

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 694 OF 2015**

MRS. TESSIE RODRICKS, REP. THROUGH
MR. ANAND VAMAN KANDOLKAR ... PETITIONER

Versus

MRS. MERLENE VITOR & 11
OTHERS., ... RESPONDENTS

Shri Anthony D'Silva, Advocate for the Petitioner.

Shri Sudin Usgaonkar, Senior Advocate with Ms. Vinita Palyekar,
Advocate for the Respondent Nos. 1 to 4.

CORAM : C.V. BHADANG, J.

Date : 28th MARCH 2018

ORAL ORDER:

This petition can be disposed off on a short count. The petition arises out of inventory proceedings. The respondents had filed Miscellaneous Civil Appeal No. 29/2014, before the learned District Judge, challenging the order dated 06.02.2014, passed by the Inventory Court. The Inventory Court, by the said order, had rejected an application filed by the respondents/interested parties to annul the auction conducted in their absence.

The learned District Judge by judgment and order dated 31.07.2015 has allowed the appeal and consequently, the auction conducted has been annulled and the respondents have

been allowed to take part in the fresh auction. Feeling aggrieved, the petitioner is before this Court.

2. I have heard Shri D'Silva, the learned Counsel for the petitioner and Shri Usgaonkar, the learned Senior Counsel for the respondent nos. 1 to 4. Perused record.

3. It would not be necessary to deal with the various submissions advanced, as in my considered view, the petition has to succeed, for the reason that no opportunity of personal hearing was granted by the learned District Judge, while deciding Miscellaneous Civil Appeal No. 29/2014.

4. The learned Counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of **Prakash Ratan Sinha Vs. State of Bihar and Others, (2009) 14 SCC 690** and in the case of **Automotive Tyre Manufacturers Association Vs. Designated Authority and Others, (2011) 2 SCC 258**. Reliance is also placed on the decision of this Court in the case of **Celina Almeida Vs. Minister of Urban Development, Goa and Others, 2013(4) Mah. L.J. 53** and **Mr. Antonio Jose da Silva (since deceased) Vs. M/s Horizon Realtors**, Second Appeal No. 149/2013 decided on 04.07.2014, in order to submit that written

submissions cannot be a substitute to oral arguments and an opportunity of oral hearing is a valuable right, which affords a party an opportunity for clarification or to clear any doubt.

5. Shri Usgaonkar, the learned Senior Counsel for the respondent nos. 1 to 4 has submitted that the petitioner has not shown whether, there are any grounds or contentions, which they want to raise, other than those, which were mentioned in the written submissions and in the absence thereof, it would be a futile exercise to send the matter back. It is submitted that the material question is whether, the respondents/interested parties were duly served, during the course of the inventory proceedings and if not, no exception can be taken to the impugned judgment, granting such opportunity.

6. I have carefully considered the submissions made by the learned Counsel for the parties. A perusal of the impugned judgment shows that the respondents (appellants before the learned District Judge) had filed written submissions. The petitioner no. 1 (respondent no. 1 before the learned District Judge) had also filed written submissions. The rest of the respondent nos. 2 to 9, before the learned District Judge, were ex-parte.

7. A perusal of the judgment would make it explicit that the learned District Judge had not heard the oral arguments and the appeal came to be decided, based on the written submissions. This Court in the case of **Mr. Antonio Jose da Silva** (supra), after taking note of the decision of the Hon'ble Supreme Court in the case of **Prakash Ratan Sinha** (supra) and **Automotive Tyre Manufacturers Association** (supra) and the decision of this Court in the case of **Celina Almeida** (supra) has observed that written submissions cannot be a substitute to oral arguments and it was found that the Appellate Court was not justified in passing a judgment, as the parties were not given adequate hearing to advance their respective contentions.

8. The Supreme Court has held that during the course of the oral submissions a party has an opportunity for clarification or clear any doubt and this is how, it is held that written submissions cannot be a substitute to oral submissions.

9. In that view of the matter and looking to the fact that the learned District Judge had not heard oral arguments, I find it appropriate to remit the matter back to the learned District Judge, for deciding it afresh, in accordance with law, after affording opportunity to the parties to be heard.

10. In the result, the petition is partly allowed. The impugned judgment and order is hereby set aside. The Miscellaneous Civil Appeal No. 29/2014 is restored to the file of the learned District Judge at Mapusa, for deciding it afresh in accordance with law. Rival contentions of the parties are left open. The parties to remain present before the learned District Judge at Mapusa on 16.04.2018 at 10:00 a.m.

C.V. BHADANG, J.

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