

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
COMPANY APPLICATION NO.2 OF 2021
IN
COMPANY APPLICATION NO.39 OF 2001

VICTOR FERNANDES

... Applicant

Versus

THE OFFICIAL LIQUIDATOR, HIGH
COURT OF BOMBAY PANAJI

...Respondent.

Mr. Susan Linhares, Advocate *for the applicant.*

Ms. Amira Abdul Razaq, Advocate *for the respondent.*

CORAM : REVATI MOHITE DERE, J.

DATED : 10th December 2021

P.C.:-

1. Heard Ms. Linhares for the applicant and Ms. Razaq for the respondent-Official Liquidator.
2. By this application, the applicant seeks modification of the Decree/Order dated 8/9/2006, passed by this Court in Company Application No.39/2001.
3. The applicant is the judgment-debtor and the respondent-Official Liquidator is the decree-holder

4. Vide Judgment and Order dated 8/9/2006, the applicant was directed to pay to the Official Liquidator a sum of ₹ 2,11,989/-, with pending interest at the rate of 13%, with quarterly rests and future rate at the rate of 6% until payment, with costs which were quantified at ₹ 10,000/-.

5. According to the applicant, in compliance with the said order dated 8/9/2006, he paid in installments a sum of ₹ 1,70,00/- to the Official Liquidator for the period from 9/1/2007 to 16/7/2007. The applicants states that in response to a letter dated 27/2/2014 of the Official Liquidator, the applicant paid an amount of ₹ 2,11,989 vide cheque bearing No.000020 dated 4/4/2014 drawn on HDFC Bank, issued in favour of the Official Liquidator. The said cheque was accompanied by the applicant's letter dated 4/4/2014 informing the respondent-Official Liquidator that the interest having been paid on earlier occasion in 2007 and the principal amount being paid by the said cheque on 4/4/2014, the case as against him, be treated as closed and the said cheque be accepted as full an final payment.

6. According to the learned Counsel for the applicant, the respondent-Official Liquidator made no communication thereafter from 2007 to 2014 and, as such, the applicant was under a bonafide impression that the case was closed as against the applicant. The learned Counsel for the applicant submits that in 2018, the applicant was served

with a notice dated 12/7/2017 in Regular Execution Application No.45/2015/C filed before the Civil Judge, Senior Division, at Mapusa wherein the respondent-Official Liquidator, as the decree-holder, has sought execution of this Court's order dated 8/9/2006, claiming a total sum of ₹ 4,69,650/-.

7. The learned Counsel for the applicant, on instructions of the applicant, states that the applicant is ready and willing to deposit a sum of ₹ 2,00,000/- , in addition to what has already been paid by him, by way of full and final settlement. He submits that the applicant has paid ₹ 2,11,989/- towards the principal amount and way back in the year 2007, paid a sum of ₹1,70,000/- to the respondent-Official Liquidator by way of interest and, as such, after more than 10-12 years to ask the applicant to deposit ₹ 6,84,679/-, would be too harsh.

8. The learned Counsel for the respondent-Official Liquidator submits that since the decretal amount was not paid by the applicant in 2007, the amount has gone up to ₹ 6,84,679/-. Learned Counsel for the respondent-Official Liquidator does not dispute that the respondent-Official Liquidator has received the principal amount, plus ₹ 1,70,00/- by way of interest. She, however, states that the said amount is not in terms of the decree/order passed by this Court vide order dated 8/9/2006. The learned Counsel, however, leaves it to this Court to

decide the amount that the applicant should be directed to pay for satisfying the decretal amount, as full and final settlement.

9. Having regard to the fact, that the applicant is a senior citizen and the financial difficulties expressed by him and the fact that the applicant has already paid not only the principal amount of ₹ 2,11,989/-, but also the interest to the tune of ₹ 1,70,000/-, the amount of interest at the rate of 13% as demanded by the respondent-Official Liquidator, is rather harsh. Having regard to the aforesaid, I am of the view that the applicant has made out a case for modification of the decree dated 8/9/2006.

10. Accordingly, the decree stands modified. In addition to the amount already paid by the applicant i.e. amount of ₹ 2,11,989/- towards the principal and ₹ 1,70,000/- towards the interest, the applicant is directed to pay a further sum of ₹ 2,00,000/- to the respondent-Official Liquidator, as full and final settlement. Ms. Razaq, on the instructions from Mr. Bhonsle, Senior Technical Assistant, from the Office of the Official Liquidator, accepts the same.

11. The decree is, accordingly, modified in the aforesaid terms, subject to the applicant filing an undertaking in this Court, within one week from today, stating that he will pay the amount of ₹ 2,00,000/-, as full and final settlement, to the respondent-Official Liquidator within

one month from today, failing which, this application shall be deemed to have been dismissed and the respondent-Official Liquidator will be entitled to recover the entire decretal amount, on the basis that the decree was never modified. However, if there is compliance, then, the decree to stand modified in the aforesaid terms.

12. The application for modification is disposed of in the aforesaid terms. There shall be no order as to costs.

13. All parties to act on authenticated copy of this order.

REVATI MOHITE DERE, J.