

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 220 OF 2024

M/s. Goel Ganga Infratech Solutions Pvt Ltd &
Ors. .. Applicants
Versus
Mohammed Shirazi & Ors. .. Respondents

WITH
CIVIL REVISION APPLICATION NO. 226 OF 2024

M/s. Shahenshah Properties Pvt Ltd .. Applicant
Versus
Mohammed Shirazi .. Respondent

WITH
CIVIL REVISION APPLICATION NO. 228 OF 2024

Mr. Hemchandra Dashrath Satav .. Applicant
Versus
Mohammed Shirazi & Ors. .. Respondents

WITH
CIVIL REVISION APPLICATION NO. 230 OF 2024

Poona Warehousing Pvt Ltd & Anr. .. Applicants
Versus
Mohammed Shirazi & Ors. .. Respondent

WITH
CIVIL REVISION APPLICATION (ST) NO. 8933 OF 2024

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- Mr. Y.S. Jahagridar, Senior Advocate a/w Ms. S. Kanetkar i/by Mr. Shailendra Kanetkar for Applicants
- Mr. S.S. Patwardhan i/by Mr. Mrinal Ashwin Shelar for Applicant in CRA/226/2024
- Mr. Veerendra Tulzapurkar, Senior Advocate i/by I.M. Khairdi for Applicant in CRA/228/2024

- Mr. Ketan Doshi for Applicant in CRA/230/2024
- Mr. Aadesh Patil for Respondent No. 2 in all CRAs
- Mr. Aadesh Patil for Applicant in CRAFT/8933/2024
- Ms. Dnyanada Patwardhan, Ms. Rajeshwari Patwardhan and Ms. Amisha Mundada

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 12, 2024

P.C.:

1. Heard learned Advocates appearing for the parties.
2. Heard Mr. Jahagirdar, learned Senior Advocate who is appearing in CRA/220/2024 for Defendant Nos. 8 to 11 to maintain challenge to the common impugned order dated 06.03.2024 passed by learned Trial Court in Applications below Exhs. 33, 34, 41, 45 and 54. Other Defendants i.e. Defendant Nos. 1 to 7 have also filed identical CRAs which are listed at Sr. Nos. 25 to 27 as also one CRA filed by Defendant No. 1 Society being CRA (St) No. 8933 of 2024 which is listed on 26.04.2024 for hearing. CRA (St) No. 8933 of 2024 is taken on board today for hearing along with present CRAs and the present common order is passed.
3. Learned Advocates appearing for the Applicants are *ad idem* that the challenge maintained in all CRAs is to the common impugned order dated 06.03.2024 passed by the learned Trial Court while rejecting Applications filed by Defendants under O. 7, R. 11 of CPC.

For considering the Applications filed by the Defendants seeking rejection of Plaintiff, it is pertinent to note the averments in the suit and whether these averments qualify the reliefs prayed for by the Plaintiff. Facts in the present case are curious. Defendant No. 1 Society was formed and came into existence in the year 1979 whereas Plaintiff was incorporated and added as the 10th member of the Defendant No.1 Society in 1995. It appears that Defendant No.1 Society holds substantial land rather it holds substantial land parcels in respect of which various rights have been created and agitated over a period of time. Pleadings also show that sometime in the year 1999, the Society had authorized Plaintiff to represent the Society in certain proceedings and a Power of Attorney was issued to the Plaintiff to represent the Society on its behalf. At this stage, I need not delineate and enter into all such minuscule details. What is of significance for me to note is the fact that by virtue of the suit, Plaintiff has sought substantive reliefs in respect of an area admeasuring 45 Acres which is the suit property out of the properties belonging to the Society. Admittedly perusal of the pleadings in the suit itself show that this entire 45 acres of suit property is under various litigation *qua inter se* rights between the Defendants themselves as also third parties. Plea of Benami transaction is also pleaded and taken by the Plaintiff in the Suit with respect to acquisition of certain properties of the

