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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 495 OF 2019

MAHENDRA DINANANTH PRABHU

AND ANR.,

... PETITIONERS

VS

ROQUE FELIX DE SOUZA (DEC) AND

12 ORS.,

... RESPONDENTS

Mr. J.P. Mulgaonkar, Senior Advocate with Ms. Rupa Banaulikar, Advocate for the Petitioners.

Mr. Vilas P. Thali with Mr. R. Prabhugaonkar, Advocates for Respondent No. 2(a).

CORAM: G.S. KULKARNI, J.

DATED: 28 SEPTEMBER 2022

ORAL ORDER.

1. On 4 April 2018, a co-ordinate Bench of this Court (C. V. Bhadang, J.), passed the following order:

"P.C.

Heard for sometime.

2. The petition is disposed of by consent of parties in the following terms :

(a) The petition is allowed.

(b) The impugned order is hereby set aside.

(c) The petitioners shall file an application for condonation of delay before the learned District Judge, within a period of two weeks from today.

(d) The learned District Judge shall hear the application for condonation of delay along with the application for leave to appeal, on its own merits and in accordance with law.

(e) The learned District Judge shall decide both the applications as expeditiously as possible and preferably within a period of four months from the receipt hereof.

(f) The statement on behalf of the respondent no.2(a) that they will not press for execution of warrant of possession, shall continue for a period of four months from today.

(g) Rival contentions of the parties are left open.

(h) In the circumstances, there shall be n order as to costs.”

2. An obvious consequence of the above order is that, it was clearly left to the learned District Judge to decide the two proceedings in accordance with law, namely, the delay condonation application of the petitioners and the main application on leave to appeal. However, peculiarly, the learned Judge without exercising any discretion to the appropriate course of action which was required to be followed, has decided both the applications on their own merits. In fact, once the delay of condonation application was not being entertained, there was no

need for the learned District Judge entering into the merits of the leave petition.

3. In the above circumstances, in my opinion, it would be appropriate that the parties are relegated to the learned District Judge who shall first adjudicate on the delay condonation application and after taking an appropriate view of the matter and only in the event the delay is condoned, the other proceedings can be taken up for hearing.

4. In this view of the matter, the impugned orders are set aside as the delay condonation application needs to be first adjudicated afresh. It is clarified that the learned District Judge shall adopt an appropriate course of action depending on the orders being passed on the delay condonation application. All contentions of parties on the merits of the proceedings before the learned District Judge are expressly kept open.

5. Liberty to the respondents to file appropriate reply to the delay condonation application. As also, liberty to the petitioners to file rejoinder, if any.

6. The parties are directed to appear before the learned Adhoc District Judge-1, Panaji on **10 October 2022 at 10.00 a.m.**

7. Needless to observe that, as the proceedings are sub judice for quite some time, the learned District Judge shall make an endeavour to decide the proceedings as expeditiously as possible and in any event, within a period of three months from 10 October 2022.

8. The protection granted by this Court vide order dated 9 June 2022 shall continue to operate till the applications are disposed of and for a period of two weeks thereafter, in the event, the orders are adverse to the petitioners.

9. Insofar as the deposit of arrears of compensation is concerned, a co-ordinate Bench of this Court (Sandeep K. Shinde, J.) on 4 July 2022 had passed an order in Miscellaneous Civil Application No. 1144/2022 (F) directing the petitioners-applicants to deposit arrears of compensation in the following manner:

“11. For all these reasons, the applicants shall deposit the arrears of compensation i.e. from the date of eviction decree till June 2022 in the Registry of this Court in three equal instalments i.e. on or

before 30 September 2022 and shall regularly deposit compensation at the rate of Rs.1200/- per month in the Registry of this Court on the 10th day of each month till the petition is disposed of.

10. It is stated by Mr. Mulgaonkar, learned Senior Advocate for the petitioners that an amount of Rs.72,000/- remains to be deposited and it shall be deposited in this Court by the petitioners/applicants on or before 30 September 2022. He also makes a statement that the compensation at the rate of Rs.1,200/- per month for the future period shall also be deposited for the period commencing from 1 October 2022 in the Court of the learned District Judge and the same shall be continued to be deposited till the disposal of the proceedings by the learned District Judge. Such deposit of the amount shall be subject to the orders to be passed by the learned District Judge. The statement as made by Mr. Mulgaonkar is accepted.

11. Once the amount of Rs.72,000/- towards arrears of compensation is deposited in this Court by 30 September 2022, the entire amount as deposited shall be invested by the Registry in a nationalised Bank initially for a period of one year. The deposits

shall remain in this Court subject to further appropriate orders to be passed by the learned District Judge.

12. Liberty to the parties to apply for withdrawal of the amount as and when felt necessary.

13. The Registry is directed to forward a copy of this order to the office of the Adhoc District Judge-1, Panaji.

14. Petition is disposed of in the above terms. No costs.

G.S. KULKARNI, J.

VAIGANKAR
ESHA SAINATH

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