

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1012 OF 2015

SHRI.SHAILESH DURGANAND
SANVORDENKAR AND ANR., ... Petitioners

Versus

DURGANANDA RAMNATH SINAI
SANVORDECAR AND 2 ORS., ... Respondents

Mr. Shivan Desai, Advocate for the Petitioners.

Ms. P. Kaur, Advocate for Respondent No. 1.

Mr. Ryan Da Piedade Menezes, Advocate for Respondent Nos. 2
and 3.

CORAM:- C.V. BHADANG, J.

DATE:- 15th APRIL, 2016.

ORAL ORDER:

Heard the learned Counsel for the parties.

2. By this petition, the petitioners are challenging the judgment and order dated 26.11.2015, passed by the learned District Judge-2, South Goa, Margao in Miscellaneous Civil Appeal No. 28/2015, whereby the order dated 18.04.2015 passed by the learned Civil Judge Senior Division at Quepem in Special Inventory Proceedings No. 02/2009/A-Regular Inventory Proceedings No. 40/2010/A, has been confirmed.

3. The brief facts are that the petitioners herein have filed an application before the inventory Court for removal of the Cabeça-de-Casal (Administrator) and for appointment of another Administrator in his place. It was alleged that there were some acts of malfeasance and misfeasance committed by the Administrator as set out in the application, which indicate that the Administrator Mr. Durganand Sinai Sanvordecar, was not proper person to administer the estate. The concerned Administrator did not file any reply to the said application. By order dated 18.04.2015, the learned Civil Judge Senior Division has directed an enquiry on the allegations made in the application (Exhibit-44), which was challenged by the petitioners before the learned District Judge in Miscellaneous Civil Appeal No. 28/2015, which appeal has been dismissed.

4. It is contended on behalf of the petitioners that once the concerned Administrator had failed to file reply to the application (Exhibit-44), there was no occasion for the inventory Court to have directed an enquiry. The learned Counsel for the petitioners has placed reliance on the provisions of Articles 2088 and 1439 of the Portuguese Civil Code, 1867 (the Code, for short), in order to submit that the act of malfeasance and

misfeasance by the Administrator, were sufficient for his removal. The learned Counsel submits that in the absence of any contest, by filing the reply to the said application, the same could have been allowed as prayed. The learned Counsel for the petitioners has also placed reliance on Articles 488 and 494 of the Code in order to submit that the facts pleaded, if not disputed, shall be treated as admitted.

5. The learned Counsel for respondent no. 1 has supported the impugned order. It is submitted that merely because no reply is filed, the inventory Court could not be precluded from conducting an enquiry.

6. The learned Counsel for respondent nos. 2 and 3 supports the contentions of the petitioners that a case for removal is made out.

7. I have considered the rival circumstances and the submissions made. Article 2088 provides that an administrator, who fraudulently delays the proceedings may be removed at the instance of the interested parties, while Article 1439 of the Code sets out various reasons, which may entail the removal of the

Administrator. In particular Article 1439, where the Administrator delays the description, fails to indicate to the appraisers the properties, does not appear, does not produce documents or declarations, which are demanded from him, or by any other manner fails to perform the duties of his office etc., he can be removed. It is not in dispute that the removal of the Administrator cannot be ordered without hearing him. Thus, the only short question is whether the inventory Court was justified in directing an enquiry.

8. The learned Counsel for the petitioners states that the impugned order passed by the inventory Court does not indicate as to what was the nature of the enquiry. In this regard, it is trite that enquiry would be circumscribed by the applicable provisions including Articles 2088 and 1439 of the Code. The inventory Court shall also have due regard to the provisions of Articles 488 and 494 of the Code, while deciding the application (Exhibit-44). It may not be out of place to mention here that if, the law provides that the Administrator can be removed for certain reasons and that the petitioners are coming with the case that the Administrator is liable to be removed, the inventory Court would be justified in holding a

minimal enquiry so as to ascertain whether such grounds are made out. As noticed earlier, while doing so, the inventory Court will be guided by the relevant provisions as may be applicable.

9. In such circumstances, I am not inclined to interfere with the impugned order as passed. The learned Counsel for the petitioners at this stage submits that the inventory proceedings may be expedited.

10. In the result, the following order is passed:

ORDER

(a) The Writ Petition is hereby dismissed.

(b) The Civil Judge Senior Division shall decide the inventory proceedings as expeditiously as possible and preferably within a period of one year from the date of receipt of this order.

(c) Parties to co-operate for early disposal of the proceedings.

C.V. BHADANG, J.