

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 508 OF 2014

1. Mrs. Flora Pereira,
62 years of age, widow of
Late Milagres Pereira, business
2. Mr. Diago Pereira,
33 years of age, son of
Late Milagres Pereira, businessman
3. Mr. Elvis Pereira,
25 years of age, son of
Late Milagres Pereira, businessman
All residents of Opposite Civil court,
Karkhatighatti, Curchorem,
South Goa. Petitioners

V e r s u s

1. Central Bank of India,
A body incorporated under
The Banking Companies Act V of 1970,
Having its registered office at
Chander-mukhi, Nariman Point, Mumbai
with regional office at Goa,
Mascarenhas Building,
Antao de Noronha Road,
Panjim-Goa 403 001
Duly represented by its authorised officer,
Mr. N. B. Rajguru, major in age,
Father's name unknown, Address unknown.
2. Mrs. Supriya Pereira e D' Souza,
Major in age, service,
wife of Mr. Renee D' Souza.
3. Mr. Renee D' Souza,
Major in age, son of Pedro Antonio D' Souza,
Business, both def. no. 2 & 3 are residents of
Main Road (Ponda-Margao),
Butic Ladies Parlour,
H. No. .. Raia, Margao, Goa. Respondents

Ms. Susan Linhares, Advocate for the Petitioners.

Mr. Amey Kakodkar, Advocate for the Respondent no.1.

Coram :- F. M. REIS, J

Date : 13th August, 2015.

ORAL JUDGMENT

Heard Ms. Susan Linhares, learned Counsel appearing for the Petitioners and Shri Amey Kakodkar, learned Counsel appearing for the Respondent no. 1.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondent no. 1 waives service.

3. Upon hearing the learned Counsel appearing for the respective parties, the short point for consideration is whether the learned Judge was justified to pass the impugned Order dated 13.02.2014 closing the evidence of the Petitioners and posting the matter for evidence of the Respondents. It is the contention of the learned Counsel appearing for the Petitioners that as the Petitioners had an impression that the matter would be adjourned as the parties were exploring the possibilities of a settlement before the Tribunal, the Petitioners failed to remain present. Learned Counsel further pointed out that the suit filed by the Petitioners is essentially for an injunction and damages on the ground that the Respondents were not entitled to attach the property of the Petitioners. Learned Counsel further pointed that the suit has been filed on the ground that the subject property cannot be attached as the husband of the Petitioner had expired and, as

such, the property could not be subjected to attachment.

4. On the other hand, Shri Amey Kakodkar, learned Counsel appearing for the Respondent no. 1, has pointed out that though the parties were exploring the possibility of settlement, the Petitioners have defaulted in the payment of the amounts in terms of the agreement otherwise agreed between the parties. Learned Counsel further pointed out that even this Court whilst passing an Order dated 26.02.2014 clearly observed that the Petitioner cannot be examined in case substantial amount was paid or deposited by the Petitioners. Learned Counsel further pointed out that only a sum of Rs.40,000/- was paid to the Respondents and, according to him, the total dues of the Respondents works out to Rs.33,00,000/-. The learned Counsel further pointed out that the Respondents were otherwise prepared to waive the interest but, however, the Petitioners have defaulted in making such payment. Learned Counsel as such submits that the Petition be rejected.

5. I have carefully considered the submissions of the learned Counsel and I have also gone through the records. The Order dated 26.02.2015 states that the Petitioners would be examined only in case a substantial amount was paid or deposited by the Petitioners. Considering the dues payable to the Respondents, the payment of Rs.40,000/- cannot be considered to be a substantial amount as observed in the said Order dated 26.02.2015. Apart from that, I find that the Petitioners were delaying the matter before the learned Trial Court as the contention of the learned Counsel appearing for the Respondent no. 1, no doubt

suggest that an attempt was made to settle the matter amicably. In such circumstances and in the interest of justice and as Mr. Kakodkar, learned Counsel has pointed out that the Respondents are willing to settle the matter, I find it appropriate to quash and set aside the impugned Order dated 13.02.2014 and permit the Petitioners to proceed to record their evidence subject to payment of costs of Rs. 10,000/- to the Respondents as condition precedent. This view has been taken taking note of the contention of learned Counsel appearing for the Petitioners, that no further adjournment shall be taken on any such flimsy grounds.

6. In view of the above, I pass the following :

ORDER

- (i) The impugned Order dated 13.02.2014 is quashed and set aside.
- (ii) The Petitioners are permitted to proceed to record their evidence in accordance with law subject to payment of costs of Rs.10,000/- to the Respondent no. 1 as condition precedent.
- (iii) Rule is made absolute in the above terms.
- (iv) The parties are directed to appear before the learned Judge on 28.09.2015 at 10.00 a.m.

F .M. REIS, J.

arp/*