

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 556 OF 2015

M/S KONKAN CONSTRUCTIONS AND 4
ORS.,

... Petitioners

Versus

SMT. LATA DILIP KASKAR.

... Respondent

Adv. Abhay Nachinolkar for the Petitioners.

Adv. Ashwin D. Bhobe for Respondent.

Coram:- C. V. BHADANG, J.

Date:- 30th March, 2016

ORAL ORDER:

By this petition, the petitioners, who are the original defendants are challenging the order dated 7/3/2015 passed by the learned Add. Senior Civil Judge at Mapusa, thereby rejecting an application Exhibit 43-D for withdrawal of the amount deposited by the respondent/plaintiff before the Trial Court.

2. The brief facts are that the respondent had filed Special Civil Suit No.90/2004/A for specific performance of a contract of sale against the petitioners. That suit was decreed in terms of consent terms dated 22/11/2013. As per the said consent terms, the petitioners had agreed to execute a sale deed in favour of the respondent in respect of the suit flat on or before 10/12/2013. The respondent had recorded no objection for the petitioners withdrawing the amount of Rs.87,094/-, along with the interest accrued thereon, deposited by the respondent before the trial court. A perusal of clause

3 of the consent terms, clearly shows that this was subject to the condition of the execution of the sale deed, as agreed.

3. The petitioners filed an application Exhibit 43-D for withdrawal of the amount which has been rejected by the trial court on the ground that as per clause 3, the no objection to withdraw the amount was on the execution of the sale deed. Indisputably, for some reason or the other, the sale deed is not yet executed. In such circumstances, the trial court has found that since the sale deed is not executed, the amount cannot be allowed to be withdrawn. Feeling aggrieved, the petitioners are before this Court.

4. On hearing the learned counsel for the parties and on perusal of the impugned order and the consent terms, I find that no case for interference is made out. Indisputably, the sale deed is not yet executed and as such, the petitioners cannot invoke clause 3 of the consent terms. In such circumstances, no case for interference is made out. It is made clear that the petitioners would be entitled to move the trial court for release of the amount on compliance with the consent terms/consent decree, as it stands. With this, the writ petition is disposed of.

C. V. BHADANG, J.

ap/-