Meena

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.373 OF 2019

MINEIRA NACIONAL LIMITADA., REP. BY SUBRAMANY AND ANR. ...Petitioners

VS

RAJAN RAGHUNATHRAO DESSAI AND 3 ORS. ...Respondents

Mr. A.D. Bhobe with Ms. Annelise Fernandes, Advocates *for the petitioners.*

Mr. S. Usgaonkar with Ms. R. Pereira, Advocates *for respondent Nos.1 and 2.*

Mr. J.P. Mulgaonkar, Senior Advocate with Ms. R. Banaulikar, Advocate *for respondent Nos. 3 and 4.*

CORAM: MANISH PITALE, J

DATED: 23rd November, 2021

ORAL ORDER :

1. By this petition, the petitioners (original judgment debtors) have challenged order dated 14/03/2019 passed by the Court of Senior Civil Judge, Quepem, Goa (hereinafter referred to as the Executing Court), whereby the said Court has dismissed an application (Exh.51) filed on behalf of the petitioners.

2. In the present case, the suit was filed as far back as in the year 1969 by the respondents, bearing Special Civil Suit No.27 of 1969 claiming certain reliefs against the petitioners, including payment of certain amounts. By an order dated 26/06/1981, this suit was finally disposed of on the basis of a settlement between the parties. Under the said decree passed by consent, the original plaintiff no.1 was entitled to 50% of the amount payable and the plaintiff nos.2 to 6, being the children of plaintiff no.1, were entitled to 10% each.

3. Execution proceedings were initiated in the context of the aforesaid consent decree. It appears that during the pendency of such proceedings the original plaintiff no.1 died. It is also an admitted position that upon the death of plaintiff no.1, Inventory Proceeding No.13 of 1988 was initiated before the Court of Civil Judge, Senior Division, Margao, for partition of her estate wherein respondent no.1 was appointed as the head of the family. It appears that in the said inventory proceedings, apart from the original plaintiff nos.2 to 6 being parties, three more parties as legatees under a Will executed by plaintiff no.1 are contesting the matter.

4. It is also an admitted position that at least three Writ Petitions came to be filed before this Court arising from various orders passed by the Executing Court and that although some payments have been made during the pendency of the execution proceedings, the decree has not been satisfied in its entirety even today, while we are reaching the end of the year 2021.

5. In this backdrop, the petitioners filed the aforesaid application at Exh.51 before the Executing Court. By this application, the petitioners expressed their apprehension that since there are three more parties who seem to have a claim in the estate of the original plaintiff no.1, there is every possibility that even if the decree is satisfied by the petitioners, there would be further proceedings initiated by the aforesaid three parties, which would lead to further litigation and harassment of the petitioners. It was submitted that in terms of orders passed by this Court in various proceedings the amount payable and to be distributed amongst the respondents could certainly be re-computed but a direction was necessary to respondent No.1, as the head of the family, to add all beneficiaries of the deceased original plaintiff no.1 under her Will.

6. The executing Court considered the said application, which was opposed by the respondents. It was held that as per the order of this Court the petitioners as judgment debtors are required to only re-compute the amount and deposit the same, so that the decree could be satisfied. It was held that the beneficiaries under the Will executed by the Original Plaintiff no.1 were not required to be made parties and this was held in the backdrop of the pending inventory proceedings before the competent Court.

7. The petitioners filed the present Writ Petition challenging the aforesaid order. This Court by order dated 22/04/2019 issued notice, only on the limited issue as to whether the respondents should be directed to execute indemnity bonds in the backdrop of the aforesaid apprehension expressed by the petitioners. While issuing notice this Court granted ad-interim stay in terms of prayer clause 'b', which meant that the proceedings in the execution application no.6 of 2017 initiated by the respondent Nos.1 to 4 remained stayed during the pendency of the present Writ Petition. It was brought to the notice of the Court that in the earlier round before this Court, a direction was given for clubbing the three execution proceedings and that therefore, in effect, the entire execution proceedings before the Executing Court have remained stayed.

8. The respondents appeared in this Writ Petition and opposed the relief sought to the extent of the limited issue on which notice was issued by this Court.

9. Mr. A.D. Bhobe, learned Counsel appearing for the petitioners submitted that since notice itself was issued on the aforesaid limited issue, he was restricting his contentions to the same. It was submitted that there was a real apprehension on the part of the petitioners as judgment debtors that they would have to face further execution applications before the Executing Court, even if the entire amount as per the decree was to be deposited before the Executing Court. It was submitted that admittedly there were three more beneficiaries under the Will executed by the Original Plaintiff No.1 and therefore, even if the entire amount was to be deposited and if the said three additional beneficiaries were not given the amount to which they stood entitled under the Will, there was every possibility of the petitioners being harassed with further execution proceedings.

