

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 181 OF 2015**

MRS. ALISHA ADIL PALKAR

... Petitioner

Versus

MRS. LIBERATHA D'SOUZA E MARTINS

AND 4 ORS.

... Respondents

Mr. Ashwin D. Bhobe, Advocate for the Petitioner.

Mr. V.R. Tamba with Mr. Y.S. Naik, Advocate for Respondent No.1.

Coram:- M. S. SANKLECHA, J.**Date:- 19th March, 2015****ORAL ORDER:**

This petition under Article 226 and 227 of the Constitution of India seeks to set aside order dated 27/02/2015 passed on Exhibit 48 in the file of the Execution Application No.33/2001/F by the Civil Judge, Junior Division at Mapusa.

2. Briefly, the facts leading to this petition are that on 21/03/2001 a suit was decreed inter alia against one Adil Palkar for eviction from the suit house and mesne profits. The decree holder commenced execution proceedings inter alia against the judgment debtors including Adil Palkar. The execution proceedings were contested by Adil Palkar through an advocate appointed under free legal aid services scheme. However, during the execution proceedings Adil

Palkar died and the advocate appointed under the free legal services returned the papers to his widow Alisha Palkar on the ground that his engagement came to an end on the death of Adil Palkar. In the meantime, the petitioner i.e. Alisha Palkar was added to the execution proceedings as respondent no.4(a) in her capacity as a legal heir of Adil Palkar.

3. On 27/02/2015, Alisha Palkar filed an application before the learned Judge at Mapusa seeking an appointment of an advocate to represent her i.e. application at Exhibit 47. On 27/02/2015, the learned Judge passed an order on Exhibit 47 directing the petitioner to move the legal services authority for appointment of an advocate as he has no powers to appoint an advocate. Immediately thereafter on 27/02/2015 itself the learned Judge passed an order on the decree holder's execution application dated 27/02/2015 at Exhibit 48 itself directing eviction, inter alia, of the petitioner through Court bailiff.

4. The petitioner's grievance is that she is a widow and was unaware of the proceedings initiated against her husband. It was only on the death of her husband that she came to know of this case and being in circumstances which did not allow her to appoint an

independent advocate, she approached the learned Civil Judge at Mapusa for appointment of an advocate. The learned Judge after directing the petitioner to move the legal services authority for appointment of advocate by order at Exhibit 47 on the same day, on the application of the decree holder for execution of the decree at Exhibit 48 allowed the same. Thus the execution application was allowed without hearing the petitioner as she was yet to appoint an advocate.

5. I find that the learned Judge at Mapusa after having directed the petitioner to move the legal services authority for appointment of advocate ought to have given her reasonable time to engage an advocate to plead her cause. The petitioner was not a party to the original proceedings and came on scene only as legal heir of one of the original judgment debtors. The petitioner did not have any advocate and on 27/08/2014 the learned Judge directed her to approach the legal services authority to have an advocate to represent her case. In the above circumstances, the learned Judge ought to have granted reasonable time to the petitioner to engage an advocate under legal services authority to plead her cause before disposing of the execution application filed by the decree holder. The undue hurry in

disposing of the execution application by the learned Judge in the face of having directed the petitioner to move the legal services authority for an appointment of an advocate is as good as an ex parte order compounded by not giving any notice to the petitioner that the execution application will be decided after hearing her. This conduct on the part of the learned Judge has certainly led to injustice inasmuch as the petitioner was unable to represent her cause before the Court allowed the execution application. Accordingly, the order dated 27/02/2015 passed on Exhibit 48 allowing the execution application is quashed and set aside.

6. The petitioner to move the legal services authority as directed by the learned Civil judge on the order passed on Exhibit 47 within 10 days from today and the legal services authority will dispose of the application expeditiously. Thereafter, the learned Civil Judge would pass an order on the execution application after hearing the petitioner either in person or through a duly authorised advocate.

7. Petition allowed in above terms. No orders as to costs.

M. S. SANKLECHA, J.

NH/-