

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 640 OF 2016

IN

WRIT PETITION NO. 543 OF 2016

M/S. IVORY SHIPPING, REP. BY ITS
PARTNERS SHRI KRISHNAKANT KOLAMKAR
AND KISHORE TOLANI AND 2 ORS.

... Applicant

Versus

STATE OF GOA, GOVT. OF GOA, THR.
FINANCE SECRETARY AND 4 ORS.

... Respondent

Mr. S. S. Kantak, Senior Advocate with Mr. Preetam Talaulikar,
Addl. Government Advocate for the Applicants.
Mr. S. D. Lotlikar, Advocate General with Mr. P. Dangui, Addl.
Government Advocate for the Respondent nos. 1, 3 and 4.
Mr. Nikhil Vaze, Advocate for the Respondent no. 2.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 10th August, 2016

P.C.

Heard Mr. S S. Kantak, learned Senior Advocate appearing for the Applicants, Mr. S. D. Lotlikar, learned Advocate General appearing for the Respondent nos. 1, 3 and 4 and Mr. Nikhil Vaze, learned Counsel appearing for the Respondent no. 2.

2. This is an application filed by the Applicant-original Petitioner for modifications of some of the terms in the Order dated 26.07.2016.

3. Shri Kantak, learned Senior Advocate appearing for the Applicant-Original Petitioner, has pointed out that there is a direction

therein to deposit a sum of Rs. 59,00,000/- with the Respondent-Bank which on account of the death of the main partners of the Petitioner-firm, the deadline fixed by this Court to deposit such amount came to an end. It is further pointed out that time be extended and further, according to the Applicant, the sum of Rs.59,00,000/- would include also a sum of Rs.35,00,000/- which the Petitioners claim to receive from the State Government. Learned Senior Advocate further submits that on account of financial difficulties, the Applicant-Original Petitioner is not in a position to deposit the total sum of Rs.59,00,000/- but however, the Petitioner shall deposit a sum of Rs.21.60,000/- besides a sum of Rs.2,40,000/- already deposited by the Petitioner. The learned Counsel further pointed out that the Petitioner shall give an undertaking to this Court that in case the Respondents do not receive the subsidy amount of Rs.35,00,000/- the Petitioner shall immediately deposit such amount as per the directions of this Court.

4. Mr. Nikhil Vaze, learned Counsel appearing for the Respondent-Bank, pointed out that the scheme floated by the State Government has lapsed and, as such, the Petitioners are not entitled for any OTS. It is further pointed out that the proposal was given in the year 2014 and, as such, according to him, the question of accepting it at this stage would not be justified.

5. We have considered the submissions of the learned Counsel. We

have also gone through the records. The objections raised by the Respondents referred to herein above are matters which would have to be considered at the time of the Final Hearing of the above Petition. The only aspect is whether the Petitioners have made out a case for extension of time to comply with the directions issued by this Court dated 26.07.2016 and thereby modifying the amount.

6. In the peculiar facts and circumstances of the case, as it is not disputed that in the meanwhile one of the main partners of the Petitioners have expired, we find that, no doubt, the Respondent-Bank in fact have to be protected to ensure that a total sum of Rs.59,00,000/- as stated in the said Order is made available to the Respondent-Bank in case the proposal is considered by the concerned Department.

7. In such circumstances, clause 5(i) in the Order dated 26.07.2016 stands modified, whereby the Petitioner shall deposit a further sum of Rs.21,60,000/- besides a sum of Rs.2,40,000/- already deposited with the Bank within four weeks from today. The Petitioner no. 3 as well as the legal representatives of the Petitioner no. 2 shall furnish an undertaking to the satisfaction of the Registrar (Judicial) of this Court that they will immediately deposit a sum of Rs.35,00,000/- as and when called upon by this Court to pay to the Respondent-Bank. The remaining conditions in the said Order shall continue to be in operation.

8. At this stage, the learned Counsel appearing for the Respondent-Bank, has brought to our notice that a typographical error has occurred in the Order dated 26.07.2016 at Para 4, sixth line as instead of a sum of "Rs.Two crores twenty five lakhs", it should read as a sum of "Rs.Two crores thirty five lakhs".

9. Learned Senior Advocate appearing for the Applicant-original Petitioners, has no objection to the same.

10. Hence, the Order dated 26.07.2016 stands corrected by deleting the sum of "Rs.Two crores twenty five lakhs" and inserting sum of "Rs.Two crores thirty five lakhs" at para 4 line 6. The Registry shall correct accordingly.

11. Shri Kantak, learned Senior Advocate appearing for the Applicants-original Petitioners, also pointed out that the Petitioners shall also submit a proposal claiming the benefit under the first scheme floated by the State Government which the Respondent-Bank may forward to the concerned authorities to examine in accordance with law.

12. Application stands disposed of accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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