

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 10 OF 2014

MR. GIRDHARILAL GANGANI

Major of age,

S/o Mohanlal R. Gangani,

r/o Galaxy Apartments,

Atmaram Borkar Road,

Panaji, Goa 403 001.

... Petitioner

Versus

MRS. SHARADA MULGAONKAR

Major of age,

Wife of Girish Mulgaonkar,

r/o. H. No. 860,

Hardwood City, Gates Mills, ohio 44040 U.S.A.

Through her Power of Attorney holder

Mrs. Sangeeta Naidu, major of age

W/o Narain Naidu,

r/o 17-A, Nutal Abhishek Co-Op. Housing Soc. Ltd.

II Cross lane, Lokhandwals Complex,

Andheri (West), Mumbai 400053.

... Respondent

Mr. Vijay A. Palekar, Advocate for the Petitioner.

Mr. Sudin Manohar Usgaonkar, Advocate for the Respondent.

Coram:-N. M. JAMDAR, J.

Date:- 2 March 2015

ORAL ORDER :

Taken up for final disposal by consent.

2. By this petition, the petitioner challenges the order passed by the Civil Judge, Senior Division, Panaji dated 23 July 2013. The respondent had earlier filed an application under order XV-A of Civil Procedure Code and by order dated 29 March 2011 the petitioner was directed to deposit the arrears of Rs. 2,72,000/- and rent per month of Rs.17,000/-. An application therefore was moved by the respondent to strike off the defence of the petitioner on the ground that the petitioner had not made any payment as directed by the said order. The learned Civil Judge granted the application by the impugned order and defence of the petitioner was struck off.

3. The petition came on board on 23 February 2015 and following order came to be passed:

"The learned Counsel for the petitioner states that the petitioner is ready and willing to clear all the outstanding amount and an opportunity be given to the petitioner.

2. The learned Counsel for the respondent states that if entire amount is paid within one week from today with reasonable costs then the respondent is not averse to give an opportunity to the petitioner.

3. Stand over to 2 March 2015. The petitioner shall clear the entire arrears plus an amount of Rs.25,000/- towards costs to

be deposited in this Court before the next date. If such deposit is made, Court will proceed to pass suitable orders. If the amount is not paid, petitioner only to view order, is put to notice that the petition will not be entertained”

4. Mr. V. Palekar, learned Counsel for the petitioner submitted that the petitioner had cleared entire arrears plus the costs as directed. Mr. Sudin Usgaonkar, learned Counsel for the respondent submitted that it is true that the amount has been deposited, however some conditions may be imposed on the petitioner, as regard to the future deposits.

5. In view of the fact that an opportunity was given to the petitioner by order dated 23 February 2015 and that the petitioner has deposited the amount, the impugned order in the facts and circumstances of the case is required to be set aside. Accordingly, the impugned order dated 23 July 2013 passed by the Civil Judge, Senior Division, Panaji is quashed and set aside. The learned Counsel for the petitioner states that the petitioner will pay the rent as directed on every 5th day of the month directly in the Bank Account whose details, the learned Counsel for the respondent states will be furnished by the respondent.

6. The petitioner shall continue to pay the rent, as directed, per month and a default shall be considered as aggravated breach and will be dealt with by the learned Civil Judge accordingly.

7. The respondent is permitted to withdraw the amount deposited by the petitioner in the Registry of this Court.

8. In view of the fact that the trial was delayed due to pendency of this petition, the petitioner will commence his defence without seeking needless adjournments.

9. The petition is stands disposed of in above terms.

N. M. JAMDAR, J.

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