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IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 38 OF 2024

M/S Nilesh Furniture Works,
A registered Partnership Firm,
Through its Partners:

1. Sudha Guiridhar Khandolkar
W/o Guiridhar Khandolkar
Aged 77 years, married,
Indian national,
2. Shri. Guiridhar khandolkar
Son of Pandurang Khandolkar
Aged 78 years, married
Indian national,
3. Shri. Nilesh Guiridhar Khandolkar,
Son of Shri. Guiridhar Khandolkar
Aged 47 years, Indian national,
All residing at E-312,
Shiv Krupa Bairo Amaral,
Taleigao, Caranzalem, Tiswadi, Goa;
and all Represented by their Partner &
POA Holder:
4. Mr. Vijesh Guridhar Khandolkar,
Son of Guridhar Khandolkar,
Aged 45 years, Indian National,
Resident of E-312,
Shiv Krupa Bairo Amaral,
Taleigao, Caranzalem, Tiswadi, Goa.

... Applicants

Versus

1. Shri. Anand Shankar Nagvekar,
S/o Shri. Shankar Nagevekar,
Aged out 86 years,
Married, Indian National,
2. Smt. Sumedha Anand Nagvekar
W/o Shri. Anand Shankar Nagvekar,
Aged about 72 years, married,
Indian National
3. Shri. Ramesh Shankar Nagvekar
S/o Shankar Nagvekar
Aged about 70 years, Indian National,
All residing at 1st Floor,
Nagvekar Apartment,
Opposite Mahalaxmi Temple,
Alongside Dada Vaidhya Road,
Panaji Goa- 403001.
4. Smt. Geeta Ulhas Patekar
W/o Late Ulhas Patekar,
Aged about 56 years, Indian National
5. Shri. Vinod Ulhas Patekar
S/o Late Ulhas Patekar
Aged about 35 years, Indian National
6. Shri. Rohan Ulhas Patekar
S/o Late Ulhas Patekar
Aged about 34 years, Indian National
7. Ms. Samira Ulhas Patekar
D/o Late Ulhas Patekar
Aged about 32 years, Indian National,
All residing at H. No. 270, Odlem Bhat,
Taliengao, Goa

... Respondents

Mr. Shivraj Gaonkar with Mr. Prabhav Sirvoicar, Advocates
for the Petitioners.

Mr. Rama Gajanan Rivonkar, Advocate for the Respondent
Nos. 1 to 3.

Mr. R. G. Ramani, Senior Advocate with ***Mr. Vinayak
Nevrekar***, Advocate for Respondent Nos. 4 to 7.

CORAM : **VALMIKI MENEZES, J.**
DATED : **4TH APRIL, 2025.**

ORAL JUDGMENT:

1. Heard learned Advocates for the parties.
2. Rule. Rule is made returnable forthwith; at the request of and with the consent of learned Advocates for the parties, the matter is finally heard and disposed of. Learned Advocate Mr. Prabhav Sirvoicar waives service on behalf of the Applicants, learned Advocate Mr. Rama Gajanan Rivonkar waives service for Respondent Nos. 1 to 3 and learned Advocate Mr. Vinayak Nevrekar waives service for Respondent Nos. 4 to 7.
3. This Revision application impugns an order of 03.09.2024, passed by the Civil Judge Junior Division, 'E' Court at Panaji in RCS No. 59/2022/F, whereby the application

under Order 7 Rule 11 for rejection of the counter claim in the suit has been dismissed.

4. After hearing the matter for some time, it is observed that the order has not been passed on the merits addressing the arguments raised by the Plaintiffs that counter claim was barred by law of limitation. The only ground on which the application is rejected is found in paragraph No. 22 of the order. The rejection is based on the fact that if the counter claim is rejected, it would result in striking off the defence. This, in my opinion, can be no reason at all to reject an application under 7 Rule 11. The Trial Court is obliged to address the issue raised in the application, in this case being that the counter claim is barred by law of limitation. There is no reason cited in the order addressing the specific grounds raised by the Plaintiffs. On this ground, the impugned order is required to be set aside and hence is quashed and set aside. The Trial Court shall rehear the application dated 31.01.2023 at Exhibit D-16 and dispose of the same preferably within a period of 3 months from today; in the event that charge of the Court to which the aforementioned suit is allotted to any other Court, this direction equally applies to that Court.

5. Needless to state that the Trial Court shall address itself only to the issue as to whether the counterclaim is barred by the

law of limitation and also on the second ground which has not been addressed at all that is whether there is no cause of action disclosed in the counter claim.

6. The impugned order dated 03.09.2024 is quashed and set aside on the aforementioned terms. All contentions of the parties are kept open.

7. Rule is made absolute in the above terms.

8. The Civil Revision application stands disposed of.

VALMIKI MENEZES, J.