

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 404 OF 2017**

INDIA MARIA MATILDES DE SOUZA., ... Petitioner

Versus

AGNELO GUSTAVO DE SOUZA & 3 ORS., ... Respondents

Shri M.B. D'Costa, Senior Advocate with Ms. Karishma Betquecar, Advocate for the Petitioner.

Shri Agnelo F. Diniz, Advocate for the Respondent No. 1.

Shri Cipriano Fernandes, Advocate for the Respondent Nos. 2 to 5.

CORAM:- C. V. BHADANG, J.

RESERVED ON: 11th JULY, 2017

PRONOUNCED ON: 18th JULY, 2017

ORAL ORDER:

The challenge in this petition, under Article 227 of the Constitution of India, is to the order refusing to permit the petitioner to independently bid in the auction.

2. The brief facts are that, Inventory Proceedings No. 68/2015/F are initiated upon the death of Aramita De Souza and Jose De Souza. The said proceedings were initiated by the respondent no. 1-Agnelo De Souza, who is the son of the Estate

Leavers. It appears that Shri S.A. Dhuri, an Architect filed a valuation report on 10.02.2016 and property at item no. 1 was valued as on 19.02.2012 at Rs.15,60,000/-. Subsequently, the respondent no. 1 sought an auction to be held. The petitioner, who is the divorced wife of the respondent no. 1, filed an application on 13.07.2016, before the Inventory Court, seeking leave to independently bid in the auction, on the ground that she is the divorced wife of the respondent no. 1 although, not a heir of the deceased-Estate Leaver.

3. The learned Inventory Court by an order dated 13.07.2016 has dismissed the application, which was challenged by the petitioner before the learned District Judge in Miscellaneous Civil Appeal No. 89/2016. The learned District Judge by the impugned judgment and order dated 30.01.2017, has dismissed the appeal, concurring with the view taken by the Inventory Court. Hence, this petition.

4. I have heard Shri D'Costa, the learned Senior Counsel for the petitioner, Shri Diniz, the learned Counsel for the respondent no. 1 and Shri Fernandes, the learned Counsel for the respondent nos. 2 to 5.

5. It is submitted by Shri D'Costa, the learned Senior Counsel for the petitioner that although, the petitioner is not an heir of the Estate Leavers, she is entitled to bid independently on account of the fact that she is divorced/estranged wife of the respondent no. 1, who is one of the interested parties. The learned Senior Counsel has placed reliance on the commentary on Judicial Partitions (Theory and Practice) at page 139, Volume-II by Joao Lopes Cardozo, in order to submit that there are cases wherein a right to independently take part in the auction can be conferred on the spouse/moiety holder of the heir/heirress, in order to avoid sham partition/s. This according to the learned Senior Counsel would especially be a case, where there is a dispute between the heir and his or her spouse and an action for divorce/separation is pending. He pointed out that in the present case, the marriage between the respondent no. 1 and the petitioner has been dissolved and thus, there is a reasonable apprehension of the auction, not being conducted in a genuine manner, resulting into the rights of the petitioner being adversely affected. The learned Senior Counsel has referred to and relied upon the valuation report of Shri S.A. Dhuri. The learned Senior Counsel has pointed out the escalation of price of the concerned property from the year 1983 to 2012. It is submitted that the property which was valued at Rs.63,380 as on

11.06.1983 is valued at Rs. 15,60,000/- on 19.09.2012. He therefore submits that in order to ensure that there is genuine and bonafide auction and in order to protect the right of the petitioner, she has to be permitted to take part in the bid/auction.

6. Shri Diniz, the learned Counsel for the respondent no. 1, on the contrary, points out that since after the passing of the impugned order, the inventory proceedings have concluded and have been finalised. It is submitted that the petitioner has filed a substantive appeal alongwith an application for condonation of delay being Miscellaneous Civil Application No.145/17, challenging the final chart of partition, drawn in the inventory proceedings, which appeal is pending before the learned District Judge at Panaji. He therefore submits that the present petition has become infructuous. The learned Counsel has placed reliance on the decision of this Court in the case of **Ranjit Satardekar Vs. Smt. Clotildes Fernandes & Others, 2006(4) ALL MR 223**, in order to submit that the expression “the moiety holder spouse” appearing under Article 1412 of the Portuguese Civil Code, 1939, refers to the spouse of the deceased person, pursuant to whose death the inventory proceedings have been initiated. The said expression by no stretch of imagination can be referred to the “moiety holder/s of the heir/s”.

7. The learned Counsel for the respondent nos. 2 to 5 supports the respondent no. 1.

8. In reply, Shri D'Costa, the learned Senior Counsel for the petitioner submits that the learned District Judge has already taken a view in the impugned judgment dated 30.01.2017, holding that the petitioner is not entitled to bid independently in the auction and thus, the learned District Judge will not be in a position to take a different view in the first appeal, challenging the final chart of allotment. He therefore, submits that the petition has not become infructuous and insists for deciding the same on merits.

9. I have considered the rival circumstances and the submissions made. At the outset, it may be mentioned that the learned Counsel for the petitioner does not dispute that it is only the heir and the moiety holder spouse of the deceased, who are entitled to participate in the bid. The contention, however, is that where there is a spouse, who is estranged from the heir, such a spouse, has a right and can be permitted to independently bid in an auction.

10. Before coming to the rival contentions on merits, it is necessary to consider whether, the petition has become infructuous, as claimed on behalf of the respondents. It is significant to note that there was a divorce between the petitioner and the respondent no. 1 in June, 2013 i.e. during the pendency of the inventory proceedings. An application seeking permission to bid was filed on 13.07.2016. It is further a matter of record that after rejection of the said application, the present petition is filed on 21.04.2017 i.e. after the conclusion of the inventory proceedings. That apart, the petitioner has filed an appeal alongwith an application for condonation of delay being Miscellaneous Civil Application No.145/17, challenging the final judgment and order dated 12.04.2017, passed by the Inventory Court, which is pending before the competent Court. A perusal of the grounds of appeal would show similar contentions as raised in the present petition are also raised in the said appeal. In such circumstances, in my considered view, it would be appropriate that the learned District Judge decides the appeal on its own merits and in accordance with law.

11. It would be significant to note that if, this Court takes one view or the other on the contentions raised, it is bound to affect the outcome of the appeal before the learned District

Judge. Once, it is found that the inventory proceedings have finally concluded and the said judgment and order is challenged in appeal, which is pending before the competent Court, it would not be appropriate to entertain this petition. In such circumstances, I decline to entertain this petition, under Article 227 of the Constitution of India, which is accordingly dismissed. Needless to mention that it would be open to the parties to raise all the contentions as may be available in law, before the learned District Judge and the learned District Judge shall decide the appeal on its own merits and in accordance with law, notwithstanding the dismissal of Miscellaneous Civil Application No. 89/2016.

12. Shri D'Costa, the learned Senior Counsel for the petitioner points out that an application for stay, filed by the petitioner is pending before the learned District Judge. The learned District Judge shall decide the application for stay as expeditiously as possible and preferably within a period of four weeks from the date of receipt of this order.

C.V. BHADANG, J.

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