

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 329 OF 2019**

**INDUSIND BANK LTD., REP. BY ITS
DEPUTY MANAGER., SIDDHARAT KADAM., ... Petitioner**

Versus

**AVINASH N. MALWANKAR (DEC) AND 4
ORS., ... Respondents**

Adv. A. D. Bhobe with Advs. Mr. Vishwadh Sardessai, Mr. V. Gadnis and
Ms. K. Govekar for the Petitioner.

Adv. Kaif Noorani under legal aid for Respondent Nos.2, 3 & 4.

Respondent no.3 present in person.

**Coram:- C. V. BHADANG, J.
Date:- 11th June 2019.**

Oral Order:

The challenge in this petition is to the order dated 6/3/2019 by which the Executing Court, has issued a warrant of arrest against the Branch Manager of the petitioner, bank.

2. Indisputably the petitioner had challenged the decree which is sought to be executed before the Executing Court, by filing Regular Civil Appeal no.103/2013. It appears that Mr. Avinash N. Malwankar, Respondent no.1, who was the sole plaintiff, expired on 7/1/2016. The petitioner despite of all

efforts could not ascertain the legal representatives of the first respondent, as a result of which, the appeal came to be disposed off as abated. The Execution case filed by the first respondent was also disposed off for want of the legal representatives of the decree holder being brought on record. Subsequently the legal representatives of the first respondent brought themselves on record in the execution case, and in the said execution the impugned order dated 6/3/2019 is passed.

3. Mr. Bhobe, the learned counsel for the petitioner points out that the petitioner has filed an application for setting aside abatement of the appeal along with an application for condonation of delay, which is pending before the appellate court. It is pointed out that in the appeal there is also an application for stay pending.

4. Be that as it may, the record discloses that the petitioner, bank has already deposited the principal amount of the decree before the District Court and amount of Rs.2,08,050/- has been deposited before this Court, which is towards interest.

5. Mr. Noorani, the learned counsel for the respondents, on instructions from the respondent no.3, who is personally present before the Court has an

alternate submission to make. It is submitted that in the event this Court is inclined to entertain the petition favourably, the learned District Judge may be directed to decide the appeal filed by the appellant in a time bound manner. The learned counsel submitted that the respondents have no objection for grant of C.M.A. No.58/2018 which is pending before the learned District Judge.

6. Considering the overall circumstances and having regard to the fact that a substantial portion of the decretal amount has already been deposited, the impugned order in my considered view cannot be sustained. The petition is accordingly allowed. The impugned order is hereby set aside. In the circumstances, there shall be no order as to costs.

7. The learned District Judge shall pass appropriate orders on C.M.A No.58/2018, in view of the concession as recorded on behalf of the respondents herein.

8. The learned District Judge shall then proceed to decide Regular Civil Appeal no.103/2013 and the application for stay on its own merits and in accordance with law as expeditiously as possible.

9. The amount deposited before this Court along with interest, if any, shall be made over to the Court of the learned District Judge at Mapusa. The disbursement of the amount before the learned District Judge shall be subject to the final outcome of the appeal.

C. V. BHADANG, J.

Ap/-