Urban Concept, Lotus Ventures and Mr. Amit M. Suktankar Vs Mrs. Maria Zita Afanso and Mr. Christolker Pedrinha Po

Court: Bombay High Court (Goa Bench)

Date of Decision: Jan. 11, 2011

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 7 Rule 11

Hon'ble Judges: A. P. Lavande, J

Bench: Single Bench

Advocate: A. Agni, for the Appellant; M.D. Da Costa and J.A. Lobo, for the Respondent

Judgement

A.P. Lavande, J.
Heard Mrs. Agni, learned Counsel for the Petitioners and Mr. Da Costa, learned Senior Counsel for the Respondents.

2. Rule. By consent, heard forthwith.

3. By this revision application, the Petitioners challenge order dated 6/10/2010 passed in Civil Suit No. 6/09/A, by which the application filed by

the Petitioners under Order 7 Rule 11 of the CPC has been dismissed.

4. The Respondent Nos. 1 and 2 filed the above referred suit against the Petitioners and some other Defendants seeking relief of declaration. The

Petitioners are Defendant Nos. 21,22 and 23 in the above referred Special Civil Suit No. 6/09/A filed by the Respondents in the court of Civil

Judge, Senior Division, Panaji. The said application was opposed by the Plaintiffs and by the impugned order the Trial Judge had dismissed the

application.

5. The only point urged by Mrs. Agni in support of the revision application is that although it was specifically the case of the Petitioners in the

application that the suit filed by the Plaintiffs was barred by limitation and, as such the plaint was liable to be rejected, the Trial Court in the

impugned order has not dealt with the said issue which the Trial Court was required to do. She therefore submitted that the impugned order is

liable to be quashed and set aside.

6. Mr. Da Costa, learned Senior Counsel for the Respondents fairly concedes that the learned Trial Judge has not dealt with the issue which was

raised before it. He further submitted that the Plaintiffs would file an application for amendment before the trial court.

7. I find that the concession made by the Mr. Da Costa, learned Senior Counsel deserves to be accepted. Perusal of impugned order discloses

that the learned Trial Judge has nowhere dealt with the issue raised by the Petitioners/Defendant Nos. 21 to 23 which was required to be decided

while deciding the application filed under Order 7 Rule 11 of CPC On this point alone , the impugned order is liable to be quashed and set aside

and is hereby quashed and set aside.

8. The Trial Court shall decide the application dated 2/12/2009 filed by the Petitioners in the above referred suit after giving an opportunity of

being heard to the parties, in accordance with law.

9. Civil Revision application stands disposed of accordingly with no order as to costs.

10. In view of the disposal of the revision application, Civil Application No. 6 of 2011 also stands disposed of.