Society and declaratory relief is sought by the Plaintiff who is member of the Society that he be declared as the real owner as also possessory owner of the suit property i.e. 45 acres of land with reference to registered sale deeds which are registered with the Sub-Registrar on 31.01.1998 under four different registration numbers as undisclosed principal of Defendant No. 1 Society who is holding the same on its behalf. In the first instance, such a relief of declaration is prayed for the first time by the Plaintiff in the year 2023 by filing the present suit proceedings to set aside the registered sale deeds of 1998 when admittedly the Plaintiff was the member of the Society since the year 1995 itself. Hence such belated plea *prima facie* cannot be maintainable as it defeats the law of limitation on the face of record. Be that as it may, Plaintiff does not stop here. Prayer clause (b) to (n), namely 13 more prayers are seeking further substantial reliefs which on *prima facie* reading appear to be convoluted not only in terms of facts stated therein but also in law. Various declarations are sought by the Plaintiff in respect of not only registered agreements executed by the Society and its members and challenge is maintained to the Resolution of the Society and an Arbitral award as per the Master Settlement Agreement under Section 73 of the Arbitration and Conciliation Act, 1996 and the endorsement of the conciliator as being false and fabricated.

4. Mr. Jahagirdar has painstakingly taken me through the prayer clauses and after consuming substantial time, I am inclined to observe that I have found it extremely difficult to even comprehend the prayer clauses *qua* the pleadings in the suit plaint. I have also perused the common impugned order dated 06.03.2024. I have noticed that the learned Trial Court has recorded that it is not visible from the pleadings that that false and vexatious claim has been made by the Plaintiff, but the plaint discloses the cause of action which cannot be dismissed or rejected. This is without assigning any reasons. As usual and as it happens in similarly placed cases, cognizance of which has been taken by this Court in its various orders, the learned Trial Court has further recorded that limitation here seems to be a matter of fact and law. It is seen that at least the learned Trial Court has admittedly held that even if some of the reliefs may not be granted by the Court, part plaint cannot be rejected. If such a finding in itself is returned by the learned Trial Court without assigning any cogent reasons, the question before the Court would be whether to allow such a plaint to exist on the record and file of the Court. This is precisely the reason as to why provisions of O. VII, R. 11 are framed by the legislature. It is clearly seen in the present case that Plaintiff is challenging registered sale deeds executed in the year 1998 after their execution and registration after almost 25 years. There is a gross unexplained delay.

Rights have been crystallized in the past 25 years. Being a member of the Society since 1995, the Plaintiff, it appears is aggrieved with the decision of the Arbitrator in the Arbitration award with respect to accepting and adopting the resolution passed by the Society recording sale of the Society land. However in that case he will have to raise a dispute or file appropriate proceedings before the appropriate Competent Authority under the appropriate statute. It is seen that pursuant to the Arbitral award, registered sale deeds have also been executed in favour of Defendant Nos. 8 to 10 on 13.07.2023. It seems that the Plaintiff being a member of the Society is aggrieved with this and instead of challenging the arbitral award, he has filed the present Suit in the present form by mixing various reliefs which on the face of record are unacceptable and not maintainable at all. This is my opinion after reading the suit plaint and the prayers. Hence, the common impugned order dated 06.03.2024 shall immediately stand stayed. Since substantive challenge is maintained in the Application filed under O. VII, R. 11 of the CPC and it goes to the root of the matter, necessarily Special Civil Suit No. 2396/2023 shall not be proceeded any further before the learned Trial Court since this Court is now seized with the present challenge. Hence, SCS No. 2396/2023 shall stand stayed.

5. In view of the above, an arguable case is made out by Mr. Jahagirdar, learned Senior Advocate, duly endorsed and supported by Mr. Patwardhan, Mr. Khairdi, Mr. Doshi and Mr. Patel for issuance of the notice to Respondent No. 1 who is the contesting respondent. Hence issue notice to Respondent No. 1 Humdast permitted. In addition to Court's notice, Applicants are directed to serve copy of their respective CRA along with copy of this order on Respondent No. 1 and inform him about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondent No. 1 to file affidavit-in-reply on or before the next date, if so desired, with an advance copy to the Advocate for Applicants.
6. Respondent No. 1 is directed to remain present either himself or through Advocate on the next adjourned date. It is made clear that if Respondent No. 1 remains absent despite service on the next adjourned date, present CRAs shall be heard and disposed of at the stage of admission in the absence of the Respondent No. 1
7. Stand over to **26th April, 2024 at 2:30 p.m.**

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[MILIND N. JADHAV, J.]

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