rather than on the averments made in the plaint. From the plain reading of the plaint, the suit would be

maintainable and would not be barred by the provisions of Section 41. There is a triable issue that arises as to whether the impediments caused to the right of way claimed by the Plaintiff was by an infrastructure project, more so in the light of the specific pleading that the Highway Authorities had sanctioned the construction of the residential house of the Plaintiffs near the very access claimed by him. All this would be a matter for trial and would be finally decided in the suit.

4. On going through the impugned judgment, the trial Court has considered in detail not only the law or the manner in which the bar under Section 41 would operate but has also considered the averments made in the plaint, and has concluded that the plaint would not be barred by law. It has also concluded that the arguments put forth by the Defendant No.3 for rejection of plaint were based upon the averments made in the defence in the written submission, as can be culled out in the findings in paragraph 27 and 28 of the impugned order. No infirmity can be found in the reasoning of the trial Court whilst rejecting the application. In my opinion, this would not be a case for exercise of supervisory or revisional jurisdiction of this Court after considering the impugned order.

5. The application, is therefore, rejected. No costs.

VALMIKI MENEZES, J.