

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 69 OF 2016
WITH
CRIMINAL WRIT PETITION NO. 70 OF 2016
WITH
CRIMINAL WRIT PETITION NO. 71 OF 2016
WITH
CRIMINAL WRIT PETITION NO. 72 OF 2016
WITH
CRIMINAL WRIT PETITION NO. 73 OF 2016

State Bank of India,
a Banking Corporation,
incorporated under The State
Bank of India Act, having
its branch at Central Mansion
Ponda, Ponda-Goa, 403401,
represented through Shri Vikas
Suresh Thakur, son of Suresh Kumar
Thakur, 40 years old, Deputy Branch
Manager, State Bank of India Ponda
Branch, Indian National, Residing at
Shanti Nagar, Ponda-Goa.

..... Petitioners

V e r s u s

- 1) EDC Ltd. formerly known as Economic Development Corporation of Goa, Daman and Diu Limited, a Company duly registered under the Companies Act 1956 and having its office at EDC House, First

Floor, Atmaram Borkar Road, Panaji-Goa.

2) M/s. Kaustub Shipping Pvt. Ltd. Having
its office at 6, Laxmi Apartments,
Yeshwantnagar, Tisk, Ponda Goa
through its Managing Director/Director

2a) Mr. Balkrishna G. Kamats/o Giridhar
Kamat, Director, major of age, Indian
National, Office at: 6 Laxmi Apartments
Yashwantnagar, Tisk, Ponda, Goa.

2b) Shri Anand Desai, S2/S3, Radha
Anand Bhuvan, major of age, Director,
Indian National, r/o Near Saraswati
Mandir.

3) Mrs. Rukmini Balkrishna Kamat,
w/o Mr. Balkrishna G. Kamat,
major of age, Managing Director,
Indian National, r/o Kunkolien,
Post Mardol, Ponda, Goa.

4) The Collector,
South Goa District,
Margao, Goa.

.... Respondents

Shri S. B. Karpe, Advocate for the Petitioners.

Shri D. G. Pangam, Advocate for the Respondent no1.

CORAM: C. V. BHADANG, J.
DATE: 27th September, 2016.

ORAL JUDGMENT:

Rule made returnable forthwith.

The learned counsel for the contesting respondent no.1 waives service. Notice of rule on the other respondents is dispensed with. Heard finally by consent.

2. The learned counsel for the petitioner seeks leave to delete respondent no.2 (b) from the record. Leave to delete is granted at the risk of the petitioner. Necessary correction to be carried out forthwith.

3. All these petitions involve a common and connected question and they can be disposed off by this common order.

4. The petitioner, which is a nationalized bank had advanced a loan to M/s. Zuari Barge Constructions of which the proprietor is Mr. Balkrishna G. Kamat (respondent no.2(a) herein). It appears that the petitioner had filed original application dated 20/11/2002 for recovery of Rs.21 lakhs and odd before the Mumbai Debt Recovery Tribunal

(DRT for short). The DRT by judgment and order dated 14/10/2003 had allowed the application filed by the petitioner in the following terms :

ORDER:

(1) Application is allowed with interest and costs.

(2) Applicant bank to recover Rs.21,69,595.39 (Rupees Twenty One lakhs Sixty Nine Thousand Five hundred Ninety Five and paise thirty nine only) with a simple future interest @ 13% p.a. With yearly rests, from the date of filing the suit till realization of the amount from the defendants who are liable to pay.

(3) The charge of the Applicant Bank to continue over the mortgaged property viz. Shop No.G-6, Ground floor of the building known as Laxmi Apartments and standing on plot of land measuring 1800 m² and forming part of the larger land known as Cumarpatto also known as Gorbhat of Village Ponda, Goa, till realization of the amount. If the defendants fail to redeem the said mortgaged property within three months, then applicant bank is at liberty

to proceed Agassi the same for their recoveries.

(4) The charge of the Applicant bank to continue over hypothecated property, if any, available, till realization of the outstanding.

