



Maria S.

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**FIRST APPEAL NO. 47 OF 2023**

Mrs Jayashri N. Rajebhosale, Alias Bimabai Rauji Rane Sardessai, wife of Nanasaheb R. Rajebhosale, Major age, housewife, Indian National, presently residing at, Krashikesh, Plot No.114, PDA Colony, Alto Porvorim, Goa, represently by her duly constituted attorney, Shri Vikramsinh Nanasaheb Rajebhosale, Residing at Flat No.8, Building No.D. Sapana Habitat Chogm Road, Alto Porvorim, Goa.

**... Appellant**

*Versus*

1. Goa Cricket Association (Affiliated to Board for Cricket Control in India Registered under Societies Registration Act, 1860, under Reg. No.585, having office at GCA Cricket Stadium Alto-Porvorim, Bardez-Goa through its Signatory Hon. Secretary, Shri Chetan Desai.

2. Institute of Technology and Management, having office at 7<sup>th</sup> floor, C Wing B.S.E.I Tech Park, Opp. Vashi Railway Station, Vashi Navi Mumbai 4007005.

3. Smt Sugandha Anand Shetye [Since deceased]  
alias Sugandha Ananda Xetiye, Through LR's R-4 to 7.  
widow of late Anand Krishna Xetye Amendment carried out  
Savoikar. as per order dt. 29.4.24  
In MCA/182/24.

4. Shri Shivdatta Anand Shetye,  
S/o Anand Krishna Shetye  
Savoikar.

5. Mrs. Laxmi Shivdatta Shetye,  
W/o Shri. Shivdatta Anand Shetye  
Savoikar.

6. Shri. Kundankumar Anand  
Shetye, S/o late Anand Krishna  
Shetye Savoikar.

7. Mrs. Celsa Fernandes, W/o  
Shri Kundankumar Anand Shetye.

All resident of House No.E/37  
Nagarwada, Bicholim Goa.

**...Respondents**

**Mr. J. J. Mulgaonkar, Advocate with Ms Shweta Parulekar,**  
**Advocate for the Appellant.**

**Mr. Shivan Desai, Advocate with Ms Riya Amonkar,**  
**Advocate for Respondent No.2.**

**CORAM: M. S. KARNIK &**  
**VALMIKI MENEZES, JJ.**

**DATED: 10<sup>th</sup> October, 2024.**

**JUDGMENT: (Per Valmiki Menezes, J.)**

1. Heard learned Counsel Mr J. J. Mulgaonkar, for the  
Appellant and learned Counsel Mr Shivan Desai, for Respondent  
No.2.

2. Admit. With the consent of the learned Advocates for the parties, the appeal is disposed of finally.

3. This First Appeal takes exception to an order dated 23.11.2022 passed by the Civil Judge Junior Division, Bicholim in RCS No.162/2014/B/C. By the impugned order, the Civil Court has rejected the plaint of the Appellant/Original Plaintiff on grounds specified in Order 7 Rule 11(B) CPC. By the impugned order, the Civil Court directed the Plaintiff to correct the value for prayers of the suit as per the value of the suit property, in terms of Section 7(iv)(d) of the Court Fees Act and to pay appropriate Court fees thereon within 30 days from the date of the order, failing which the plaint would stand rejected.

By a further order dated 28.12.2022, which is also impugned herein, the Civil Court, as a consequence of non-compliance of the order dated 23.11.2022, recorded that the plaint stood rejected and closed the proceedings.

4. The following point for determination arises from the present first appeal:

Whether the impugned orders are contrary to the scheme of Order VII Rule 11 (b) CPC, in that, the impugned order rejecting the plaint does not specifically set down the correct value of the relief in the plaint on which the plaintiff was required to pay a Court fee, nor does it specify the

quantum of Court fee payable on such value.

5. It is the submission of learned Advocate Shri J. J. Mulgaonkar that the trial Court has passed a vague order in terms of Order VII Rule 11(b) CPC by directing the plaintiff to value the reliefs sought in the suit as per the value of the suit property in terms of Section 7(v)(d) of the Court Fees Act and to pay the appropriate Court fees within 30 days. He further submits that for a Court to reject a plaint on the ground that it is undervalued and proper Court fees are not paid thereon, such Court necessarily has to conclude, on the basis of the subject matter of the suit, what in its opinion, is the correct value of the subject matter; without arriving at a quantum of the value, and the correct Court fee to be paid thereon, an order of the nature passed by the trial Court, as in the case of the impugned order, cannot be sustained.

