

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION (REVIEW) NO. 27 OF 2017
IN
WRIT PETITION NO. 935 OF 2015
WITH

DEVENDRA RAGHURAJ DESHPRABHU ... Applicant

Versus

SITADEVI DESHPRABHU @ JAIA
VALAUCAR R. VASSUDEV PRABHUDESSAI
DESHPRABHU RAU RAJE (DEC) AND 7 ORS., ... Respondents

Shri S. Kantak, Senior Advocate with Shri Julius Nayak, Shri Preetam Talaulikar, Shri Parikshit Sawant and Ms. Aleesha Reis Falcao, Advocates for the Applicant.

CIVIL APPLICATION (REVIEW) NO. 28 OF 2017
IN
WRIT PETITION NO. 934 OF 2015
WITH

SUNITA DEVENDRA DESHPRABHU & ANR. ... Applicants

Versus

SITADEVI DESHPRABHU @ JAIA
VALAUCAR R. VASSUDEV PRABHUDESSAI
DESHPRABHU RAU RAJE (DEC) AND 6 ORS., ... Respondents

Shri Parag Rao with Ms. A. Lobo, Advocates for the Applicants.

CIVIL APPLICATION (REVIEW) NO. 29 OF 2017
IN
WRIT PETITION NO. 32 OF 2016

JITENDRA RAGHURAJ DESHPRABHU ... Applicant

Versus

SITADEVI DESHPRABHU @ JAIA
VALAUCAR R. VASSUDEV PRABHUDESSAI
DESHPRABHU RAU RAJE (DEC) AND 7 ORS., ... Respondents

Shri Parag Rao with Ms. A. Lobo, Advocates for the Applicant.

CORAM:- C.V. BHADANG, J.

DATE:- 6th DECEMBER, 2017.

ORAL ORDER:

This is an application for review of the judgment and order dated 04.10.2016, passed in Writ Petition Nos. 934/2015, 935/2015 and 32/2016.

2. For the limited purpose of deciding the review application, it would not be necessary to set out the facts in details, which otherwise find place in the impugned judgment. Suffice it to mention that the learned Trial Court had refused to grant the application for amendment of the plaint, proposing to introduce a plea that the consent decree (obtained in Special Civil Suit No. 10/1975), is tainted with fraud, *inter alia* on the ground that the petitioners failed to show due diligence as required by the proviso to Order VI, Rule 17 of the Code of Civil

Procedure (Code, for short). In order to demonstrate due diligence and satisfaction with the said proviso, reliance was placed on behalf of the petitioners on the legal advice obtained on 24.07.2015. It was contended that out of inadvertence, the plea of fraud was not raised in the suit. The learned Trial Court has refused to accept that due diligence was shown. This Court in para 32 of the impugned judgment, after noticing the findings recorded by the Trial Court, had come to the conclusion that no exception can be taken to the findings as recorded. This Court found that mere obtaining of legal advice, cannot establish due diligence. This Court also found that if, such ground is accepted, it may afford a convenient mode to a party to circumvent the embargo placed by the provisions of Order VI, Rule 17 of the Code. This Court also noted the well established legal position, that the satisfaction with the requirement of the proviso, is a sine qua non for grant of the amendment, if such an amendment is sought at a stage where the trial has commenced.

3. I have heard Shri Kantak, the learned Senior Counsel for the applicant in Civil Revision Application No. 27/2017 and perused record.

4. On behalf of the applicants, the following two contentions are raised:-

(i) That under Article 348(3) of the Constitution of India, read with Section 5 of the Goa, Daman and Diu (Administration) Act, 1962, the Government is obliged to bring an authoritative English translation of the enactments, if such enactment/law is in language other than English. It is submitted that the local family laws operating here are in Portuguese language. There is no authoritative text brought out by the Government. The contention in short is that on account of this disability, to understand the law, which was in Portuguese language, the applicants were entitled to rely upon the legal advice and this would be sufficient compliance with the proviso to Order VI, Rule 17 of the Code, as the applicants were at a disadvantage on account of the law being in Portuguese language.

(ii) Reliance is placed on an additional affidavit filed on 07.07.2017 i.e. after the filing of the present review application. The affidavit encloses the transcription of the unstarred Question No. 23 at the Goa Legislative Assembly on 17.03.2017, wherein the following questions were posed:

Question: a) Whether the Government is aware that Personal Laws in Goa are governed by the Portuguese Civil Code and have significant

bearings on civil life of Goans ?

Answer: Sir, Yes.

Question: b) Whether the Government is aware that General Public is suffering due to the fact that the Code being in Portuguese language, it is not generally understandable ?

Answer: Yes

Question: c) Whether the Government is aware that there was a Goa Family Code Bill Committee formed to recast the Portuguese Civil Code from Portuguese language to English language, in tune with principles of Indian Constitution judicial interpretations and change in social norms, in the interest of Goans ? and

Answer: Yes

Question: d) Whether the Government will assure to introduce and pass the Goa Family Code Bill ?

Answer: Yes

7. It is pointed out that all these questions were answered in the affirmative. The contention is that the Government was and is aware of the difficulty faced on account of the inability of the authoritative English translation, by the public faced in general and the litigants in particular. Except this, there are no other grounds urged.

8. I have given my anxious consideration to the circumstances and the submissions made and I do not find that

any case for review is made out. At the outset, it is necessary to mention that the ground based on Article 348(3) of the Constitution of India, read with Section 5 of the Goa, Daman and Diu (Administration) Act, 1962, was not raised before the Trial Court. It was for the applicants to demonstrate before the Trial Court that inspite of due diligence, the amendment could not be brought, prior to the commencement of the trial. It was fairly conceded on behalf of the applicants that the grounds as raised in the review application, were not pressed in service before the Trial Court, in order to demonstrate that there is satisfaction with the proviso to Order VI, Rule 17 of the Code. Once the said ground was not raised, this Court would be slow to consider it in a challenge by way of a Writ Petition and more so, while considering the application for review. However, considering the fact that this ground was raised in the Writ Petition, the same can be briefly dealt with.

9. Before considering the ground as raised, it may be mentioned that both the grounds as raised can be said to be connected. Both are on account of the non availability of an authoritative text of Portuguese law. Article 348 of the Constitution of India to the extent relevant, reads thus:-

“348. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc. (1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides-

(a) all proceedings in the Supreme Court and in every High Court,

(b) the authoritative texts

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor of a State, and

(iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State, shall be in the English language.

(2)

(3) Notwithstanding anything in sub-clause (b) of clause (1), where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of that sub-clause, a

translation of the same in the English language published under the authority of the Governor of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this article.”

10. It can thus be seen that under Article 348(1), unless the Parliament by law otherwise provides the authoritative texts of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State, as well as all Acts passed by the Parliament or the Legislature of the State, shall be in English language. Article 348(3) provides for a situation where the Legislature of the State has prescribed any language other than English language, for use in any Bills introduced in or Acts passed by the Legislature of the State.

11. In the State of Goa, the family laws continue to be in Portuguese language. It is also true that there is no authoritative text, published by the Government in English. There are English translations by private authors. A judicial notice of the fact can be taken about such English translation by private authors, being used by parties and relied upon by the Courts in several decisions. The applicants were assisted by

legally trained minds and thus, it cannot be accepted that it was only on 25.07.2015 that it was felt necessary to include the plea of fraud as one of the grounds. In that view of the matter, I do not find that the impugned judgment suffers from any error, apparent on face of the record. The application is without any merit and is accordingly dismissed.

C.V. BHADANG, J.

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