

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 32 OF 2018

IN

WRIT PETITION NO. 776 OF 2017

**JYOTSNA PRAMOD METHA, THR. POA
DEVANG METHA AND ANR.,**

... Applicants

Versus

**ANAND BOSE CONSTRUCTION PVT. LTD.,
REP. BY ITS CHAIRMAN AND M.D.,
ANAND CHANDRA BOSE AND 2 ORS.,**

... Respondents

**Adv. Ulhas Bhagwant Pai Raikar for the Applicants.
Mr. N. Sardesai, Senior Advocate with Adv. Vibhav Rajiv
Amonkar for Respondents no.1**

Coram:- C. V. BHADANG, J.

Date:- 1st November 2018

Oral Order:

This is an application for review of the judgment and order dated 27/4/2018 passed by this Court in Writ Petition no.776 of 2017.

2. I have heard Shri Raikar, the learned counsel for the applicants and Shri Sardesai, the learned Senior Counsel for the respondents. Perused record.

3. The only contention raised by Shri Raikar in so far as the present review application is concerned is that in the consent

terms/deed the requirement of execution of exchange deed was erroneously included. It is submitted that it was a case of a mutual mistake of fact on the ground that the superstructure on the land which was belonging to the applicant was constructed with the funds of the applicants.

4. Shri Sardesai, the learned Senior Counsel for the respondent has submitted that this Court has already found in para 23 of the judgment under review that it cannot be accepted that because the land was belonging to the applicants there was no question of execution of the exchange deed in respect of certain tenements/units, as has been agreed in the consent terms.

5. I have considered the circumstances and the submissions made and I do not find that the judgment under review demonstrates any error apparent on the face of the record. It was not disputed during the course of the arguments at bar that as per the agreement dated 11/1/2010 the applicant/vendors did not contribute towards the construction which was to be undertaken on the land. The consideration in respect of the land which was agreed to be paid to the applicant was partly in cash and partly by handing over certain units, which part of the agreement has already been complied with. In such circumstances, this court found that it is not possible to accept the contention on behalf of the applicants that because the land was belonging to the

applicants there was no question of execution of the exchange deed in respect of certain tenements/units. This is a finding recorded after hearing the parties. If at all the applicants are aggrieved by any such finding, the remedy of the applicants, if any, lies elsewhere. It is further significant to note that while deciding writ petition no.776/2017 this Court has expressed that the issue of executability of the decree which is raised under section 47 of C.P.C shall be gone into by the Executing Court independently. In that view of the matter, no case for review of the order is made out. The application is dismissed with no order as to costs. Needless to mention that the Executing Court shall proceed to decide the execution application as expeditiously as possible. Parties to cooperate for early disposal of the application.

C. V. BHADANG, J.

ap/-