

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 67 OF 2020

Shri Agnelo Fernandes (sd)

Through Lrs.

a) Catarina Fernandes,
w/o. Late Agnelo Feliciano Filomeno
Fernandes, 71 years of age,
Senior Indian Citizen,
(Power of Attorney of Petitioner
No.1(b) and 1(c).

b) Peter Lambert Fernandes,
s/o late Agnelo Feliciano Filomeno
Fernandes, 42 years of age.

c) Sandra Benita Martha Fernandes
s/o late Agnelo Feliciano Filomeno
Fernandes, 43 years of age.

d) Olinda Candice Fernandes
s/o late Agnelo Feliciano Filomeno
Fernandes, 39 years of age.

e) Candolin Fernandes
s/o late Agnelo Feliciano Filomeno
Fernandes, 33 years of age.

All r/o. H. No. 291/1,
4th ward, Colva
Salcete, Goa.

..... Petitioners

V e r s u s

M/s. Sea Queen Beach Resort Pvt. Ltd.
Colva Salcete Goa

Represented by

Shri V. K. Bali

General Power of Attorney Holder
of Shri Gurmit Singh

Director of Company

r/o.H.No, 684, E & F Block,

Kuvempunagar Mysore

..... Respondents

Mr. Sapresh Devidas and Mr. Balkrishna Prakash Sardessai, Advocates for the Petitioners.

Mr. Jatin Ramaiya, Advocate for the Respondents.

Coram :- M. S. SONAK, J.

Date : 22nd June, 2021

ORAL JUDGMENT

1. Heard Mr. Sapresh Devidas, learned Counsel for the Petitioners and Mr. Jatin Ramaiya, learned Counsel for the Respondents.

2. Rule. Rule is made returnable forthwith at the request and with the consent of learned Counsel for the parties. Learned Counsel for the Respondents waives notice.

3. The challenge in this petition is to the order dated 18.02.2020 made by the Civil Judge Junior Division (executing court) ordering the Bailiff to execute the Judgment and Decree dated 19.08.2017 made in Regular Civil Suit No. 433/2010/II which was made exparte.

4. Mr Devidas, the learned Counsel for the Petitioner pointed out that way back on 12.02.2018 itself, the Petitioner has filed an application for setting aside the exparte decree along with an application for condonation of delay. He pointed out that these applications are now posted for consideration before the Civil Court on 09.07.2021. He submits that pending the decision on these applications, the executing Court ought not have proceeded with the execution, as otherwise, the application for setting aside the exparte decree will be rendered virtually infructuous. He submits that sufficient cause has been shown by the Petitioners both for condonation of delay and for setting aside the exparte order. He points out to the order made by this Court on 11.02.2020 at the ad-interim stage and submits that the same is liable to be made absolute.

5. Mr. Jatin Ramaiya, the learned Counsel for the Respondents, submits that the suit was instituted way back in the year 2008. He submits that merely because an application for setting aside of *ex parte* decree is pending, that would not preclude the executing Court from proceeding with the execution. He submits that no stay was granted by the Court restraining the execution proceedings. He submits that there is no jurisdictional error in the impugned order and therefore this Petition deserves to be dismissed.

6. Having heard the rival contentions, though there is merit in the submission of Mr. Jatin Ramaiya that the mere pendency of an application for setting aside of an *ex parte* decree will not take away the jurisdiction of the executing Court to proceed with the execution in the peculiar facts and now that the application for condonation of delay and setting aside of the *ex parte* decree is posted for hearing on 09.07.2021, the execution proceedings can be deferred for some time until the two applications made by the Petitioners for condonation of delay and setting aside of the *ex parte* decree are disposed of. It is possible that there was some delay in disposal of these applications on account of the Covid-19 related circumstances. In

order that there is minimum prejudice to the Respondents, suitable directions are required to be issued to the Civil Court to dispose of the pending applications for condonation of delay and setting aside of the exparte decree.

7. The learned Counsel for the parties pointed out that the written submissions have already been filed on the record of the Civil Court. They submit that on 09.07.2021 itself, they will orally argue the two applications. Accordingly, the learned Civil Court is directed to hear the oral arguments on 09.07.2021 and to dispose of the applications for condonation of delay and setting aside of the exparte decree on their own merits and in accordance with law as expeditiously as possible and, in any case, on or before 31.07.2021.

8. The execution proceedings i.e. Regular Execution No. 81/2018/F pending in the Court of Civil Judge, Junior Division at Margao, will remain stayed up to 06.08.2021. In case the exparte decree is set aside, then, obviously, the impugned order will not survive. However, if the exparte

decree is not set aside, then, the executing Court to proceed with the execution in accordance with law and on its own merits. The objections, if any, which the Petitioners might have to the execution are however kept intact.

9. The parties to appear before the Civil Court on 01.07.2021 and file an authenticated copy of this order. On this date, if the Respondent wishes to file a formal reply to oppose the application for setting aside of the exparte decree, the Respondent may do so. If the Civil Court wishes, it may even prepone the hearing scheduled on 09.07.2021. The parties and their Advocates to co-operate with the Civil Court in the expeditious disposal of the applications for condonation of delay and setting side of exparte decree. In particular, the Petitioners should not seek any undue adjournment now that this order has protected them for sometime.

10. Rule is made absolute in the aforesaid terms. There should be no order as to costs.

11. All concerned to act on the basis of an authenticated copy of this order.

M. S. SONAK, J.

ANDREZA PEREIRA Digitally signed by ANDREZA
PEREIRA
Date: 2021.06.22 18:11:48 +05'30'