IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 1 OF 2018

1. Mrs. Tulsi Ramnath Naik
Wife of late Mr. Ramnath Naik,
Major in age, Indian National,
Housewife, Resident of H. No.656/A
Gogol, Margao, Goa. and 7 others. .... Petitioners

V e r s u s

1. Mr. Gaurang Suctancar,
son of late Manguesh Suctancar,
Age 43 years, Indian National,
Business, Resident of Risara House,
Vaudev Dempo Marg, Tonca, Caranzalem,
Goa and 7 others. ..... Respondents.

Mr. Jagannath Jayant Mulgaonkar, Advocate for the Petitioners.

Mr. Shivan Desai, Advocate with Adv. Jatin Ramaiya for Respondent no.1.

Coram:- C. V. BHADANG, J.
Date:- 11th January 2018.

Oral Order:

Heard Shri Mulgaonkar, the learned counsel for the Petitioners and Shri Desai, the learned counsel for the Respondent no.1/Decree Holder.

2. The challenge in this civil revision application is to the order dated 7/9/2017 passed by the Executing Court in Regular Execution Application

No.109/2016/G. By the impugned order, the Executing Court has dismissed the objection raised by the Petitioner/Judgment Debtor to the execution of a consent decree.

3. Indisputably there is a consent decree passed in Special Civil Suit No.122/05/A on 29/10/2005 which is sought to be executed by the first respondent. The first respondent had retired from the partnership on 30/7/2012 and under the said Retirement Deed, the rights to the disputed property were assigned in favour of the first respondent. The consent decree shows that there are mutual rights and obligations created. The execution was sought to be objected on various grounds which have been negatived by the executing court.

4. The learned counsel for the petitioners has raised the following contentions:

(i) That the Retirement Deed if it purports to assign or transfer the rights in the subject property, it requires registration.

(ii) That the decree sought to be executed being in the nature of a decree for mandatory injunction the period for limitation for filing execution was three years and thus the execution application filed in 2017 to execute the decree of 2005 is barred by limitation.

(iii) The defendant no.5, Master Akshay Naik was a minor when the consent terms were executed and in the absence of an appointment of his guardian ad litem, the consent decree would be void.

Except this, there are no other contentions raised.

5. At the outset it is necessary to mention that the last mentioned objection on the basis of the original defendant no.5 (Mast. Akshay Naik) being a minor was neither raised when the consent terms were recorded nor before the Executing Court. They are sought to be raised for the first time before this Court on the ground that it being a matter which goes to the root of the executability of the decree can be allowed to be raised. In this regard it is significant to note that the petitioners have only produced the consent decree which incorporates the consent terms. The actual consent terms executed between the parties in the trial court have not been produced. Indisputably the father of minor Akshay Naik was dead when the consent terms were executed. The defendant no.4 (Smt. Anu Naik) is the mother of master Akshay Naik. There is nothing on record to show that Smt. Anu Naik had refused to act as a guardian, she being the natural guardian of the minor, nor it is alleged or shown that the interest of Anu Naik was adverse to Master Akshay Naik. In such circumstances and further having regard to the fact that this objection was never raised when the consent terms were executed nor

before the Executing Court in my considered view cannot be accepted.

6) Coming to the first contention about the registration of the Deed of retirement, it is essentially a deed under which the respondent no.1 had retired from the partnership and the partners inter se had made an arrangement regarding the subject property which was assigned in favour of M/s. Prudential Developers. A specific query was made to the learned counsel for the petitioners to show the provisions of the Registration Act under which a decree of the present nature, is a compulsory registrable document so such provision was pointed out. The learned counsel for the petitioner does not dispute that a deed of retirement simplicitor would not be a document which is compulsorily registerable. The submission is that if it purports to convey property then it would require registration as a conveyance. The contention cannot be accepted. As noticed earlier, it is primarily a deed of retirement in which the partners inter se have made arrangements as to how the subject property is to be dealt with.

7) Coming to the third contention, the decree is essentially in the nature of a decree for specific performance where there are mutual rights and obligations created and it cannot be said to be a decree for mandatory injunction. Clause (e) of the Consent terms specifically records that the two

structures, shall be fully completed by the plaintiffs or their nominees within thirty months from the date of the consent terms and upon obtaining the occupancy certificate thereto from the Margao Municipal Council, the plaintiff shall notify the concerned defendant about the completion of concerned structures, and upon their satisfaction of the construction as per terms agreed, shall record such satisfaction in writing and take from the plaintiffs or their nominee/s the possession of the structures under a written acknowledgment.

8) It can thus be seen that although the construction work was to be completed within thirty months from the date of the consent terms, the handing over of the possession was further subject to obtaining occupancy certificate from the Margao Municipal Council. It is undisputed that the respondent no.1 has obtained the occupancy certificate only in the year 2015. It is further apparent from the record that the execution is filed within 12 years of the consent decree. In such circumstances the objection on the ground of limitation also in my considered view cannot be accepted.

9) During the course of the arguments, it was submitted by the learned counsel for the respondent no.1 that the respondent no.1 having obtained the occupancy certificate is ready and willing to hand over the possession of the

two structures to the petitioners as agreed under the consent terms. It is difficult to understand why the petitioners have reservations in obtaining the possession of the new structures which are fully ready and even the occupancy certificate in respect of the same has been obtained. The petitioners are trying to obstruct the execution of a decree passed way back in the year 2005 and that too, on the basis of the consent terms. I have carefully gone through the impugned order and I do not find that it suffers from any jurisdictional error requiring interference. The Revision application is without any merits and is accordingly dismissed.

C. V. BHADANG, J.

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