

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 598 OF 2014

SMT. KULSUM MOHAMED AKBAR ALIAS
CULCUMBI ALIAS KULSUM BI

... Petitioner

Versus

MR. HUSSAIN BEIG AND ANR.,

... Respondents

Mr. I. Agha, Advocate for the Petitioner.

Mr. M. Amonkar, Advocate for the Respondents.

Coram:- F. M. REIS, J.

Date:- 25th June, 2015

ORAL ORDER :

Heard Mr. I. Agha, learned Counsel appearing for the petitioner and Mr. M. Amonkar, learned Counsel appearing for the respondents.

2. The above Writ Petition, inter alia, challenges judgment dated 10/07/2014, whereby the Misc. Civil Appeal No.134/2013 filed by the respondents came to be allowed and the matter was remanded to the learned Trial Court to decide the application filed by the respondents afresh after hearing the parties in accordance with law.

3. Mr. I. Agha, learned Counsel appearing for the petitioner has pointed out that the application filed by the respondents under order 21 Rule 99 of the Civil Procedure Code is not maintainable in law as according to him such application cannot be filed at the instance of the judgment debtor. The learned Counsel has thereafter taken me

through the impugned order and pointed out that as the application itself was not maintainable the appeal preferred by the respondents is also not maintainable in law and the impugned order is without jurisdiction. The learned Counsel has further pointed out that the import of the impugned order would be that the warrant of possession issued by the Executing Court would not survive. The learned Counsel, as such, submits that the impugned order be quashed and set aside.

4. On the other hand, Mr. M. Amonkar, learned Counsel appearing for the respondents has pointed out that the judgment which is sought to be executed is vague and, as such, such application filed by the respondents is maintainable. The learned Counsel further pointed out that the Lower Appellate Court has rightly examined the matter in controversy and directed the learned Trial Judge to decide the application afresh. The learned Counsel, as such, submits that there is no case made out for any interference in the impugned order.

5. I have thoughtfully considered the submissions of the learned Counsel. On perusal of the impugned order passed by the Lower Appellate Court, I find that the contention of Mr. Agha, that the application filed by the respondents itself was not maintainable, has not been raised by the petitioner. In such circumstances, the question of invoking the jurisdiction of this Court under Article 227 of the Constitution of India would not at all arise considering the view

taken by the Lower Appellate Court.

6. Be that as it may, there is no failure of justice to the petitioner which would call for any interference in the impugned order as the petitioner can always raise this contention before the learned Trial Judge, which the Court may consider on its own merits after hearing the parties in accordance with law. Keeping the contentions raised in the petition open and with the observations made herein above, the petition stands disposed of. The parties are directed to appear before the learned Trial Court on 3/08/2015 at 10.00 a.m.

F. M. REIS, J.

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