

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 561 OF 2017

SHRI. KRISHNA ARJUN MAPARI (DEC)
THR. HIS LRS AND 4 ORS., ... Petitioners

Versus

MAHADEO SITARAM KAKODKAR AND 3
ORS., ... Respondents

Shri Ashwin D. Bhobe, Advocate for the Petitioners.

Shri R.G. Ramani, Advocate for the Respondent Nos. 1(a) to 1(d).

Coram:- C. V. BHADANG, J.

Date:- 18th September 2017

P.C:

Heard Shri Bhobe, the learned Counsel for the petitioners and Shri Ramani, the learned Counsel for the contesting respondent nos. 1(a) to 1(d).

2. The challenge in this petition is to the order passed by the Executing Court, by which, the petitioners are directed to be sent to the civil prison, for non satisfaction of the monetary part of the decree. During the pendency of this petition, the petitioners have deposited an amount of Rs.2 lakhs, before this Court on 26.07.2017. The outstanding monetary part of the decree, as of today, is stated to be approximately Rs.5,47,000/-. The only contention raised on behalf of the petitioners is that although, the

legal heirs of the original deceased decree holders were allowed to be brought on record as per Order of this Court in Writ Petition No. 683/2016, the amendment to incorporate the names of the legal representatives, was not carried out in the execution proceedings. It is thus contended that in the absence of any decree holders on record, there could not have been any order directing the petitioners to be sent to the civil prison.

3. Shri Ramani, the learned Counsel for the respondent nos. 1(a) to 1(d) states that the amendment has been carried out on 27.06.2017 and the legal representatives are now brought on record. Thus, the said ground does not survive. The learned Counsel for the parties in all fairness state that the petition can be disposed of, by directing the amount deposited before this Court to be remitted to the Executing Court and the Executing Court can consider the aspect of execution of decree in accordance with law.

4. In such circumstances, by consent of parties, the petition is disposed of in the following terms:-

- (a) The petition is allowed.
- (b) The impugned order is set aside.
- (c) The amount deposited before this Court alongwith interest, if any, shall be remitted/transferred to the Executing Court, which shall permit the respondents/decreed holders to withdraw the

amount. This shall be subject to the outcome of the execution case.

(d) It will be open to the Executing Court to go into the question of execution of the decree, by all permissible modes, in accordance with law.

(e) The petitioners are permitted to file additional reply, if so advised.

(f) Rival contentions of the parties are left open.

C. V. BHADANG, J.

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