

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 68 OF 2015

WITH

CROSS OBJECTION NO.10 OF 2016

Mrs. Vishaya Abdulla,
wife of Mr. Kombantavida Abdulla,
aged 57 years, married,
Indian National, resident of
H.No.1764, Behind Sai Service,
Alto Porvorim, Bardez Goa.

...Appellant.

Versus

1. The Mapusa Urban Co-operative
Bank of Goa Ltd., represented by its
Authorised Officer, Mapusa Branch,
having office at Nandadeep,
Mapusa, Bardez, Goa.
2. The Branch Manager,
The Mapusa Urban Co-operative
Bank of Goa Ltd., Panaji-Goa Branch,
'Akash Bhavan' Opp 18th June Road,
Panaji-Goa.
3. The Recovery Officer, of Mapusa
Urban Co-operative Bank of Goa Ltd.,
Panaji-Goa Branch,
Mapusa Branch, having office at
'Nandadeep', Mapusa, Bardez-Goa.
4. Mr. Shrikant Gowda, son of
major of age, and his wife

5. Mrs. Manisha S. Gowda,
Wife of Mr. Shrikant Gowda,
major of age, both resident of
Model complex, Flat No3,
Bldg. No.5 Taleigao, Goa.

6. Mr. Kombantavida Abdulla,
son of Mr. V. Mammo,
major of age, resident of
Fountainhas, Panjim Goa.

.... Respondents.

Mr. Amey S. Kakodkar with Mr. P. Shirodkar, Advocates for the Appellants.

Mr. J. P. Mulgaonkar, Senior Advocate with Ms. Rupa Banaulikar, Advocate for the Respondents No.1 to 3.

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...Cross Objectitioner.

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son of Mr. V. Mammo,
major of age, resident of Fountainhas, Panjim Goa.

.... Respondents.

Mr. J. P. Mulgaonkar, Senior Advocate with Ms. Rupa Banaulikar, Advocate for the Cross Objectitioner.

Mr. Amey S. Kakodkar with Mr. P. Shirodkar, Advocates for the Original Appellant.

Coram : M. S. SONAK, J.

Date : 01st October, 2020

ORAL JUDGMENT:

Heard Mr. Amey S. Kakodkar, learned Counsel for the appellant and Mr. J. P. Mulgaonkar, learned Senior Advocate alongwith Ms. Rupa Banaulikar, learned Counsel for the Respondents No.1 to 3.

2. The challenge in this appeal is to the order dated 16.11.2015 made by the learned Civil Judge, Senior Division, 'A' Court, Bicholim, in Special Civil Suit No. 12/2013/A dismissing the appellant's-plaintiff's application for interim reliefs on the ground that the application, may not be maintainable in view of the bar content in Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the said Act). However, the impugned order, was in fact, inter alia that the appellant-plaintiff has made out any case for grant of interim relief and that such interim reliefs was partly granted mainly on account of bar jurisdiction under Section 34 of the said Act.

3. As against the findings in the impugned order, that the appellant has made out prima facie case, the respondent Bank has filed cross objections.

4. On hearing the learned Counsel for the parties, it is apparent that the view taken by the learned Civil Judge is quite consistent with the decisions of the Hon'ble Apex Court in the case of *Jadgish Singh v/s. Heerlal & Ors.*¹ as well as *Shree Anandhakumar Mills Limited v/s. Indian Overseas Bank & Ors.*² insofar as the issue of jurisdiction is concerned. In view of these 2 later decisions, there is really no case made out to interfere with the impugned judgment and order and the appeal from order No.68 of 2015 is, therefore, required to be dismissed.

5. Insofar as the cross-objections are concerned, though technically, they survive, the interest of justice will be satisfied if, the observations made in the impugned judgment and order are not taken into consideration at the stage of final disposal of the suit or before any other forum where the appellant may institute proceedings for seeking substantive or interim reliefs.

6. Accordingly, the impugned order is not interfered with. However, it is clarified that the observations in the impugned order need not influence the trial court itself at the state of final disposal of the suit or any other forum before which the appellant may institute proceedings for seeking substantive or interim reliefs. The proceedings will have to be disposed of on its own merits and in

¹ 2014 1 SCC 479

² 2019 14 SCC 788

accordance with law.

7. Mr. Kakodkar, learned Counsel for the appellant states that there has been interim relief in operation right from 5th August 2016. He therefore prays that the interim relief may be continued for 6 weeks as the appellant, may have to consider instituting proceedings before the DRT which is situated at Mumbai. He points out that in the case of *Shree Anandhakumar Mills Limited* (supra) the Hon'ble Apex Court, even after coming to the conclusion that Section 34 of the said Act was indeed attracted, granted protection for about 45 days.

8. Taking into consideration the circumstance that the interim relief is in operation right from August 2016, the same is extended by a period of 6 weeks. However, it is once again clarified that the extension also need not influence the DRT, which will, have to decide the issue of substantive as well as interim relief on its own merits and in accordance with law. The extension is granted taking into consideration the current pandemic situation and the fact that the DRT is situated at Mumbai.

9. Though, the interim order is extended by a period of 6 weeks, such extension is only partial. This means that there shall no longer be a restraint on the learned Trial Judge for hearing and disposing of the application under Order 7 Rule 11 of the CPC

moved by and on behalf of the respondents.

10. With the aforesaid clarifications, the appeal from order as well as the cross objections therein are disposed of.

11. There shall be no order as to costs.

12. All concerned to act on the basis of the authenticated copy of this Order.

M. S. SONAK, J.

msr.