

IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO. 40 OF 2016

IN

COMPANY PETITION NO. 18 OF 2010

M/S. SWETA ESTATES PVT. LTD.,
REPRESENTED HEREIN BY GP. CAPT.
SUMANT KOCHHAR (RETD.)

... Applicant

Versus

M/S. ARONDHA PROPERTIES PVT. LTD.,
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT, 1956

... Respondent

Mr. Shivan Desai, Advocate for the applicant.
None for the respondent.

Coram:- F. M. REIS, J.

Date:- 21st October, 2016

P.C.

Heard Mr. Shivan Desai, learned counsel appearing for the applicant. None appears for the respondent.

2. On the last date of hearing, as none appeared for the respondent, the applicant served a fresh notice to the company as the learned Advocate who had filed appearance on behalf of the respondent company after being duly served sought leave to withdraw his appearance. As none appearing on behalf of the respondent, a fresh notice was ordered to be served on the respondent and the notice was duly served at the address of the registered office of the concerned company.

3. The above applicant filed the application is for withdrawal of the amount of Rs.2.8 crores along with interest accrued thereon. In view of the direction issued by the learned Civil Judge Senior Division, Panaji, in Special Civil Suit No.14/2010 by the judgment and decree dated 30.04.2016, the said amount which has been deposited in view of the order passed by this Court dated 16.09.2010 wherein this Court came to the conclusion while considering the application filed by the applicant for winding up of the company that there was no defence raised to the payment of a sum of Rs.2.8 crores. Thereafter, on 28.10.2010, the amount deposited in this Court was not allowed to be withdrawn by the subject company until the disposal of the suit filed by the applicant. The suit filed by the applicant came to be decreed by the said judgment referred to herein above wherein, inter alia, direction was issued permitting the applicant to withdraw the amount deposited in this Court along with interest accrued thereon. The learned counsel appearing for the applicant pointed out that there is no notified appeal preferred by the company nor any challenge to the judgment and decree passed by the learned Trial Judge. The only appeal preferred by one of the co-defendants i.e. the director of the applicant is pending before this Court. The amount was admittedly deposited by the concerned company. This Court has directed the concerned company not to withdraw the amount, but however, in view of the judgment passed by the learned Judge, the applicant are entitled to withdraw the said

amount. As no stay of the operation of the judgment has been obtained or produced before this Court by the concerned company, I find that there is no reason to refuse the relief sought by the applicant. But however, considering that an appeal has been preferred by the one of the co-defendants, in the interest of justice, I find it appropriate that the applicant be permitted to withdraw the amount of Rs.2.8 Crores along with interest accrued thereon subject to the applicant furnishing a corporate solvent guarantee to the satisfaction of the Registrar (Judicial) of this Court for the total amount withdrawn in terms thereof. The applicant shall also furnish an unconditional undertaking signed by a duly authorised officer of the applicant to the effect that in case any adverse order is passed in an appeal preferred by the co-defendants in the suit, the applicant shall refund/redeposit the amount along with accrued interest within a period of 30 days and subject to the further orders which may be passed in such appeal.

4. The application stands disposed of accordingly.

F. M. REIS, J.

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