

(2008) 08 BOM CK 0031

Bombay High Court (Goa Bench)

Case No: First Appeal No. 174 of 2004

Mr. Eric D'Souza, Flat No. F-104,
Annette Beach Apartments,
Cobrawado, Calangute, Bardez,
Goa and Others

APPELLANT

Vs

Saldanha Developers Pvt. Ltd.

RESPONDENT

Date of Decision: Aug. 13, 2008

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 8
- Maharashtra Co-operative Societies Act, 1960 - Section 91

Hon'ble Judges: Santosh Bora, J; S.C. Dharmadhikari, J

Bench: Division Bench

Advocate: V. Menezes, for the Appellant; J.P. Mulgaonkar, for the Respondent

Final Decision: Allowed

Judgement

S.C. Dharmadhikari, J.

The appellants are the original plaintiffs; whereas the respondents are the defendants. The appellants filed a suit in the Trial Court being Special Civil Suit No.57/2003/A, claiming specific performance of the agreements, more particularly set out in prayer clause (a) of the plaint and for a direction that defendant No.1 be directed to execute a proper Deed of Conveyance in favour of plaintiff No.8 in respect of the suit property and to perform all acts, deeds, and things for registration of the said deed. Further, a money decree in the sum more particularly set out in prayer clause (b) and permanent injunction in terms of prayer clause (c) was also claimed. It appears from the record that when the writ of summons was duly served, two applications were filed by the Advocate for the defendants. One application was invoking Order 7, Rule 11 of CPC on the basis that Order 7, Rule 11(A) of C.P.C. prohibits entertaining of a suit, claim in which is barred by some provision of law.

2. In the instant case, according to the defendants, Section 91 of the Maharashtra Co-operative Societies Act, 1960, as applicable to the State of Goa, would bar the jurisdiction of the trial Court and the Trial Court must, therefore, reject the plaint.
3. The original plaintiffs filed an affidavit, opposing the application under Order 7, Rule 11 of C.P.C. and contended that the allegations in the application, read as a whole, do not, in any manner, demonstrate that the claim would not be maintainable before ordinary Civil Court. Their case is that considering the prayers in the plaint and the basis being the agreements, which defendant No.1 was to specifically perform, then only remedy open for them is to approach the Civil Court and the Co-operative Court would have no jurisdiction to entertain and try the present dispute.
4. The other application invoked the provisions of the Arbitration and Conciliation Act, 1996. It was the case of the defendants that the provisions of Section 8 of the Arbitration and Conciliation Act, 1996 would come into play inasmuch as Clause 29 of the Agreement entered into between the parties would show that the claim has to be resolved by resorting to arbitration. Therefore, when there is an agreement between the parties and the said agreement is produced before the Court, then, Section 8 would come into play and all ingredients thereof are satisfied. Therefore, the plaint should be rejected.
5. The learned Judge took up both the applications and by a common order disposed off the same.
6. In so far as the application invoking Section 8 of the Arbitration and Conciliation Act, 1996 is concerned, the learned Judge observed that ingredients thereof are not satisfied inasmuch as the original defendants have not produced the arbitration agreement. In such circumstances, the trial Court held that there is no substance in the contention that the arbitration agreement would take away the jurisdiction of the Civil Court. We see no reason to disturb this finding inasmuch as the original defendants have not initiated any proceedings challenging this part of the impugned order. Therefore, the conclusion that the suit claim is not barred under the Arbitration and Conciliation Act, 1996 has become final and requires no interference.
7. As far as the contention of the defendants that the Civil Court has no jurisdiction because Section 91 of the Maharashtra Co-operative Societies Act, 1960, as applicable to the State of Goa is concerned, after the matter was argued for sometime, both sides agree that the issue of jurisdiction of the Civil Court in terms of this provision be kept open. Both sides agree that the plaint itself may not be rejected straight away. However, the original defendants seek leave to raise all pleas with regard to jurisdiction of the Civil Court. We see no reason to deny such liberty to the original defendants. It is brought to our notice that although the suit was instituted in the year 2003 and is covered by the Amendment to the CPC no written

statement is filed. Obviously, the Trial Court passed an order on the application under Order 7, Rule 11 of C.P.C. in favour of the original defendants. As a consequence of the order, the plaint was rejected and was taken off the file of the Civil Court. That order is now being reversed and set aside by us. It is now that the respondents/original defendants would get an opportunity to file their written statement, raising all pleas. In such circumstances, Order 8, Rule 1 as amended by amendment of 2002 would have no application to the peculiar facts of this case. That does not mean that the defendants can take their own sweet time to file their written statement. Interest of justice would be sub served if the original defendants are granted 8 weeks" time from today to file their written statement and if the same is filed within this period, it shall be taken on record and thereafter, the trial Court to frame issues, including that of its jurisdiction and allow parties to raise all pleas, so also to place such materials on record as are permissible in law in support thereof. With this clarification and granting liberty to the defendants to raise all pleas with regard to jurisdiction of the Civil Court, we quash and set aside the impugned order and restore the plaint and suit to the file of the trial Court. Appeal allowed in the aforesaid terms accordingly. No costs.