

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 04 OF 2015

1. Mr. John Felliipe Costa,
major of age, married,
resident of Panchawadi,
Ponda, Goa.
 2. Mrs. Mellinda Pereira,
major of age, married,
resident of Panchawadi,
Ponda, Goa.
- Appellants

Versus

1. M/s Resources International,
a registered partnership firm,
with office at Damodar Chambers,
Mezanine Floor, Panaji, Goa,
represented by its partner,
Mr. Deepak M. Rajani, major,
resident of Dona Paula, Panaji, Goa.
2. M/s Sesa Goa Ltd.,
a company duly incorporated
under the Companies Act,
having its office, Codli,

Kirlapal-Dabal, Goa.Respondents.
Mr. R. Menezes, Advocate for the Appellants
Mr. J. Godinho, Advocate for the Respondents.

CORAM: N. M. JAMDAR, J.

DATE: 20TH FEBRUARY, 2015.

ORAL ORDER:

Heard Mr. R. Menezes, learned counsel for the appellants and Mr. J. Godinho, learned counsel for the respondents.

2. By this Appeal From Order, the appellants challenge the order passed by the District Judge, Panaji (at Ponda) dated 29 November, 2014 allowing the review of the order dated 27 February, 2014 and permitting the respondent no.1 to amend the written statement. Though an appeal from order has been filed what essentially at issue is whether respondent no.1 be permitted to amend the written statement.

3. A suit was filed by the appellants for mesne profits and restoration of possession of property. It is the case of the appellants that the appellants had purchased the property by sale deed dated 4 March 1974. The respondent no.1 had a plan to construct iron ore loading plant. An agreement was reached between respondent no.1 and the appellant for exchange of land. According to the appellant, since the respondent no.1 was delaying the execution of the deed of exchange, the appellant called upon the respondent no.1 to cancel the

agreement of exchange and accordingly filed a suit for cancellation of agreement dated 23 March 1991 and sought restoration of possession. The suit filed by the appellants was decreed on 7 December, 2007. Thereafter, the respondent no.1 filed an appeal which is now pending before the District Court.

4. In the said appeal, respondent no.1 moved an application for amendment of written statement to bring on record that suit property was acquired by Government of Goa by an award dated 23 October 2009. It was the contention of respondent no.1 that the appellants were granted compensation and possession was taken over by the Government. According to respondent no.1, this fact came to the light of respondent no.1 on 3 September 2010. The learned District Judge came to the conclusion the amendment is not necessary for determining the real question in controversy and that there is no written statement filed by the respondent and therefore, no amendment can be granted. The learned Judge, by order dated 27 February 2013 rejected the application for amendment. The respondent no.1, thereafter, filed an application for review before the District Judge, Panaji (at Ponda), where the appeal was transferred. It was submitted by the respondent no.1 that respondent no.1 had filed an additional written statement after the plaint was amended by the appellant. The learned District Judge accordingly allowed the amendment since the property was admittedly acquired by way of land acquisition.

5. Mr. R. Menezes, learned counsel for the appellants sought to urge various contentions. He submitted that the review jurisdiction ought not to have been exercised and it is improperly exercised. Though the respondent no.1 has adopted a method of filing a review instead of filing a writ petition challenging the order refusing amendment, it is not impermissible mode, if there was a fundamental error. The learned District Judge in the earlier order had observed that there is no written statement at all filed by respondent no.1. The learned judge in review took note that there was an additional written statement.

6. Therefore, it cannot be said review was wrongly decided. Once that fact was established, the question was of relevancy of the amendment. That the property which is the subject matter of the suit, stood acquired, cannot be said to be an irrelevant fact. As regards the contention of respondent no.1 that the petitioner will not be entitled to claim any mesne profit in view of the compensation and handing over possession, it is an aspect that will be considered on merits. In fact, if the appellant claimed to be the owner of the property and was seeking decree of possession, it is the appellants who should have pointed out that the property stood acquired.

7. The learned judge in review rightly came to the conclusion that the factum of acquisition was relevant to be brought on record. Therefore, no interference is called for with the impugned order. It is made clear that all contentions of all the parties on merits as regards amendment are open. In

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view of this clarification, no further orders are required to be passed. The Appeal From order is accordingly dismissed.

N. M. JAMDAR, J.

Ap/-