(5) Issue Recovery Certificate and serve copies upon the parties.

5. It appears that subsequently a recovery certificate was issued in favour of the petitioner on 21/11/2003. The petitioner filed Recovery case No.66/2004 on the strength of the same, in which Shop premises bearing No.G-6 on the Ground floor of 'Laxmi Apartments', Tisk, Ponda-Goa was attached in the month of August 2004. The record further discloses that the parties had reached a compromise of which the terms were reduced in writing vide Compromise Memo dated 13/12/2014. According to the petitioner, the respondent no.2(a) has failed to adhere to the terms of the compromise.

6. The respondent no.2(a) Balkrishna Kamat is one of the Directors of yet another entity, namely, M/s Kaustub

Shipping Pvt. Ltd., which had obtained financial assistance from Economic Development Corporation Ltd. (EDC, for short), the Respondent no.1 herein. EDC Ltd. had filed separate criminal cases under section 138 of the Negotiable Instruments Act against M/s Kaustub Shipping Pvt Ltd. before the learned Judicial Magistrate First Class at Panaji bearing criminal case nos.853/2005/C, 854/2005/C, 855/2005/C, 856/2005/C and 857/2005/C. Mr. Balkrishna Kamt happens to be the accused no.2 in the said complaints. The said complaints were decided by common judgment on 30/10/2010, by which Mr. Balkrishna Kamat/Respondent no.2 (a) has been sentenced to undergo simple imprisonment for a period of one month and to pay compensation of Rs.20,00,000/- to EDC and in default to undergo simple imprisonment for a period of two months. The respondent no.1 filed separate application for attachment of the property of respondent no.2(a), who is said to be absconding. That application is purportedly filed under section 83 of Cr.P.C. In para 6 of the said application the respondent no.1 had described the shop premises bearing no.G-6 on the ground floor of the building known as

Laxmi Apartments situated at Ponda, which are said to be recorded in the name of M/s Kamat Enterprises. The learned Magistrate has passed the following order on the said application on 9/6/2014 :

Order

"Issue warrant of levy fine u/s 44 Cr.P.C. addressed to the Collector, North Goa to levy the fine imposed by the Court of Rs.20,00,000/- by attachment and sale of the moveable property of the accused and if not found from the immovable property of the accused as the arrears of Land Revenue, because despite due opportunity, the accused has failed to pay the fine amount imposed. The details of the property to be attached is given in para 6 herein.

It is this order which is subject matter of challenge in these petitions.

7. It is submitted on behalf of the petitioner that the petitioner is having a prior charge on the shop premises and the shop premises have been already attached. It is

contended that the learned Magistrate thus could not have directed the attachment and sale of the shop premises for recovery of compensation awarded to respondent no.1. It is submitted that the impugned order is passed behind the back of the petitioner.

8. On the contrary it is submitted by the learned counsel for the respondent no.1 that compensation is recoverable as a fine. It is submitted that the claim for recovery of compensation/fine under section 421 of Cr.P.C shall take precedence over any other previous claim/charge.

9. On hearing the learned counsel for the parties I find it appropriate that the learned Magistrate decides the application filed by the respondent no.1 afresh after hearing the petitioner herein. This is because admittedly the impugned order is passed behind the back of the petitioner. In such circumstances the following order is passed:

ORDER:

- (i) The petitions are partly allowed in terms of prayer clauses (a) and (b) to the extent it relates to the shop

premises being No.G-6 on the Ground floor of 'Laxmi Apartments', Tisk, Ponda-Goa.

- (ii) The applications are remitted back to the learned Magistrate for deciding them afresh in accordance with law, after hearing the parties, including the petitioner herein.
- (iii) The learned Magistrate shall decide the applications as expeditiously as possible and preferably within a period of one month from the receipt of this order.
- (iv) Rival contentions of the parties are left open.
- (v) Rule is partly made absolute in the aforesaid terms.

C. V. BHADANG, J.

Ap/