

IN THE HIGH COURT OF BOMBAY AT GOA

MICELLANEOUS CIVIL APPLICATION NO.839/2019
IN
FIRST APPEAL NO.125/2015

ERIC D'SOUZA AND OTHERS Applicants

Versus

SALDANHA DEVELOPERS
PVT. LTD. REPRESENTED BY
ITS M.D., BENEDICT SALDANHA
AND ANOTHER. Respondents

Mr. Preetam Talaulikar, Advocate for the Applicants.

Mr. J. E. Coelho Pereira, Senior Advocate along with Ms. S. Dewani,
Advocate for Respondent No.1.

Coram:- M.S. SONAK &
SMT. M. S. JAWALKAR, JJ.

Date:- 20th January, 2020

P. C.:

Heard Mr. Preetam Talaulikar for the applicants and Mr. J. E. Coelho Pereira, Senior Advocate along with Ms. S. Dewani, Advocate for respondent no.1.

2. By this application, the respondents in First Appeal No.125/2015 seek withdrawal of the amount deposited by the original appellant in terms of order dated 19.06.2017 passed in Civil Application No.270/2015 by this Court.

3. Initially, a similar application was made by these very applicants which came to be dismissed by order dated 05.09.2018 because, the applicants had merely stated that they have financial difficulties without providing any details. The original appellant had in fact pointed out that the applicants have reserves of almost ₹26 lakhs and this fact was not disclosed, whilst raising the plea of financial difficulties.

4. On this occasion, some details have been furnished by the applicants. However, on the ground of financial difficulties, we are not prepared to permit the applicants to withdraw any amounts taking into consideration our order dated 05.09.2018.

5. However, Mr. Talaulikar, has pointed out that the original appellant in paragraph 21 of the Written Statement filed in the Suit had admitted that an amount of ₹8,81,000/- is payable to the applicants. He therefore submits that withdrawal may be permitted to this extent along with accrued interest thereon.

6. Mr. J. E. Coelho Pereira, learned Senior Advocate for the original appellant submits that this application is barred by principle of *res judicata*. He submits that the applicants have questioned the impugned judgment and decree on the ground that the learned Trial Judge had no jurisdiction to entertain the suit, which had to be referred to the Registrar in terms of Section 83 of the Goa Cooperative Societies Act, 2001. He therefore submits that the pleadings in paragraph 21 were without prejudice to the basic contention that the learned Trial Judge lacked jurisdiction in the matter.

7. In paragraph 21 of the Written Statement, the appellant had pleaded as follows:

“ The contents of para 15 are denied. The accounts submitted are audited accounts by reputed chartered Accountants and no manipulation of expenses is done. Enclosed copy of audited Accounts (refer attached Enclosure No.6) The figure of Rs.37.96 lakhs stated by the Plaintiff upto 31/3/2001 is baseless. The amount due to the society as on 31/3/2001 was rs.17,15,972/- and further an amount of more than Rs.8.00 lakhs is paid to the society. The balance amount payable to them is around Rs.8.81.000/- as of now.”

8. In view of the aforesaid pleadings, there can be no difficulty in permitting the applicants to withdraw the amount of ₹8,81,000/-. Since, the Written Statement was filed in the year 2008, we feel that it will be appropriate if the applicants are permitted to withdraw

consolidated amount of ₹9 lakhs from out of the amounts deposited by the appellant in this Court.

9. We therefore permit the applicant no.7 i.e. Annette Beach Apartments Co-operative Housing Society Limited to withdraw an amount of ₹9 lakhs from the amount deposited by the original appellant. Such withdrawal shall be subject to the Secretary of the applicant no.7 Society filing an undertaking on behalf of the Society that this withdrawal shall abide by the final order in the Appeal. This means that if ultimately, the applicants are required to bring back this amount with interest, the applicant no.7 Society will do so. Copy of such undertaking to be furnished to the learned counsel for the original appellant before the same is filed in the Registry.

10. Subject to the aforesaid, the application for withdrawal is allowed to the extent of ₹9 lakhs only.

11. This application is disposed of in the aforesaid terms.

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.