

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.779 OF 2010**

1. M/s. Crisna Esvonta Ambo,
A partnership firm having
its office at Station road,
Margao, Goa and represented
by its partners,
- (a) Shri Gurunath Krishna Ambe,
son of late Shri Krishna Ambe,
of major age,
- (b) Smt. Geeta Gurunath Ambe,
of major age,
- (c) Miss Priya Gurunath Ambe,
of major age,
all residing at Comba,
Margao, Goa.Petitioners

V/s

Suryakant Kelu Kavlekar
Son of late Shri Kelu Kavlekar,
major of age, businessman,
resident of House No.950/1,
Krantinagar, Porvorim,
Taluka Bardez-Goa. ... Respondent

Shri R.G. Ramani, Advocate for the Petitioners.
Shri Sudesh Usgaonkar, Advocate for the
Respondent.

CORAM : C.V. BHADANG, J.

DATE : 20th SEPTEMBER, 2016

ORAL JUDGMENT :

By this petition the petitioners, original

judgment debtors are challenging two orders both dated 28/10/2010. By order below Exhibit 19-D, the Executing Court has directed detention of the petitioner no.1(a) in civil prison, while by order below exhibit 20-D the respondent/decreed holder is directed to take steps to institute criminal proceedings for forgery against the petitioners.

2. The brief facts are that the respondent/decreed holder has instituted Special Execution Case No.24/2007/III which is pending before the learned Civil Judge Senior Division at Margao. The respondent filed an application under Order 21 Rule 30 of CPC for detention of the petitioners/Judgment Debtors in civil prison on the ground that inspite of having sufficient means they have failed to satisfy the decree. It appears that before the Executing Court several form nos.I & XIV of the properties situated at Quepem & Cuncolim were produced by the Decree Holder claiming that the petitioner no.1(a) is

one of the co-owners of the said properties. On the basis of the same, the Executing Court came to the conclusion that the Judgment Debtor No.1 has sufficient means to pay the decretal amount.

3. The petitioner no.1(a) had filed an affidavit on 27/01/2009, stating that he does not own any house or property anywhere in India. Subsequently, in the reply dated 17/08/2010, the petitioner no.1(a) claimed that the properties described in the application filed by the Decree Holder do not belong to Judgment Debtors but are ancestral properties belonging to the co-owners and the Judgment Debtor is one of them. In that view of the matter, the Executing Court found that a false affidavit was filed, which led the Executing Court to direct the Decree Holder to initiate criminal proceedings for forgery.

4. On hearing the learned Counsel for the parties and on perusal of the record, it appears

that in none of the form no.I & XIV, the name of any of the Judgment Debtors including Gurunath Ambe appears. In some form Nos.I & XIV the name of Krishna Yeshwant Ambe, the father of Gurunath appears along with other co-sharers. In respect of some other properties, the name of Krishna Yeshwant Ambe appears as a sole occupant. Some of the properties are shown to be tenanted. In that view of the matter, it is submitted by Shri Ramani, the learned Counsel for the petitioners that it was necessary for the Executing Court to have conducted an inquiry as contemplated under Order 21 Rule 40 of CPC. In so far as the aspect of forgery is concerned, although it is not disputed that the affidavit is not happily worded, it is contended that the affidavit was filed in the context of the fact that according to the Judgment Debtors there was no independent exclusive property owned by the Judgment Debtors.

5. The learned Counsel for the respondent

states that the petitioners have share in the property as shown in the various form nos.I & XIV and, as such, the Executing Court has rightly come to the conclusion that inspite of having sufficient means the decreetal amount has not been paid.

6. I have considered the rival circumstances and the submissions made. An order directing detention of civil prison or the one directing prosecution for forgery are drastic orders. Rule 40 of Order 21 of CPC provides that after the Judgment Debtor appears in obedience to the notice issued under Rule 37, the Court shall proceed to hear the Decree Holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the Judgment Debtor an opportunity of showing cause why he should not be committed to civil prison. It can thus be seen that Order 21 Rule 40 clothes the Executing Court with powers to hold an inquiry. In the

present case, in none of the form no.I & XIV the names of any of the Judgment Debtors appears. The name of the father of Judgment debtor No.1 appears either along with other co-sharers or as a sole occupant. In such circumstances, it would be appropriate if the Executing Court holds an inquiry by affording the parties to produce evidence both oral and documentary and then pass an order in accordance with law. It would also be open to the Executing Court to pass appropriate order if it is found that Judgment Debtor no.1 has filed a false affidavit. For these reasons, the following order is passed:

O R D E R

- (i) The petition is partly allowed.
- (ii) The impugned orders dated 28/10/2010 are hereby set aside.
- (iii) The application Exhibit 19-D filed by the respondent is remitted back to the Executing Court for deciding it afresh after holding inquiry in terms of Order 21 Rule 40 of CPC and in accordance with law.
- (iv) Application Exhibit 20-D is also

remitted back to the Executing Court for deciding it afresh in accordance with law.

(v) The Executing Court shall complete the inquiry as expeditiously as possible and preferably within a period of 6 months from the receipt of this order.

(vi) The rival contentions of the parties are left open.

(vii) In the circumstances, there shall be no order as to costs.

(viii) Parties to co-operate for the time bound disposal of the matter.

C.V. BHADANG, J.

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