

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 1116 OF 2017

REMINIA MASCARENHAS E GONSALVES ... PETITIONER

Versus

BENJAMIN POBRE GONSALVES & ANR. ... RESPONDENTS

Shri Devidas J. Pangam, Advocate for the Petitioner.

Shri Jagannath J. Mulgaonkar, Advocate for the Respondent No.1.

CORAM : C.V. BHADANG, J.

Date : 14th MARCH 2018

ORAL ORDER:

The challenge in this petition is to the order dated 30.11.2017, passed by the learned District Judge at Mapusa, in Regular Civil Appeal No. 38/2017. By the impugned order, the learned District Judge has partly allowed the application at Exhibit-8, filed by the respondent no. 1, thereby permitting withdrawal of Rs.2 lakhs, from an amount deposited before the District Court, subject to certain conditions.

2. The brief facts are that the petitioner is the wife of the respondent no. 1. The respondent no. 1 filed a suit against the petitioner for a declaration that the respondent no. 1 had withdrawn an amount of Rs.8,50,000/-, from the joint account of

the petitioner and the respondent no. 1, with State Bank of India, Mapusa and from restraining the respondent no. 2-State Bank of India, Mapusa from paying an amount of Rs.8,50,000/- from the NRE/TDRS to the petitioner.

3. The case made out by the respondent no. 1 was that the petitioner had fabricated a letter, on the basis of which, she managed to transfer a sum of Rs. 9 lakhs from the account of respondent no. 1, with the Syndicate Bank, Margao to the joint account of the petitioner and the respondent no. 1, with State Bank of India, Mapusa. The said amount, according to the respondent no. 1, was received by him as compensation from United Nations Compensation Commission on account of the loss suffered by him due to Iraq-Kuwait war.

4. The petitioner resisted the suit. It was contended that the sister of the petitioner, Mrs. Arcanja had given financial assistance to the respondent no. 1, of an amount of Rs.9 lakhs and the aforesaid amount was transferred by the respondent no. 1 to the joint account, so as to facilitate the withdrawal of the sum and the said amount was to be paid back to Mrs. Arcanja. It was contended that Mrs. Arcanja however, told the petitioner that she may retain the amount. It was thus contended that the

amount now belongs to the petitioner.

5. The learned Trial Court came to the conclusion that the letter dated 05.03.2002 (Exhibit-PW-1/C-46) was written by the respondent no. 1 and the letter also found a mention that the petitioner's sister had helped the respondent no. 1 and he was to pay the petitioner's sister an amount of Rs.9 lakhs. The respondent no. 1 had also instructed petitioner to make the payment to her sister, when the money was transferred with the State Bank of India, Mapusa.

6. The Trial Court also came to the conclusion that the respondent no. 1 has proved that an amount of Rs.8,50,000/- was withdrawn by the petitioner, which belongs to the respondent no. 1. However, the learned Trial Court found that the petitioner has to maintain herself and three children and her daughters have become major and her son is on the verge of attaining majority. The Trial Court also noticed that the respondent was unemployed. The learned Trial Court found that the amount of Rs.8,50,000/- can be equally shared by the petitioner and the respondent no. 1. Accordingly, the suit came to be partly decreed in the aforesaid terms. Feeling aggrieved, the petitioner has challenged the same in appeal before the learned District

Judge, which is pending.

7. In appeal, the respondent no. 1 filed an application (Exhibit-8), seeking withdrawal of an amount of Rs.3 lakhs, on the ground that he is required to pay the outstanding medical bills and to incur medical expenses on his ongoing medical treatment.

8. The learned District Judge after noticing the fact that this Court had allowed the petitioner to withdraw an amount of Rs.2 lakhs vide order dated 05.04.2011, passed in Writ Petition No. 275/2010 and after taking a note of the fact that the respondent no. 1 is required to clear the hospital bills as per the certificate dated 16.08.2017, has permitted the respondent no. 1 to withdraw an amount of Rs.2 lakhs, subject to giving an undertaking that, in the event, the petitioner (appellant before the learned District Judge) succeeds in the appeal, the respondent no. 1 shall deposit the amount before the District Court, within a period of 12 weeks from the date of the order. Feeling aggrieved, the petitioner is before this Court.

