

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 154 OF 2021

Ashish Isani

..... Petitioner

V e r s u s

Rosy Conceicao Rodrigues & 2 Ors.

..... Respondents

Mr. Harshvardhan V. S. Bhatkuly, Advocate for the Petitioner.

Mr. John Lobo, Advocate for the Respondent nos. 2 and 3.

Coram :- M. S. SONAK, J.

Date : 30th June, 2021

P.C.

1. Heard the learned Counsel for the parties.
2. The Petitioner challenges the order dated 13.11.2019 made by the executing Court issuing warrant of attachment in the execution of money decree which has attained finality.
3. Mr. Bhatkuly, the learned Counsel for the Petitioner, urged that the property which is sought to be attached does not exclusively belong to the Petitioner and the exercise as contemplated by Order 21 Rule 13 (b) of the

Civil Procedure Code (CPC), was never carried out. Besides, he submits that according to the Petitioner, the decretal amount can never exceed ₹ 5,00,000/- though, the Decree-holders are claiming an amount of ₹ 27,00,000/- or thereabout. He submits that the Petitioner has receipts of the rents paid and possibly these receipts are not credited. He submits that the Decree-holder is incorrectly interpreting the Decree and claiming such inflated amounts.

4. Mr. John Lobo, the learned Counsel for the Decree-holder, submits that this is nothing but an attempt to protract the Execution Proceedings. He relies on *Rahul S. Shah vs. Jinendra Kumar Gandhi & Ors. (Civil Appeal Nos. 1659-1660 of 2021)* disposed of by the Hon'ble supreme Court on 22.04.2021.

5. Mr. Lobo submits that despite notices, the Petitioner refused to appear before the executing Court either himself or through his Advocate. He submits that even this Petition has been filed almost after a year of the impugned order was made. He submits that the contentions on behalf of

the Petitioner are completely misconceived and this is nothing but a ploy to avoid the satisfaction of the Decree. He, therefore, submits that this Petition ought to be dismissed.

6. Having heard the learned Counsel for the parties, to a certain extent, I agree with Mr. Lobo, learned Counsel, that the Petitioner, has been protracting the proceedings before the executing Court. There is no justification as to why the Petitioner chose not to even appear before the executing Court and file reply to the applications made by the Decree-holder. Faced with this protractment, the Executing Court made the impugned order.

7. However, as urged by Mr. Bhatkuly, some accommodation is required to be extended to the Petitioner having regard to the pandemic situation as well as other difficulties expressed on behalf of the Petitioner. Such accommodation, obviously, cannot be to the complete detriment of the Decree-holders though, some detriment is inevitable.

8. Accordingly, liberty is granted to the Petitioner to file an application setting out all particulars and details, including the calculations of the amounts payable in terms of the Decree under execution and, on such basis, seek recall of the impugned order dated 13.11.2019. In the application, it will be open to the Petitioner to urge the very grounds that have been urged in the present Petition.

9. Mr. Bhatkuly states that such application will be filed within ten days from today by serving an advance copy on the learned Counsel for the Decree-holders. Besides, Mr. Bhatkuly, on instructions from the Petitioner, who was even otherwise insisting on appearing in person, states that the Petitioner will pay to the Decree-holder a sum of ₹ 15,000/- by way of costs again within this period of ten days. If there is some difficulty in direct payment, the Petitioner can deposit such costs before the executing Court within a period of ten days from today.

10. Subject to the payment/deposit of such costs of ₹ 15,000/-, the executing Court is directed to consider such application and dispose of the

same within a maximum period of four weeks from the date the same is filed. Needless to add, that the executing Court will afford an opportunity to both the Decree-holder as well as the Petitioner-Judgment debtor. If, for some genuine reasons the Decree-holder requests for some additional time, the executing Court may consider the same. However, the executing Court, should not be too liberal in granting adjournments to the Petitioner-Judgment debtor unless a case of absolute genuineness and emergency is made out by him. The difference in the directions is because the Petitioner-Judgment-debtor, from his conduct, has demonstrated his proclivity to delay the Execution Proceedings.

11. All contentions of all parties are expressly left open since, this Court has not expressed any opinion on the merits of the issues raised. In any case, directions are issued to the executing Court to dispose of the Execution Proceedings expeditiously having regard to the observations made and the directions issued by the Hon'ble Supreme Court in the case of ***Rahul S. Shah*** (supra).

12. Until the disposal of the Petitioner's application for recall of the impugned order dated 13.11.2019, the Petitioner and his family members are restrained from selling, transferring or creating any third party rights in respect of the attached premises.

13. The Petition is disposed of in the aforesaid terms.

14. The learned Counsel for the parties state that the parties or their Advocates will appear before the executing Court on 09.07.2021 at 10.00 a.m.

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

M. S. SONAK, J.