

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 254 OF 2016**

1. Shri Ulhas Pandharinath Chodankar,
son of Pandharinath Chodankar, 62
years, businessman,
 2. Shri Ashok Pandharinath Chodankar,
son of Pandharinath Chodankar, 49
years old, businessman,
Both Indian Nationals, residing at
213/1, Bhatiwada, Nerul, Bardez, Goa. Petitioners
- Versus

The Senior Civil Judge, "C"
Court at Mapusa, Bardez, Goa. } Deleted as per
Order dated 10.03.2016 Respondent

Mr. Vilas P. Thali, Advocate for the Petitioners.

CORAM:- S.B. SHUKRE, J.

DATE:- 10th MARCH, 2016.

ORAL JUDGMENT:

Heard learned Counsel for the petitioner.

2. In view of the law laid down by the Hon'ble Apex Court in the case of **Savitri Devi Vs. District Judge, Gorakhpur and Others, (1999) 2 SCC 577**, this being a Writ Petition invoking supervisory jurisdiction of this Court under Article 227 of the Constitution of India against the order passed

by the learned Senior Civil Judge dated 30.01.2016, it is directed that the respondent-Judicial Officer be deleted forthwith. Cause title be amended accordingly forthwith.

3. After deletion of the sole respondent from the array of party-respondent in the cause title of this petition, the question relating to legality and correctness of the impugned order still remains and even in the absence of a specific person added as respondent-party, having regard to the nature of the supervisory powers of the Court, this question can be dealt with in such a situation. Accordingly, the question of legality and correctness is being considered in the light of the argument canvassed before me by learned Counsel for the petitioners and the applicable legal provisions.

4. Heard. Rule. Heard finally.

5. It is contended by learned Counsel for the petitioners that the execution of decree which has been sought for by the petitioners was passed within two years of time from the date of execution application and therefore, as held in the case of **Inocencio Fernandes Vs. Francisco Mario De Jesus Lopes,**

AIR 1978 Goa, Daman and Diu 13, the executing Court ought to have directed, execution of the decree immediately by issuing warrant of possession without issuing any notice to the judgment debtor. He submits that law so laid down in the said case has not been applied by the learned Senior Civil Judge and without there being any specific provision of law conferring discretionary power upon the executing Court to issue notice, even in a case where a decree is being executed is less than two years old, the learned Senior Civil Judge has erroneously passed the impugned order wherein he has issued notice to the judgment debtor.

6. In the instant case, the decree that is being sought to be executed through the executing Court is passed on 16.01.2014. The execution application has been filed in December, 2015, that is, before expiry of period of two years from the date of decree. Under Order 21 Rule 22 C.P.C., when an application for execution of decree is made after expiry of two years from the date of decree, then only the executing Court is required to issue a notice to the judgment debtor for requiring him to show cause as to why the decree should not be executed against him, and otherwise not. In other words, when

the execution is sought before expiry of period of two years from the date of the decree, a reverse situation would be true thereby meaning that no mandatory duty would be cast upon the Court to issue a show cause notice to the judgment debtor. It would also mean that the executing Court would have the power to execute the decree forthwith without issuing any notice to the judgment debtor. There is no provision in Order 21 Rule 22 conferring any discretionary power upon the executing Court to issue a show cause notice to the judgment debtor even in a case where the execution is sought for within two years from the date of the decree. If no such power has been conferred by any express provision of law, I do not understand as to how the learned Senior Civil Judge could read such a power as residing in him in the scheme of the provisions of Order 21 C.P.C. Learned Senior Civil Judge has also accepted the fact that execution has been sought within two years from the date of the decree. Even in the case of **Inocencio Fernandes** (supra), the need for executing the decree forthwith, in a case where the execution application has been made within the stipulated time, it was one year at the time when the judgment was rendered, has been underlined. However it appears that learned Senior Civil Judge has not

considered the ratio of this case in a proper perspective. Therefore, the order impugned herein would have to be termed as an order passed in breach of express provisions of law and cannot be sustained.

7. It may be mentioned here while exercising the discretion to issue show cause notice to the judgment debtor in this case when it was not really available under the express provisions of law, the learned Senior Civil Judge has also not invoked his inherent power under Section 151 C.P.C., and it can be seen from the impugned order. The discretionary power seen to be existing in him has been drawn, if I may say so, from some assumptions.

8. In the circumstances, the impugned order deserves to be quashed and set aside and it is quashed and set aside. The matter is remanded back to the learned Senior Civil Judge for deciding the application for execution of the decree afresh, in accordance with law, keeping in view the observations made in this order. The Writ Petition is disposed of.

9. Rule is made absolute in the above terms. No costs.

S. B. SHUKRE, J.

EV