

IN THE HIGH COURT OF BOMBAY AT GOA**COMPANY APPLICATION NO. 66 OF 2016****IN****COMPANY APPLICATION NO. 40 OF 2016**

WILSON MANUEL GODINHO APPLICANT.

VERSUS

M/S. SWETA ESTATES PVT. LTD.
REPRESENTED HEREIN BY GP
CAPT. SUMANT KOCHHAR. RESPONDENT.

Mr. Rohit Bras de Sa, Advocate for the applicant.

Mr. Shivan Desai, Advocate for the respondent.

CORAM :- F.M. REIS, J.**Date : - 21 OCTOBER 2016.****ORAL ORDER :-**

Heard Mr. Rohit Bras de Sa, learned Counsel appearing for the applicant and Mr. Shivan Desai, learned Counsel appearing for the respondent.

2. The above application is filed by the applicant for intervention in the application filed for withdrawal of the amount

deposited in view of the Order in the above company application.

3. The facts, as culled out from the records, are that the respondent herein filed a company petition against the original respondent to the company petition for winding up on the basis that a specific amount was advanced to such company for the purpose of purchasing a property which ultimately could not proceed in view of the restrictions imposed by the statutory laws. Whilst examining such application for winding up, this Court took a categorical view in the order dated 16/9/2010 that there is no defence raised for repayment of Rs.2.80 crores being the balance principal amount. Accordingly, the concerned company was directed to deposit the said amount within 2 weeks and on failure to do so, the company winding up petition was ordered to be admitted and proceeded in accordance with law. The records further reveal that in fact, the Company deposited a sum of Rs.2.80 crores in this Court which resulted in disposal of the winding up petition. By a subsequent order dated 28th October, 2010, this Court noted at para 3 that as there is a dispute between the parties regarding the amount due and since the petitioner has already filed a suit for recovery, the petition stands disposed of. It was however,

directed that the amount deposited in the sum of Rs.2.80 crores be invested and shall not be allowed to be withdrawn by the respondent till the decision in Special Civil Suit No.14/2010 and for a period of four weeks thereafter. It appears that the suit was, thereafter, decreed in the sum of Rs.5.00 crores by a Judgment and Decree dated 30/04/2016. The learned Judge has, inter alia, held that the applicant herein is also entitled to a sum of Rs.2.80 crores deposited before this Court in the Company Petition No. 18/2010, along with interest if any accrued thereon.

4. Mr. Rohit Bras de Sa, learned Counsel appearing for the applicant-proposed intervenor in the above petition opposes the withdrawal of the amount as, according to him, the Decree passed by the learned Civil Court is jointly and severally against the Company, as well as the proposed intervenor and, as such, he has locus to file such an application. The learned Counsel further points out that the proposed intervenor, who is the director of the Company, has already preferred an appeal before this Court, challenging such a Decree and the Company has been allowed to be transposed as co-respondent by this Court. It is further pointed out that as the applicant-intervenor is

also a party to the Decree passed by the learned Judge, the application for intervention has to be granted. It is further pointed out that it is well settled that an appeal is continuation of the suit and, as such, considering that the proposed intervenor has already filed an appeal, the Decree passed by the learned Judge has not attained finality. The learned Counsel in support of his submissions has relied upon Judgments of the Apex Court reported in **(1981) 3 SCC 103** in the case of ***Hasmat Rai and another v/s. Raghunath Prasad, and (2001) 8 SCC 173*** in the case of ***Rachakonda Narayana vs. Ponthala Parvathamma and another.*** The learned Counsel as such points out that the application for intervention be allowed.

5. On the other hand, Shri Shivan Desai, learned Counsel appearing for the original petitioner points out that the proposed intervenor has no locus to intervene in the above petition. It is further submitted that the proposed intervenor was only a Director and, as such, cannot file an application for intervention in the winding up petition. The learned Counsel further points out that it is an admitted position that the Company has not filed an appeal challenging the Judgment and Decree of the learned Trial Judge and, as such, as far as

the Company is concerned, the Decree has attained finality. The learned Counsel further submits that as such, the question of allowing the intervention would not arise. It is further submitted that the original petitioner would be bound by any condition imposed whilst allowing the application for withdrawal of the amount.

6. I have considered the submissions of the learned Counsel and I have also gone through the records. The application under consideration is for intervention in the application filed by the applicant to withdraw the amount in view of the decree passed by the learned Trial Judge. As observed herein above, this Court in the said Order dated 16/09/2010, has clearly taken a view that the subject Company had no defence in payment of the amount to the original petitioner. The amount has to be paid by the Company and as a Director, in personal capacity, the applicant has no locus in the petition for winding up. It is not the case of the applicant that he is the creditor of the subject company. In such circumstances, when the Company has not moved the above application before this Court and has chosen not to remain present inspite of notice of the application for withdrawal of the amount, there is no question of allowing the

intervention. The application for withdrawal would have to be examined in terms of the order passed by the Court between the parties *inter se* who were before this Court in the winding up petition. Admittedly, the applicant was not a party to such proceeding when the orders came to be passed by this Court disposing of the winding up petition. In such circumstances, the Judgments relied upon by the learned Counsel for the applicant would not be applicable to the facts of the case. Hence, the application for intervention stands rejected.

F.M. REIS, J.

ssm.