

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.824 OF 2012

SHRI. CAETANO F.F. DE FIGUIREDO,
SMT. ALMAZA NAZAROFF DE
FIGUEIREDO (DECEASED)
THROUGH HIS LRS., ... Applicant

Versus

CUSTODIAN OF THE BRANCHES
OF BANCO NACIONAL ULTRAMARINO,
REP. BY ITS CUSTODIAN., ... Respondent

Mr. Agnelo F. Diniz, Advocate for the applicant.

Ms. A. Razaq, Advocate for the respondent.

CORAM :- C. V. BHADANG, J.

Date : 8th June, 2017.

ORAL ORDER :

Not on board. Taken on board. Heard finally by
consent of the parties.

2. The brief facts are that the respondent/ decree holder has filed an execution case for execution of a money decree passed in Accao Ordinaria 17805/1963. It appears that initially money decree for Rs.72,773.40 was passed on 20/08/1964. The matter was carried up to Hon'ble Supreme Court where the decree was confirmed. However, the Supreme Court by order dated

13/07/1982 directed the Trial Court to consider the claim of set off raised by the present petitioner/ judgment debtor. It appears that subsequently, a further decree came to be passed on 18/08/1998. A perusal of the Execution Application shows that in clause 8, the respondent/ decree holder had sought execution of the decree dated 18/08/1998. The respondent sought amendment of the Execution Application, in order to include the decree of the year 1964. The respondent sought amendment of clause 8. The said application was allowed by the Executing Court by an order dated 27/08/2012, which is the subject matter of challenge in this petition.

3. It is submitted by Shri Diniz, the learned Counsel for the petitioner that the original decree is of the year 1964, while the Execution Application sought execution of the decree dated 18/08/1998. By the proposed amendment, the decree holder is seeking execution of the decree passed in the year 1964 and as such, the Execution Application would be clearly barred by limitation.

4. It is alternatively submitted that if this Court is not inclined to interfere, the point of limitation may be specifically kept open, to be agitated before the Executing Court.

5. On the contrary, Ms. Razaq, the learned Counsel for the respondent points out that the point of limitation has already been kept open by the Executing Court and thus, no case for interference is made out.

6. I have considered the circumstances and the submissions made.

7. In para 8, the Executing Court has observed thus :

"Amendment is contested mainly on the ground of being bared by limitation. Once the amendments are incorporated in the execution application the judgment debtor would get a chance to file additional reply in which the plea of limitation could be taken and the limitation point could be made subject of issue. In the circumstances, directing amendment proposed shall be effective from the date of application of amendment is allowed is not warranted. Application stands granted. Amendment to be carried out within 7 days from today."

8. Even while deciding this petition, this Court, after noticing the contention on behalf of the petitioner that the bar of limitation is attracted, has observed that this is an arguable issue, which arises and, therefore, appropriate approach in the matter of

this nature was to keep the issue of limitation specifically open.

9. It can, thus, be seen that the Executing Court has kept the point of limitation specifically open, which can be gone into by the Executing Court. I do not find that any case for interference is made out. Writ Petition is, accordingly, dismissed. Needless to mention that the rival contentions on the point of limitation, raised by the parties, are specifically left open, to be agitated before the Executing Court.

10. Parties to appear before the Executing Court on 12/06/2017.

C. V. BHADANG, J.

SMA