

**IN THE HIGH COURT OF BOMBAY AT GOA**

WRIT PETITION NO. 745 OF 2017

SANTAN E. CARDOZO, THR. HIS POA,  
FRANCIS BARRETTO.,

... Petitioner

Versus

VENUS AGENTS AND INVESTORS  
ASSOCIATION, THR. ITS  
PRESIDENT/SECRETARY AND 3 ORS.,

... Respondents

Shri Nigel Da Costa Frias, Advocate for the Petitioner.

Shri S.M. Singbal, Advocate for the Respondent No. 1(ii).

Shri Ryan Menezes, Advocate for the Respondent Nos. 2 and 3.

Coram:- C. V. BHADANG, J.

Date:- 9th October 2017

**ORAL ORDER:**

On hearing the learned Counsel for the parties for some time, I find that the petition could be disposed of on a short ground.

2. The petitioner is challenging the order dated 31.03.2016, passed by the Executing Court, whereby the petitioner has been prohibited from transferring or creating a charge on property nos. 611 and 612, situated on the 6th floor of the building Dempo Towers at EDC Plaza, Patto, Panaji.

3. Shri Frias, the learned Counsel for the petitioner has placed reliance on the provisions of Order XXI, Rule 58 of the Code of Civil Procedure, 1908 (CPC, for short) in order to submit that there is no inquiry conducted by the Executing Court.

Secondly, it is contended that the impugned order does not show that the objection raised by the petitioner has been rejected under the provisions of Rule 58(1) of Order XXI of CPC. It is contended that admittedly, according to the respondents, the Company is under liquidation and the liquidator is also not made a party to the execution proceedings. It is thus contended that the execution proceedings, in the absence of the liquidator as a party, are not competent. It is therefore submitted that the impugned order be set aside and the Executing Court be directed to decide the objection raised by the petitioner, after hearing the parties.

4. Shri Singbal, the learned Counsel for the respondent no. 1(ii)-decree holder and Shri Menezes, the learned Counsel appearing for the respondent nos. 2 and 3 submit that the petitioner has a remedy to challenge the order passed in a civil suit in terms of Rule 58(5) of Order XXI of CPC. It is pointed out that in fact, a suit filed by the petitioner against the respondents as well as the Company, is pending and the petitioner can raise appropriate objection in terms of Rule 58(5) of Order XXI of CPC.

5. Shri Singbal, the learned Counsel for the respondent no. 1(ii)-decree holder submits that the decree holder shall seek impleadment of the liquidator before the Executing Court and an appropriate application in that regard shall be filed.

6. It is submitted by the learned Counsel for the petitioner that during the pendency of the decision on the objection, the petitioner shall not create any third party interest by way of sale, lease or otherwise. The statement is accepted.

7. In view of this, by consent, the petition is disposed of in the following terms:

- (a) The petition is partly allowed.
- (b) The impugned order is hereby set aside.
- (c) The Executing Court shall implead the liquidator as a party to the execution proceedings, on an application being filed in this behalf by the decree holder.
- (d) The Executing Court shall decide the objection dated 14.09.2016 filed by the petitioner, afresh, after hearing the parties and in accordance with law.
- (e) The Executing Court shall decide the objection as expeditiously as possible and preferably within a period of three months from the receipt of this order.
- (f) Rival contentions of the parties are left open.

(g) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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