6. Opposing this contention, Shri Shivan Desai for the respondents supports the impugned order, contending that it clearly sets out that the plaint was required to be valued as per the value of the suit property, in terms of Section 7 of the Courts Fees Act and ad valorem Court fee was required to be paid thereon within the stipulated time. The plaintiff having failed to correctly value the suit in terms of the impugned order and further not having paid the Court fee within the time set by the Court, nor asked for any extension at that time, no interference is called for with the impugned orders.

7. The scheme of Order VII Rule 11(b), if considered would require a Court to necessarily determine the correct valuation to be set down for the reliefs sought in the suit, on the basis of the Suits Valuation Act as applicable thereto. In the present case, the relief sought in the plaint was for a declaration that the suit property is owned by the plaintiff, and for a consequent declaration cancelling the Deeds of Sale which are subject matter of the plaint. The value of the suit property as assigned in these Deeds was Rs.40 crores. Under the Suits Valuation Act, therefore, the value to be assigned to the reliefs sought would be the value of the property in relation to which the declaration of ownership was sought. Consequently, an *ad valorem* Court fee will have to be paid thereon, the maximum of which prescribed under the Court Fees Act as applicable to the State of Goa was Rs.31,500/-.

8. The trial Court, in the impugned order has nowhere recorded or opined what would be the specific value to be assigned to the suit property and to the relief sought. It has in a vague manner directed the plaintiff to correct the value of the relief in terms of Section 7 of the Court Fees Act and pay the appropriate Court fee thereon, without quantifying the value to be assigned to the suit and the quantum of Court fee.

9. In *Commercial Aviation and Travel Company and Ors. v/s. Vimla Pannalal* [(1988) 3 SCC 423] at paragraph 9 thereof the

Hon'ble Supreme Court, on considering the requirements of an order in terms of Order VII Rule 11(b) CPC, has concluded that a Court has to come to a finding that the relief claimed has been undervalued, which necessarily means that the Court is able to decide and specify proper and correct valuation of the relief and, after determination of the correct value of the relief, requires the plaintiff to correct the valuation within a time fixed by the Court.

**10.** A similar view has been taken by the Bombay High Court in *Walchandnagar Industries Ltd v/s. Indraprastha Developers And Ors* [2015 (3) MhLj 786] at paragraph 65 thereof where it holds that the conditional order under Order VII Rule 11(b) CPC requires the Court to determine the correct valuation on Court fee payable and fix a time for the plaintiffs to take corrective measures.

**11.** The trial Court has acted contrary to the provisions of Order VII Rule 11(b) CPC to the extent that it has failed to determine specifically the valuation in terms of a specific amount to be assigned thereto as also failed to determine the specific quantum of Court fee to be paid on such value. The point for determination is answered in the affirmative. To that extent, the impugned order dated 23.11.2022 and the consequent order dated 28.12.2022 would be required to be quashed and set aside. Consequently, the Court fees shall be paid by the Plaintiff/Appellant *ad valorem* on the value of the suit property i.e. on Rs.40 crores; accordingly, the

Plaintiff shall pay the maximum Court fee prescribed of Rs.31,500/- before the Trial Court within 30 days from the date of this order, failing which the plaint shall stand rejected.

**ORDER**

The impugned orders dated 23.11.2022 and 28.12.2022 passed in RCS No.162/2014/B/C by the Civil Judge, Junior Division, Bicholim to the extent that it directs the Plaintiff to correct the value for prayers of the suit as per the value of the suit property in terms of Section 7(iv)(d) of the Court Fees Act, and to pay appropriate Court fees within 30 days is set aside. The Court fees shall be paid by the Plaintiff/Appellant *ad valorem* on the value of the suit property i.e. on Rs.40 crores; accordingly the Plaintiff shall pay the maximum Court fee prescribed of Rs.31,500/- before the Trial Court within 30 days from the date of this order, failing which the plaint shall stand rejected.

The parties shall appear before the Civil Judge, Junior Division, Bicholim on 21.10.2024 at 2:30 p.m. In the event that the Court fees as directed herein are paid by the Plaintiff within the stipulated time, the Civil Court shall proceed to hear the suit in accordance with law. Registry to draw up the decree accordingly. No cost.

**VALMIKI MENEZES, J.**

**M. S. KARNIK, J.**