

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO.835 OF 2018
IN
FRIST APPEAL NO. 6 OF 2010

Sociedade Agricola Dos Gauncares
de Cuncolim e Veroda & anr. Applicants.

Versus
Kantu Shankar Dessai & anr. Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Mr. J.U. Karn, Advocate for
the Applicants.

Mr. Sudesh Usgaonkar, with Ms. R. Pereira, Advocate for the
Respondents.

***Coram : M.S. Sonak &
Prithviraj K. Chavan, JJ.***

Date : 5 March 2019.

P.C.:

1. Heard Mr. S.D. Lotlikar, learned Senior Advocate with Mr. J. Karn, Advocate for the Applicants and Mr. Sudesh Usgaonkar, with Ms. R. Pereira, Advocate for the Respondents.

2. By this application, the Applicants, who are the original Respondents in First Appeal No.6 of 2010, seek the following reliefs :

“(a) The stay granted by the order dated 04.08.2010 passed in Civil Application No.19 of 2010 be vacated.

(b) The appellant may be directed to deposit the entire

amount in arrears at the rate of Rs.60,000 per year for the period from 2012 till the handing over of the possession of the suit property to the respondent with interest at such rate as this Hon'ble Court may deem fit to fix.”

3. The relief for vacation of the stay granted by the order dated 4.8.2010 is applied for on the following two grounds :

- (i) That the Respondents (original Appellants) have defaulted in deposit at the rate of Rs.60,000/- per year from 2012 onwards; and
- (ii) That in breach of the condition, subject to which the stay was granted, the Respondents (original Appellants) have carried out the development/excavation work in the suit property.

4. In so far as the issue of deposit is concerned, there is no dispute that from the year 2012 onwards the amount of Rs.60,000/- per year, was not deposited. However, after this application was filed, the amount has been deposited in this Court. Mr. Usgaonkar, points out that the deposits made are upto the period 31 March 2019. He submits that the Respondents (original Appellants) were in severe financial difficulties due to closing down of mining operations and, therefore, there was default. Mr. Usgaonkar submits that on this ground, the stay order may not be vacated.

5. Although, we do not propose to vacate the stay order on the aforesaid grounds, it is only appropriate that the Respondents

(original Appellants) pay interest at the rate of 7.5 % per annum, on the defaulted amount and for the defaulted period. The interest amount to be deposited within a period of 8 weeks from today. In case, this interest amount is not deposited within the period of 8 weeks from today, then, the stay granted by order dated 4.8.2010 to stand vacated, without any further reference to this Court.

6. So far as second ground is concerned, by our order dated 28.1.2019, we had appointed Mr. Arun Talaulikar, Advocate of this Court as the Court Commissioner. The Court Commissioner has, now, given his report dated 25.2.2019, along with photographs. On the basis of the report and the photographs which accompany, we cannot say that the condition imposed by us has been breached. In any case, we direct the Respondents (original Appellants) to ensure that the condition imposed by us in our order dated 4.8.2010 is strictly complied with, so that there is no cause for any complain, in future.

7. We find that the compensation at the rate of Rs.60,000/- per year was determined way back in the year 2010. Now that almost 9 years have elapsed, we feel that the Respondents (original Appellants) should, during the pendency of this Appeal, deposit compensation at the rate of Rs.1,00,000/- per year. This will apply from 1 April 2019.

8. The Misc. Civil Application is disposed of in the aforesaid terms.

(Prithviraj K. Chavan, J.)

(M.S. Sonak, J.)