

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.904 OF 2015**

- 1 Sociedade De Fomento Industrial Private Limited, a Company incorporated under the Companies Act, 1956 (Act 1 of 1956), through its Power of Attorney Shri Francisco Lume Pereira having its registered office at Villa Flores de Silva, Erasmo Carvalho Street, Margao – Goa.
- 2 Hardesh Ores Pvt. Ltd., a company incorporated under the companies Act, 1956 (Act 1 of 1956) through its Director Shri Francisco Lume Pereira having its registered office at Villa Flores de Silva, Erasmo Carvalho Street, Margao-Goa.

.... Petitioners

V/s

- 1 Kamalini Ramakant Painguinkar, wife of late Ramakant R. Painguinkar, Major of age, resident of Shri Damodar Co-op. Housing Society Ltd., Building No.2, Flat No.1, Aquem, Margao 403601, Goa.
- 2 Raju Ramakant Painguinkar, Son of late Ramakant R. Painguinkar, Major of age, resident of Shri Damodar Co-op. Housing Society Ltd., Building No.2, Flat No.1, Aquem, Margao 403601, Goa.

- 3 Jyoti Raju Painguinkar, Wife of Shri Raju Painguinkar, Major of age, resident of Shri Damodar Co-op. Housing Society Ltd., Building No.2, Flat No.1, Aquem, Margao 403601, Goa.
- 4 Rasik Ramakant Painguinkar, Son of late Shri Ramakant R. Painguinkar, Major of age, resident of Shri Damodar Co-op. Housing Society Ltd., Building No.2, Flat No.1, Aquem, Margao 403601, Goa.
- 5 Tanuja Rasik Painguinkar, wife of Shri Rasik R. Painguinkar, Major of age, resident of Shri Damodar Co-op. Housing Society Ltd., Building No.2, Flat No.1, Aquem, Margao 403601, Goa.
- 6 Sandya Navinchandra Katkar, Daughter of late Shri Ramakant R. Painguinkar, Major of age, resident of Shri Damodar Co-op. Housing Society Ltd., Building No.2, Flat No.1, Aquem, Margao 403601, Goa.
- 7 Navinchandra Ramakant Katkar, Son of Shri Ramakant Katkar, Major of age, resident of Shri Damodar Co-op. Housing Society Ltd. Building No.2, Flat No.1, Aquem, Margao 403601, Goa.
- 8 Timblo Minerals Private Limited, A Company incorporated under

the Companies Act, 1956 (Act 1 of 1956), having its registered office at Kadar Manzil, Opp. Hari Mandir, Martires Dias Road, Margao 403601, Goa. Through its Managing Directors.

- 9 Timblo Private Limited, A Company incorporated under the Companies Act, 1956 (Act 1 of 1956), having its registered office at Kadar Manzil, Opp. Hari Mandir, Martires Dias Road, Margao 403601, Goa. Through its Managing Directors.

.... Respondents

Shri V.A. Lawande, Advocate for the Petitioners.

Shri H.D. Naik, Advocate for Respondents No.8 & 9.

CORAM : C.V. BHADANG, J.

DATE : 7th JUNE, 2016

ORAL JUDGMENT :

Rule. Heard finally by consent of parties.

2. By this petition, the petitioners who are the original plaintiffs (Special Civil Suit No.19/2003/A pending before the learned Civil Judge Senior Division at Quepem) are challenging the order dated 20/10/2015 by which the application for stay of the said suit, pending disposal of Regular Civil Appeal No.469/2010 before the learned Adhoc District Judge, was dismissed.

3. The brief facts are that Ramakant Painguinkar (since deceased) had entered into two agreements both dated 17/12/1984 one each with the petitioner no.1 and the petitioner no.2 for extraction and sale of the ore from the suit mine. According to the petitioners, during the subsistence of the said agreements Ramakant Painguinkar entered into agreements with the respondents no.8 & 9 on the premise that the agreements dated 17/12/1984 have expired by efflux of time. Further, according to the petitioners, during the monsoon in the year 2003 the respondents no.8 & 9 entered the suit mine and the petitioners were dispossessed of the same.

4. The respondents no.8 & 9 filed a Special Civil Suit No.19/2003/A seeking permanent injunction against the petitioners from entering and operating the suit mine. On the basis of ad interim exparte injunction obtained on 10/07/2003, the petitioners were dispossessed of the mine and were deprived of the profits which could have been earned from the extraction of the ore. Finally, Special Civil Suit No.19/2003/A was dismissed on 20/05/2006, which was challenged before this Court in First Appeal No.143/2006. By an order dated 18/07/2006, this Court had granted stay of the operation of the judgment and decree dated 20/05/2006 subject to certain conditions. Subsequently, on account of

the amendment to the Goa Civil Court's Act, the First Appeal was transferred to the file of the learned Adhoc District Judge, South Goa and is now registered as Regular Civil Appeal No.469/2010.

5. In the meantime, the petitioners filed Special Civil Suit No.19/2006/A against the respondents for monetary claim on account of deprivation of profits. It is in this suit that the application, for stay pending disposal of the Regular Civil Appeal No.469/2010, was filed.

6. It appears that the contesting respondents no.8 & 9 had initially objected, however at the hearing of the application they had given no objection for staying of the suit. In spite of that the learned Trial Court has dismissed the application by the impugned order which is subject matter of challenge in this petition.

7. I have heard the learned Counsel for the parties and perused the impugned order. I have also gone through the issues framed in the earlier Civil Suit No.19/2003/A namely issues no.6(A) & 6(B). It does appear that the disposal of Civil Suit filed by the petitioners would involve question whether the two agreements of the year 1984 were subsisting or they had expired on account of efflux of time. Incidentally,

this is also an issue which is involved in the earlier suit which is now pending adjudication in an appeal. Apart from Section 10 of the Civil Procedure Code such a stay can also be ordered in a given case by taking recourse to the inherent powers of the Court under Section 151 of the Civil Procedure Code. One of the reasons why the learned Trial Court has refused to stay the suit is that the earlier suit is disposed off. In my considered view, that cannot be a reason, inasmuch as the appeal arising out of the suit is pending and the appeal is a continuation of the suit. In either case, the learned Counsel for the respondents no.8 & 9 have also no objection for granting the application staying the suit.

8. For these reasons the petition is allowed. The impugned order is set aside. The application Exhibit 59 is allowed. There shall be stay of Special Civil Suit No.19/2006/A pending disposal of Regular Civil Appeal No.469/2010 before the learned Adhoc District Judge, South Goa at Margao. Rule is made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.

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