

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 552 OF 2015

IN

WRIT PETITION NO. 616 OF 2011

MR. RAJU D'SOUZA

... Applicant

Versus

MR. ANTHONY LOBO AND ANR.,

... Respondents

Mr. Clayton Anthony Fonseca, Advocate for the applicant.
Mr. A. D. Bhobe, Advocate for the respondents.

Coram:- F. M. REIS, J.

Date:- 1st April, 2016

P.C.:

Heard Mr. Fonseca, learned Counsel appearing for the applicant and Mr. A. D. Bhobe, learned Counsel appearing for the respondents.

2. This is an application filed by the applicant to recall an order passed by this Court dated 9th July, 2014 in MCA No.171/2014 in Writ Petition No.616/2011.

3. Mr. Fonseca, the learned Counsel appearing for the applicant points out that the order dated 2nd November, 2011, disposing of the Writ Petition No.616/2011 was based on the minutes of order signed by both the parties. The learned Counsel further points out that the respondents were not justified to seek modification of such

order without obtaining consent of the applicant. The learned Counsel further submits that as such, there is a jurisdictional error committed by this Court while passing such orders which would call for recall of the said orders.

3. On the other, Mr. A.D. Bhole, learned Counsel appearing for the respondents points out that the applicant is unnecessary delaying the proceedings before the learned Trial Judge by seeking adjournments on the ground that the applicant is moving this Court. The learned counsel further points out that on account of such acts on the part of the applicant, the application filed by the applicant deserves to be rejected with exemplary costs. The learned Counsel further submits that this is an abuse of process of the Court, as even before passing the order this Court had given many opportunities to the learned Counsel who was appearing for the applicant to file reply or oppose the prayer of the respondents herein. The learned Counsel, as such, points out that the application be rejected.

4. Upon consideration of the rival contentions and on going through the record, it is seen that while passing the said order dated 9th July, 2014, reliance was placed by this Court on the Judgment of the Apex Court reported in (1996) 6 SCC 705 in the case of Speed Ways Picture Pvt. Ltd., & Anr. vs. Union of India and anr. to come to the conclusion that even an order passed by consent can be modified. Hence, contention of Mr. Fonseca appearing for the

applicant that there is a jurisdictional error committed by this Court cannot be accepted.

5. Apart from that, the learned Counsel appearing for the applicant does not dispute that the possession of the subject-premises was handed over pursuant to the orders passed by this Court. The fact that the arrears of licence fees were not paid by the applicant herein upto such date is also not disputed. The fact that the amount payable by the applicant to the respondents on account of such arrears works out to the sum as mentioned in the bank guarantee which has been allowed to be encashed by this Court is also not disputed. In such circumstances, no prejudice is caused to the applicant in case the order stands. In any event, the respondents have been asked to furnish an undertaking to the Court in terms referred to in the said order. The application stands accordingly rejected.

F. M. REIS, J.

ssm.