

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1011 OF 2016

Models Real Estate Developers
A Partnership Firm,
By its Partner Shri Peter Vaz,
son of Shri Diogo Vaz,
of full age,
Engineer,
Resident of Joffre Residency,
4th Floor,
Behind Goa College of Pharmacy,
Panaji Goa.

... Petitioner

Versus

1. Dr. Agnelo Basilio Dias
(Since deceased)
through his legal representatives
(a) Smt. Christine Dias,
widow of Dr. Agnelo B. Dias,
of full age,
Resident of Oddavel,
Dona Paula, Tiswadi Goa.

(b) Shri Arney Dias,
Son of Dr. Agnelo B. Dias,
of full age,
Resident of Oddavel,
Dona Paula, Tiswadi Goa.

(c) Shri Rainer Dias,
Son of Dr. Agnelo B. Dias,
of full age,
Resident of Oddavel,

Dona Paula,
Tiswadi Goa.

(d) Smt. Cynthia C. Dias,
wife of Shri Rainer Dias,
of full age,
resident of Dona Paula,
Tiswadi Goa.

2. State of Goa,
Through its Chief Secretary,
Having office at Secretariat,
Porvorim Goa.

... Respondents

Mr. S. S. Kantak, Senior Advocate with Mr. P. Talaulikar,
Advocate for the petitioner.

Mr. Joseph Vaz, Advocate for the respondent no. 1(a) to 1(d).

Coram:- F. M. REIS, J.

Date:- 16th December, 2016

ORAL JUDGMENT

Heard Mr. S. S. Kantak, learned Senior Counsel
appearing for the petitioner and Mr. J. Vaz, learned counsel
appearing for the respondent no.1(a) to 1(d).

2. Rule. Heard forthwith with the consent of the learned

counsel.

3. Mr. Vaz, learned counsel waives service on behalf of the respondent no.1(a) to 1(d).

4. The challenge in the above petition is to an order dated 26.09.2016 whereby leave sought by the petitioner to amend the appeal memo before the learned Tribunal came to be dismissed.

5. Mr. S. S. Kantak, learned Senior Counsel appearing for the petitioner takes strong objection to the manner in which the impugned order was passed as the learned Tribunal while examining the application for leave to amend the appeal memo has proceeded to examine the validity or correctness of the allegations proposed therein which is not permissible while deciding such application. The learned Senior Counsel further pointed out that it cannot be disputed that the proposed amendment is referable to the matter in controversy and as such

according to him the learned Tribunal was not justified to refuse leave to the petitioner to amend the appeal memo. The learned Senior Counsel further pointed out that the petitioner desires to rely upon some permissions obtained from the statutory authorities and some documents of rectification executed during the pendency of the proceedings. The learned Senior Counsel as such points out that the impugned order deserves to be quashed and set aside.

6. On the other hand, Mr. J. Vaz, learned counsel appearing for the respondent nos.1(a) to 1(d) has vehemently opposed the petition. It is pointed out that the application for amendment itself is an abuse of the process of the Court as according to him the alleged Deed of Rectification was prepared during the pendency of the dispute raised in the above petition and is not binding on the respondents nor can in any way affect the legitimate rights of the respondents in respect of the subject property. The learned counsel further submits that such documents according to the respondents have been fabricated in

order to put up a false defence to the claim of the respondents. The learned counsel further pointed out that the application itself was filed after six years and on the ground of delay itself the impugned order does not call for any interference.

7. I have considered the submissions of the learned counsel and I have also gone through the records. The application for leave to amend is to incorporate additional facts and grounds in the memo of appeal. The relevancy or otherwise of such allegations would have to be examined by the learned Tribunal only after leave is granted to the petitioner to amend the appeal memo. It is well settled that while examining an application for leave to amend the appeal memo, the Court cannot proceed to examine the merits of the contention sought to be incorporated in the appeal memo. Though Mr. Vaz, learned counsel appearing for the respondents may be justified to contend that the documents which have been executed during the pendency of the petition would not by itself defeat the stand of the respondents nevertheless, this aspect would have to be considered by the

learned Tribunal while examining the appeal on merit. The fact that the allegations sought to be incorporated are referable to the dispute raised in the proceedings pending before the learned Administrative Tribunal is not in dispute. The contention of Mr. Vaz, learned counsel appearing for the respondents to the effect that the documents sought to be produced are fabricated or fraudulent executed during the pendency of the petition are matters which are left open which the learned Tribunal would have to examine on its own merits while deciding the appeal on merit. Keeping the contentions of the respondents open on this aspect, I find that the learned Tribunal was not justified to refuse leave to amend the appeal memo filed before the learned Tribunal. Needless to say that the respondents are at liberty to file a reply to the amended appeal memo and raise all their contentions with regard to the validity or correctness of such allegations which the learned Tribunal would have to consider on its own merit while deciding the appeal on its own merit.

8. Mr. Vaz, learned counsel appearing for the respondents may be justified to contend that the application for leave to amend was filed by the petitioner belatedly but however, delay itself cannot disentitle the petitioner to seek leave to amend the appeal memo, in case the proposed amendments are referable to the dispute and necessary to decide the matter in controversy and does not take away any accrued rights of the respondents. In the present case, without going into the correctness as to whether the proposed amendments are relevant to decide the matter in controversy, as the petitioner has moved this application belatedly, I find that the respondents are entitled to be compensated for such delay. The costs are quantified at Rs.10,000/- to be paid by the petitioner to the respondents as condition precedent.

9. In view of the above, I pass the following :

ORDER

(i) The impugned order dated 26.09.2016 is

quashed and set aside.

(ii) The application for leave to amend the appeal memo filed by the petitioner is allowed subject to costs of Rs.10,000/- to be paid by the petitioner to the respondents as condition precedent.

(iii) The learned Tribunal shall proceed to decide the appeal in the light of the observations made herein above after hearing the parties in accordance with law.

(iv) All contentions raised by the respondents with regard to the merit of the proposed amendments are left open.

(v) Rule is made absolute in the above terms.

(vi) The petition stands disposed of accordingly.

F. M. REIS, J.

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