

IN THE HIGH COURT OF BOMBAY AT GOA

MISCELLANEOUS CIVIL APPLICATION No.51 OF 2021

IN

STAMP NUMBER (MAIN) No.3945 OF 2019(FILING)

Wonedulfo Antonio Da Costa

.... Applicant

V e r s u s

Felvira Irene Godinho And 3 Ors

.... Respondents

Mr. J. J. Mulgaonkar, Advocate for the Applicant.

Mr. S. G. Desai, Senior Advocate with Mr. Vincent D'Souza, Advocate for the Respondents.

CORAM : M. S. SONAK, J

DATE : 13th July, 2021

P.C.

Heard Mr. J. J. Mulgaonkar, learned Counsel for the applicant and Mr. S. G. Desai, learned Senior Advocate alongwith Mr. Vincent D'Souza, learned Counsel for the respondents.

2. This is an application seeking modification of the order dated 09.12.2020 which reads as follows:

P.C.

Issue notice to the respondents, returnable on 22/12/2020.

2. Post the matter after vacation.

3. In the meanwhile, there shall be interim suspension of the impugned order, dated 28/8/2018, subject to the applicant deposing 50% of the decretal amount in four weeks.'

3. The record indicates that the decree which is appealed against, inter alia, had required the applicant to refund certain amounts to the respondents. According to Mr. S. G. Desai, the learned Senior Counsel for the respondents, this amount along with interest, comes to approximately ₹29,65,105/-. According to Mr. Mulgaonkar, the learned Counsel for the applicant, this amount is ₹20 lakh or thereabout. Be that as it may, there is no dispute that 50% of the decretal amount, even in terms of the calculation proposed by Mr. Mulgaonkar, has not been deposited.

4. The applicant had, in fact, applied for extension of time and even within the extended time, the amount has not been deposited. This means that, as of now, there is no interim suspension of the interim order. The interim suspension was subject to the applicant depositing 50% of the decretal amount in 4 weeks. Despite extension, this amount has not been deposited.

5. Now, this application seeking modification. The modification is that the interim suspension should continue based on the deposit of ₹7,50,000/- by the applicant.

6. The reason set out in the application is that the finances of the applicant are quite stretched and despite best efforts ₹7,50,000/- is what the applicant could manage to deposit.

7. As noted earlier, the decree had basically directed the applicant to refund the amount to the respondents. This means that the decree directs the applicant to only return the amounts which the applicant had received from the respondents. If the applicant claims to be stretched, then, the respondents, are bound to be overstretched. They are seeking the return of their own money and that too, based on the decree in their favour.

8. Therefore, no case is made out for modification of the order dated 09.12.2020. This application is liable to be dismissed and is hereby dismissed.

M. S. SONAK, J.

msr.