

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 137 OF 2011

Shri Shrikant Krishna Naik,
Major, Apsara Restaurant,
Kadar Manzil Building,
Opp. Harimandir,
Martires Dias Road,
Margao, Goa.

(since deceased through
legal heirs)

1.a. Smt Salubai S. Naik Shirodkar
widow of late Shri Srikant K. Naik,
62 years of age, housewife,

1.b. Shri Gurudas S. Naik Shirodkar,
son of late Shrikant K. Naik,
42 years of age, Businessman,

1.c. Smt. Salita G. Naik Shirodkar
wife of Shri Gurudas S. Naik Shirodkar
37 years of age, housewife

1.d. Shri Jeetendra S. Naik,
son of late Shrikant K. Naik,
39 years of age, businessman,
All r/o House No.341,
Behind Masjid, Malbhat,
Margao-Goa.

1.e. Smt. Leena Somnath Naik,
daughter of late Shrikant K. Naik,
37 years of age, housewife

1.f. Shri Somnath K. Naik,
Son of Shri Khushali Naik,
39 years of age, businessman

1.g. Smt. Sunita alias Bhagyashri
Vamona Couvlekar,
Son of Shri Prabhakar Couvlekar,
36 years of age, businessman

1.h. Shri Vamona alias Sujeet
Prabhakar Couvlekar,
son of Shri Prabhakar Couvlekar
36 years of age, businessman
Both r/o Jaidev Vada,
Nachinola, Aldona Bardez-Goa.

1.i. Smt. Vidya Damodar Naik,
daughter of late Shrikant K. Naik
34 years of age, service,

1.j. Shri Damodar Gangaram Naik,
son of Shri Gangaram Naik,
38 years of age, service,
Both r/o Reshma Building,
Aquem, Alto Margao-Goa.

..... Petitioners

Versus

Shri Sricanta Roguvir Xete Shirodkar,
aged about 58,
Resident of Opp. Macazana Church,
Macazana, Salcete, Goa.

.... Respondent

Mr. S. S. Kantak, Senior Advocate with Mr. A. Kamat, Advocate for
the petitioners.

Mr. A. Gaonkar, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 17th November, 2016

ORAL JUDGMENT

Heard Mr. S. S. Kantak, learned Senior Counsel appearing for the petitioners and Mr. A. Gaonkar, learned counsel appearing for the respondent.

2. The challenge in the above petition is to the order passed by the learned Additional District Judge, South Goa, Margao dated 22.10.2010 whereby an appeal preferred by the petitioners was dismissed for non compliance of the order passed while staying the operation of the impugned judgment under challenge.

3. I have heard the learned counsel at length. The main grievance of the petitioners is that as the appeal which was originally filed before this Court was remitted to the Court of the learned District Judge in view of an amendment to the Civil Courts Act to the pecuniary jurisdiction of the learned District Court, the petitioners

failed to deposit such amounts due to administrative difficulties of Court office. However, the amounts were not allowed to be deposited by the learned District Judge. By the impugned order, the contentions of the petitioners were not accepted by the learned Judge, the appeal of the petitioners was rejected.

4. During the course of the hearing of the above petition, the learned counsel appearing for the respondent has fairly conceded that the impugned order passed by the learned Judge be quashed and set aside and the petitioners be directed to pay all the arrears of the amount to the respondent in terms of the interim orders dated 27.04.2007 and 19.07.2007 within four weeks from today. The respondent has also pointed out that the respondent will receive such amount without prejudice to the rights and contentions of both the parties in the appeal.

5. In view of the above, the following order is passed by consent.

ORDER

- (i) The impugned order dated 22.10.2010 is quashed and set aside.
- (ii) Regular Civil Appeal No.383/2010 is restored to the file of the learned District Judge, South Goa, Margao.
- (iii) The petitioners permitted to pay all the arrears of the amounts to the respondent in terms of the interim orders dated 27.04.2007 and 19.07.2007 within four weeks from today. The amount so paid shall be without prejudice to the rights and contentions of both the parties in the appeal.
- (iv) The learned Judge is directed to finally decide the said appeal within six months from the date of the receipt of this order.
- (v) The parties are directed to appear before the learned Judge on 08.12.2016 at 10.00 a.m.
- (vi) All contentions of the parties on merits are left open.
- (vii) Rule is made absolute in the above terms.

(viii) The petition stands disposed of accordingly.

F. M. REIS, J.

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