10. On this basis, it was submitted that it would be in the interest of justice that the respondents before this Court are directed to indemnify the petitioners in that regard.

11. Mr. Mulgaonkar, learned Senior Counsel has appeared on behalf of respondent Nos.3 and 4 and Mr. Usgaonkar, learned Counsel has appeared on behalf of respondent Nos.1 and 2. Both the Counsel are at pains to point out that the execution proceedings in the present case are pending before the Executing Court for a long period of time and that there has been delay in satisfaction of the decree due to the approach adopted by the petitioners from time to time. It is emphasised that the petitioners have attempted to delay the complete satisfaction of the decree and that has resulted in repeated proceedings before the Executing Court and this Court. It is pointed out that the apprehension expressed on behalf of the petitioners before the Executing Court and this Court as regards the three additional beneficiaries under the Will executed by the original plaintiff no.1, is baseless for the reason that admittedly the aforesaid inventory proceedings are pending before the competent Court and the question of proportionate distribution from the estate of the deceased original plaintiff no.1 is a matter before the competent Court in the inventory proceedings and that there is no question of the Executing Court being concerned with the same. It is submitted that the issue is deliberately raised, only with the intention to further delay the execution proceedings. It is further pointed out that due to the fact that the three execution applications were clubbed together by order of this Court, the order of interim stay in one of the execution proceedings has led to the entire proceedings coming to a standstill before the Executing Court.

12. Heard learned Counsel for the rival parties and perused the material on record. The present case is another illustration of difficulties that the decree holders face after the decree is passed in their favour. It is as far back as in the year 1925 that the Privy Council in ***General Manager of the Raj Durbhunga*** **v.** ***Coomar Ramaput Sing*** **(1871-72) 14 MIA 605: 20 ER 912],** held that the real trouble for the plaintiff in India starts when the decree is passed in his favour. This view has been taken note of and commented upon repeatedly by this Court and the Hon'ble Supreme Court, as in the case of ***Satyawati v/s. Rajinder Singh and Another (2013)9SCC 491,*** to indicate that the attempts of judgment debtors to postpone and delay the enjoyment of the fruits of the decree by the decree holders have to be discouraged as it leads to loss of faith in the entire justice dispensation system. The executing Court in the present case took a correct view of the matter as is evident from the material on record.

13. The material on record shows that while the original plaintiff no.1 was entitled to 50% of the amount payable under the decree, the remaining five plaintiffs were entitled to 10% each. Since the original plaintiff No.1 died during the pendency of the execution proceedings, the amount of 50% payable to her would obviously be distributed amongst the beneficiaries under the Will executed by her.

14. Insofar as the petitioners as judgment debtors are concerned, they are liable to satisfy the decree by depositing the amounts upon computation/re-computation as directed by this Court in the earlier proceedings. It is none of the concern of the petitioners as judgment debtors, as to the manner in which the amount payable to the original plaintiff no.1 is distributed amongst the beneficiaries in terms of the Will. Insofar as that aspect of the matter is concerned the Inventory proceedings are already pending before the competent Court and all that the executing Court is to do is, if required, to transfer the amount found payable to the original plaintiff no.1 to the aforesaid competent Court where the inventory proceedings are pending, for distribution in terms of the Will executed by the Original plaintiff no.1. This would take care of the three additional beneficiaries under the Will, apart from the respondents before this Court. The aforesaid situation has been used as an excuse by the petitioners (judgment debtors) to file the aforesaid application at Exh.51 and in the process to delay the proceedings before the Executing Court.

15. In this backdrop, when the impugned order is perused, it is found that no error can be attributed to the same and that therefore, no interference is warranted.

16. In view of the above, the Writ Petition is found to be without any merit and accordingly the Writ Petition is dismissed. Needless to say, the interim order stands vacated.

17. The Executing Court is directed to dispose of the aforesaid three execution applications expeditiously and in any case within a period three months from today.

18. This Court has taken note of the fact that the Executing Court dismissed the application at Exh.51 with costs of Rs.2,000/-. It is found that the amount of costs is minimal and not deterrent at all and therefore, this Court is proposing to impose further costs while dismissing the present Writ Petition.

19. In this context, Mr. Bhobe, learned Counsel appearing for the petitioners submitted that costs may not be imposed for the reason that while issuing notice, this Court itself had granted interim stay. Having considered the contention raised in this context on behalf of the petitioners, this Court is of the opinion that merely because interim order was granted by this Court, it would not mean that when eventually it is found that the application moved by the petitioners before the Executing Court was indeed frivolous, no costs can be imposed.

20. In view of the above, while dismissing the present Writ Petition costs of Rs.25000/- are imposed on the petitioners. The amount of costs be deposited within four weeks from today. Upon depositing such costs, the amount be released to the respondents before this Court.

MANISH PITALE, J.

MEENA VISHAL BHOIR
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