9. I have heard Shri Pangam, the learned Counsel for the petitioner and the Shri Mulgaonkar, the learned Counsel for the

respondent no. 1.

10. It is submitted by Shri Pangam, the learned Counsel for the petitioner that the entire amount belongs to the petitioner, as her sister Mrs. Arcanja had permitted her to retain the amount and thus, the Trial Court was in error in directing distribution of the amount equally between the petitioner and the respondent no. 1. It is submitted that if, the amount is paid to the respondent no. 1, it will be difficult if not impossible, for the petitioner to recover the amount, as respondent no. 1 is unemployed.

11. On the contrary, it is submitted by Shri Mulgaonkar, the learned Counsel for the respondent no. 1 that the order passed by the learned Trial Court is equitable in nature, which does not require interference. It is submitted that even according to the petitioner, the amount was transferred to the joint account, for being paid to Mrs. Arcanja. It is submitted that after the petitioner having withdrawn Rs.8,50,000/-, has failed to pay the amount to Mrs. Arcanja. The learned Counsel has submitted that Mrs. Arcanja has not been examined by the petitioner before the Trial Court and thus, it cannot be accepted that the amount has been allowed to be retained or would belong

to the petitioner. He submits that the petitioner has also withdrawn an amount of Rs.2 lakhs for her personal needs and now cannot oppose the withdrawal by the respondent no. 1.

12. The learned Counsel has made an alternate submission. It is submitted that there are Term Deposits Receipts (TDR), in the name of the respondent no. 1 worth Rs.11,18,525/- lying with the State Bank of India, Mapusa. It is submitted that the petitioner has objected for the amount of said TDR being withdrawn by the respondent no. 1. It is submitted that if, the petitioner gives no objection for withdrawal of that TDR, the respondent no. 1 will not insist for withdrawal of the amount of Rs.2 lakhs, lying before the District Court.

13. The learned Counsel for the petitioner had sought time to take instructions and has reverted back today. It is submitted that the petitioner has objection for withdrawal of the TDR for the reason that the said amount is meant for maintenance of the children. Be that as it may, in the circumstances, the petition is required to be decided on its own merits. On hearing the learned Counsel for the parties, I find that no case for interference is made out.

14. According to the petitioner herself, the amount was transferred to the joint account of the petitioner and the respondent no. 1, with the State Bank of India, Mapusa for being paid to Mrs. Arcanja, the sister of the petitioner. Admittedly, the amount has not been paid to Mrs. Arcanja, purportedly for the reason that Mrs. Arcanja had allowed the petitioner to retain the same. Mrs. Arcanja is not examined before the Trial Court. The Trial Court in such circumstances has held that the amount would equally belong to the petitioner and the respondent no. 1. The petitioner herself was permitted to withdraw Rs.2 lakhs by this Court vide order dated 05.04.2011, passed in Writ Petition No. 275/2010. The respondent no. 1 has produced a certificate from the concerned hospital to show that he needs the amount for his medical treatment. The learned District Judge has allowed the withdrawal, subject to the condition that the respondent no. 1 shall give an undertaking that he will bring back the amount, if the appeal is allowed.

15. Considering the overall circumstances, the impugned order cannot be said to be illegal or unjust or one which would result into manifest injustice to the petitioner. The petition is without any merit and is accordingly dismissed with no order as to costs. It is made clear that the observations herein are for the

limited purpose of examining the challenge to the impugned order. The learned District Judge shall decide the appeal as expeditiously as possible and preferably within a period of three months from the date of the receipt, on its own merits and in accordance with law.

C.V. BHADANG, J.

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