

**IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL FROM ORDER NO.50 OF 2014
AND
CIVIL APPLICATION NO.178 OF 2014**

MRS. IDA BARRETO AND 25 ORS. ... APPELLANTS

V/S

MR. MAXMIANO GUILHERME

FURTADO AND 19 ORS. ...RESPONDENTS

Mr. M.B. Da Costa, Senior Advocate with Ms. S. Chodankar,
Advocate for the Appellants.

Mr. M.P. Almeida, Advocate for Respondents No.1 & 2.

CORAM : N.M. JAMDAR, J.

DATE : 23 February 2015

P.C.:

Heard learned Counsel for the parties.

2. Mr. M.P. Almeida, the learned Counsel for the respondents no.1 & 2 raises a preliminary objection that considering the valuation, the Appeal From Order will lie to the District Court. Mr. Almeida submits that original valuation is only Rs.20,000/- and, therefore, appeal is not maintainable in this Court. He relies on the decision of the learned Single Judge of this Court in **Writ Petition No.119/2010** in the case of **Mr. Vero Nunes & Anr. V/s. Mr. Eurico Erasmo Nunes &**

Ors.

3. Mr. M. B. Da Costa, the learned Senior Counsel for the appellants submitted that the correct value of the property could be ascertained only when the stage as per Article 1390 of the Portuguese Civil Procedure Code is reached and it is only when there is no auction that the original valuation is to be taken into consideration. He submitted that therefore the decision in the case of **Mr. Vero Nunes** (supra) is not applicable. This decision indicates that when there is no auction then the original valuation is to be taken into consideration, but if in auction the true value of the property is disclosed, as in the present case almost to the tune of Rs.2 crores, an Appeal before this Court would be prima facie maintainable.

4. Admit. The contentions raised by Mr. Almeida is kept open.

5. In the present case, the appellants had raised an objection that the licitation would have no effect in the eyes of law as the procedure as per Article 1417(c) has not been followed. The learned Civil Judge has not dealt with the objection raised by the appellants. According to the learned Civil Judge the appellants had not made a demand within 3 days and therefore they are precluded from raising an objection. Mr. Da Costa placed reliance on the decision of the Apex Court in the case of **Baburao Karekar & Anr. V/s. Villas Atmaram Bhandodkar** reported in **Civil Appeal No.80/2011** to

contend that it is the duty of the Court to inform the parties who had not taken property in licitation to call upon them to make a demand. He submitted that therefore the appellants cannot be termed in default as they were not so notified by the Court. It is an admitted position that the appellants were not informed by the Court. Prima facie, therefore, there does not seem to be compliance of Article 1417(c). Hence, there will be interim relief in terms of prayer clause (a) and (b). Mr. Almeida informs that some third party rights have already been created.

6. Expedite authenticated copy.

N.M. JAMDAR, J.

NH/-