

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 776 OF 2016

IN

APPEAL FROM ORDER NO. 46 OF 2012

MR. DAULATRAO YESHWANTRAO
CHOWGULE, THR. POA.,

... Applicant

Versus

MR.JAGDISH YESHWANTRAO CHOWGULE.,

... Respondent

Mr. Vishnuprasad A. Lawande, Advocate for the applicant.
Mr. Rohit Bras De Sa, Advocate for the original appellant.
Mr. V. P. Thali, Advocate for the original respondent no.2.
Mr. D. Pangam with Mr. J. Dias, Mr. Sujai Joshi and Ms. Andrea
Rodricks, Advocates for the original respondent no.3.

Coram:- F. M. REIS, J.

Date:- 30th September, 2016

P.C.

Heard Mr. V. A. Lawande, learned counsel appearing for the applicant and original respondent no.1, Mr. Rohit Bras De Sa, learned counsel appearing for the original appellant, Mr. V. P. Thali, learned counsel appearing for the original respondent no.2 and Mr. D. Pangam, learned counsel appearing for the original respondent no.3.

2. All the interested parties in the Inventory Proceedings are being substantially represented by the learned counsel appearing for the respective parties.

3. The application has been moved on the ground that in view of the Voluntary Disclosure Scheme floated by the Government, the estate has not filed returns in respect of the interest accrued on the fixed deposit in question which has been restrained to be withdrawn

by an order dated 18.07.2013.

4. Mr. Lawande, learned counsel appearing for the applicant, Mr. Thali, learned counsel appearing for the original respondent no.2 and interested party no.4 and Mr. Rohit Bras De Sa, learned counsel appearing for the original appellant and interested party no.3 have no objection for approving the liability of the subject debt.

5. Mr. Pangam, learned counsel appearing for the original respondent no.3 points out that the estate is not liable to pay the tax on the said interest amount in terms of the said scheme.

6. The application is essentially in a nature of a claim by the Cabeça de Casal/applicant herein to approve a debt/liability payable by the estate of the deceased. These aspects are to be examined by calling a conference of interested parties in terms of Article 1394 of the Portuguese Civil Procedure Code and the subsequent provisions. Article 1396 of the Portuguese Civil Procedure Code provides that when there is a disagreement between the interested parties with regard to the approval of such liability, the Court can direct the payment of liability to the extent of shares of the parties who approve such liability.

7. Mrs. Sheela Chowgule, present in person who is also an interested party no.6 has no objection for approval of such liability.

8. Mr. Lawande, learned counsel makes a statement that the other interested party no.7 has also consented to the approving of such liability when she was present on the last date of the hearing.

9. In such circumstances, considering that only one interested

party represented by Mr. Pangam, does not consent to approve such liability, I find it appropriate to direct the payment of the tax in question in terms of the said scheme to the extent of 5/6th share which is stated to be the shares of the parties who have accepted and consented to the payment of such liability.

10. As far as the liability, if any, of the interested party no.5 represented by Mr. Pangam, it would be at his own risk with regard to the payment of such tax, if at all is payable.

11. Consequently, the Cabeça de Casal is permitted to withdraw 5/6th share of the tax payable on the interest accrued on the fixed deposits to pay the necessary amount in terms of the said scheme. The Cabeça de Casal shall thereafter to produce the receipt of such payment in the records of the Court.

12. The application stands disposed of accordingly.

F. M. REIS, J.

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