

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION 789 OF 2016

1. Mrs. Deepa R. Shivlingkar
w/o Rupesh Shivlingkar,
29 years of age, housewife,
r/o. H. No. 411,
Near Mata Parvatibai Floor Mill,
New Vaddem,
Vasco Da Gama Goa
2. Mr. Rupesh S. Shivlingkar,
s/o late Suresh D. Shivlingkar,
39 years of age,
Proprietor Shrividha Marine,
Office at Office no. 102, 1st Floor,
Rohan Arvade Building,
Opp. MPT Institute,
Swatantra Path,
Vasco Da Gama Goa.
Through POA
Deepa Shivlingkar

... Petitioners.

Versus

1. State of Goa
Through Chief Secretary,
Having office at Secretariat,
Porvorim – Goa.
2. Bank of India
Through Chief Manager,
Vasco Branch,
Swatantra Path, Colaco Building,
Vasco Da Gama – Goa
3. The District Magistrate/Collector,
South Goa,
Mathany Saldana Administrative Complex,
Margao – Goa.

... Respondents.

Mr. Balkrishna P. Sardessai, Advocate for the Petitioners.
Ms. Amira A. Razaq, Government Advocate for the Respondents no. 1 and 3.
Mr. Sidharth Samath, Advocate for the Respondent no. 2.

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

Date:- 29th August, 2016.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Shri Balkrishna P. Sardessai, the learned Counsel appearing for the Petitioners and Shri S. Samanth, learned Counsel appearing for the Respondent no. 2.

2. The above petition seeks for the following relief in terms of prayer clause (a) and (b):

- a) grant a writ, order or direction in the nature of mandamus directing the Respondent No. 2 to offer OTS in lines with the Government of Goa Debt Relief as offered to other borrowers;
- b) grant a writ, order or direction in the nature of certiorari for quashing and setting aside of the possession notice dated 4.05.2016 issued by Respondent No. 2 under Section 13(4) of SARFAESI with respect to the properties described therein and consequently stay the proceedings under SARFAESI Act.

3. As far as prayer (a) is concerned, the learned counsel appearing for the Respondent no. 2 points out that the application for OTS Scheme is pending

consideration before the concerned authority and, as such, the prayer to that effect no longer survives.

4. As far as prayer (b) is concerned, it is pointed out by the learned Counsel appearing for the Respondent Bank that according to the Bank the symbolic possession of the premises has already been taken over by the Bank. This is seriously disputed by the learned Counsel appearing for the Petitioner.

5. Be that as it may, at this stage the question of entertaining such a petition on that count would not at all be justified. During the pendency of the above petition, it was pointed out by the learned Counsel for the Petitioner that in the meanwhile, the Respondent Bank issued auction notice dated 21.07.2016 and a public auction was scheduled on 22.08.2016. The learned Counsel appearing for the Respondent Bank has submitted that the subject auction notice no longer survives, as according to him there were no e-bids from any prospective bidders for the auction scheduled on 22.08.2016. As such, the grievance of the Petitioner with regard to the said auction would not survive as, according to the Respondent Bank, the Respondent Bank would have to initiate the process afresh in accordance with law.

6. The learned Counsel for the Petitioner further pointed out that the Petitioner seeks to work out a solution in respect of the repayment of the

subject loan by depositing a substantial amount upon disposal of the barge hypothecated to the Respondent Bank. The representation, if any, would have to be considered by the Respondent Bank on its own merit. The Respondent Bank pointed out that in case the Petitioner approaches the concerned official Mr. Sawant, with any proposal, such proposal would be examined by the concerned Bank through its appropriate panel and the petitioner, if so advised, is at liberty to approach the concerned official with such proposal.

7. Subject to the above, we find no merit in the petition which stands accordingly rejected. All contentions of the parties are left open.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

msr.