



CNR No. GASG04-000014-2018

Presented on: 03.01.2018
Registered on: 04.01.2018
Decided on : 04.01.2019
Duration: Years Months Days
01 -- 02

IN THE COURT OF THE SENIOR CIVIL JUDGE 'A' COURT AT QUEPEM.

(Before Smt. Sharmila A. Patil, Ad-hoc Civil Judge, Senior Division 'A'
Court at Quepem).

Regular Civil Suit No.1/2018/A.

1. Gogi Constructions,
A partnership firm
having office at H.No.236/6,
Nirmala Nagar, Xeldem,
Quepem, Goa.
2. Shri Prakash Gopi,
of about 32 years of age,
son of late Shri Suresh Gogi,
3. Shri Subhash Gogi,
of about 30 years of age,
son of late Shri Suresh Gogi,

4. Shri Ganesh Gogi,
of about 25 years of age,
son of late Shri Suresh Gogi,
all residents at H.No.236/6,
Nirmala Nagar, Xeldem,
Quepem, Goa.

.... Plaintiffs.

Vs.

1. Shri Shaikh Mohammed Tauseef,
major of age about 36 years,
son of late Shri Mohammed Hassim Sheikh,
resident of H.No.67, Dessai waddo,
Quepem, Goa.

2. Shri Sheikh Mohammed Ejaz,
major of age, about 57 years,
son of late Shri Mohammed Hassim Sheikh,
resident of H.No.67, Dessai waddo,
Quepem, Goa.

.... Defendants.

Plaintiffs represented by learned Advocate Shri J. Dias present at the time of arguments and absent at the time of Order.

Defendants represented by learned Advocate Shri S. Noronha present at the time of arguments and at the time of Order.

ORDER

(Delivered on this 4th day of the month of January, of the year, 2019).

By this order I shall dispose the application filed by the defendant under Order VII Rule 11 for rejection of plaint at exhibit

10.

2. It is the case of the defendant that the present suit is filed for trespass and for cancellation of the legal effects of cheque bearing no.000036 of HDFC Bank, Colva branch Goa dated 05.08.2016 along with application for temporary injunction. A bare

perusal of the plaint, it is crystal clear that there is no disclosure of cause of action and there is absolutely no cause of action which has accrued to file the present suit. The plaintiffs by way of this suit seek to nullify all the legal effects of the said cheque and hence, the suit is undervalued. That the suit is barred by law as no suit for cancellation of the legal effects of a cheque issued under the negotiable instrument Act can be filed as the same would be in contradiction of the provision of the Negotiable Instrument Act and hence, the present application.

3. The plaintiffs have filed their reply at exhibit 14 contending that the present suit is filed for cancelling the legal effects of the cheque which have been fraudulently handed over to the defendants with its respective dates and towards its consideration. The present proceedings covers the cause of action that the said cheque is of unlawful possession and taking undue advantage of the blank cheque which the plaintiff was unaware on the date of the deposit of the said cheque. Neither consent, nor any promise was consented to towards the defendant to cover the negotiable instrument to consideration. The defendants have suppressed the facts and that the suit has to be decided on merits for the subject matter involved in the present proceedings is to establish that whether the defendant had rightful consent towards depositing the cheques on the relevant day of deposit and therefore prayed that the application be dismissed.

4. Both the parties have filed their respective written arguments. I have gone through the records and have duly considered the arguments advanced by the learned advocates for the parties. After going through the material before me the point which falls for my determination along with its finding is given as under:

<u>POINT FOR DETERMINATION</u>	<u>FINDING</u>
Whether the plaint is liable to be rejected as it does not disclose a cause of action and is barred by the law?	In the affirmative

