

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 702 OF 2016

M/S. KESHAV MALIK HARDWARE
CORPORATION, REP. BY ITS PARTNER
AND ANR.

... Petitioners

Versus

SHRI. MADAN WAMAN CHODANKAR (DEC)
THR. HIS LRS. AND 3 ORS.

... Respondents

Shri J.P. Mulgaonkar, Advocate for the Petitioners.

Coram:- C. V. BHADANG, J.

Date:- 4th August, 2016

ORAL ORDER:

The petitioners are challenging the order dated 15/03/2016 below Exhibit D-44 by which the application filed by the respondents/decreed holders directing the petitioners to file their affidavit stating the particulars of their assets has been, allowed by the Executing Court.

2. The brief facts are that the respondents/decreed holders have filed Execution Case No.22/2008/B which is pending before the learned Senior Civil Judge at Panaji.

3. The respondents are seeking the execution of a decree for possession and mesne profits.

4. It is an admitted fact that during the pendency of the suit vide a Deed of Surrender dated 5/10/2007, the petitioners/judgment debtors had surrendered their tenancy rights in favour of the third party who has intervened in the execution proceedings, who is the respondent no.4 herein. The respondent no.4 has filed an application under Order 21 Rule 97 of Civil Procedure Code in the execution case which is pending.

5. The application Exhibit D-44 filed by the respondents was opposed on behalf of the petitioners on the ground that the application by the respondent no.4 is pending and requesting the Executing Court to keep the execution proceedings in abeyance till the application by the third party is decided. The Executing Court has found that the tenancy rights were surrendered during the pendency of the suit and this fact was not informed to the Court. The Executing Court has further found that there is a decree subsisting against the petitioners for possession and mesne profits. The mesne profits are granted from June 1993 till the actual delivery of possession. The Executing Court has further found that, notwithstanding the surrender of the tenancy rights, the obligation to pay the mesne profits subsists. Finally, the Executing Court has found that it cannot go behind the decree, which is sought to be executed which has attained finality. Thus, all that the Trial Court has done by the impugned order is directing the petitioners to file their affidavit stating the particulars of their assets.

6. On hearing the learned Counsel for the petitioners, I do not find that any case for interference is made out. The Executing Court has found that the obligation towards the mesne profits would subsist and all that the impugned order directs is that the petitioner should file an affidavit stating the particulars of their assets. The petition is thus without any merits and is consequently dismissed.

C. V. BHADANG, J.

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