5. I now proceed to give reasons for the above findings.

R E A S O N S

6. Order 7 Rule 11 of the Civil Procedure Code provides for the rejection of the plaint and particularly clause (a) provides where the plaint does not disclose cause of action and clause (d) provides that the plaint can be rejected where the suit appears from the statement in the plaint to be barred by any law. Clause (d) applies in the present case as the pleadings in the plaint show that the plaintiffs are seeking to nullify the effects of the negotiable instrument which is clearly impliedly barred by the negotiable instrument Act. The presumption under the negotiable instrument Act with respect to any negotiable instrument is a rebuttable presumption in the proceedings under the negotiable instrument Act and although a suit for the recovery of the cheque amount is maintainable, a suit to nullify its effects is barred by the negotiable instrument Act. Consequently, in my view, the legal effect of cheque under the negotiable instrument

Act cannot be nullified and therefore such a plaint seeking a relief to that effect is not maintainable.

7. The arguments of learned Advocate for the plaintiff that the cheque was fraudulently obtained by the defendants and is deposited without the consent and by way of fraud and have got the cheques dishonoured are contrary to the own documents of the plaintiffs. The plaint shows that the plaintiffs and the defendant no.1 executed a memorandum of understanding dated 30.09.2015 and by this memorandum of understanding the defendants had agreed to purchase from the plaintiffs two flats. The plaint further reads that the defendant no.2 as an attorney of defendant no.1 committed forgery with illegal writing on the said cheque which was taken from plaintiff no.2 in contradiction to the memorandum of understanding.

8. This memorandum of understanding shows that it is entered between the defendant no.1 and the plaintiff no.1 wherein the defendant no.1 has agreed to purchase two flats along with the built up area and with parking units for the total consideration of Rs.29,00,000/- out of which total payment of Rs.23,00,000/- as per the terms of memorandum of understanding was made by defendant no.1. the Affidavit cum declaration cum undertaking of the plaintiff no.1 dated 02.06.2016 produced by the plaintiffs show that the plaintiffs have agreed that they have failed to start the building project and could not complete the construction by the year end of

2017 as promised by them and therefore the plaintiffs undertook to reimburse and pay the consideration amount of Rs.23,00,000/- along with additional compensation of Rs.9,00,000/- on or before 05.08.2016. In view of this affidavit cum declaration cum undertaking two cheques were handed over by the plaintiffs out of which one cheque bearing no.000036 is the subject matter of the present suit, was dishonoured. Therefore, these two documents show that the cheques were issued towards legally enforceable debt under the negotiable instrument Act and therefore a reading of the plaintiff shows that it does not disclose any cause of action. The own documents relied by the plaintiffs go contrary to the pleadings in the plaint which forms the cause of action.

9. The learned Advocate for the defendants has placed reliance on ***T. Arivandandam vs. T.V. Satyapal and Anr., (AIR 1977 SC 2421)*** wherein it is held that on a meaningful reading of the plaint if it is found that no cause of action is disclosed in the plaint, the same ought to be rejected. It was also held that Court has powers to examine the plaint to find out and clear the illusion created by a skillful drafting. In the present case, the execution of the memorandum of understanding and the cancellation of the same by way of affidavit cum declaration cum undertaking reveals that the plaintiffs have agreed to pay total consideration of Rs.32,00,000/- to the defendants and in repayment of the same, the present cheque is issued. The plaintiffs have pleaded that upon the dishonor of the cheque the defendant has filed a criminal complaint under the

negotiable instrument Act before the JMFC, Quepem which is shown as the cause of action to file the present suit. The ground of fraud which is pleaded in the plaint by the plaintiffs that without the consent of the plaintiffs, the defendants deposited the said cheque by writing the said cheque is only to create a cause of action by way of skillful drafting only to project that there is a disclosure of cause of action. The documents as well as the plaint therefore, does not disclose any cause of action and is also barred by the law and therefore is liable to be rejected under VII Rule 11(a) and (d) of CPC. Having I conclude this point in the affirmative.

10. In the backdrop, the application stands granted and consequently the plaint stands rejected in terms of Order VII Rule 11(a) and (d) of Civil Procedure Code.

Decree shall be drawn accordingly.

Pronounced in open Court.

(*Sharmila A. Patil*)
Ad-hoc, Senior Civil Judge,
at Quepem

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