

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA
MISCELLANEOUS APPLICATION NO.352 OF 2023
IN
WRIT PETITION NO.403 OF 2018

Rev. Fr. Godfrey Victor D'Souza @ Fr.
Godfrey D'souza rep. by Attorney Joan
D'Souza And 4 Ors.

... Applicants.

Versus

Benjamin D'Souza @ Benjamin
Manuel Vincent Joseph D'souza @
Benny D'Souza and Anr.

...Respondents

Mr John A. Lobo, Advocate for the Applicants.

None for the Respondents.

CORAM:
DATED :

PRAKASH D. NAIK, J
31st AUGUST 2023

P.C.

1. Learned advocate Mr Lobo appears for the applicants. None appears for respondents.
2. This application was listed on 24th August 2023. Both sides were represented by advocates. Application was adjourned to 30.08.2023. Thereafter, on 30.08.2023, none appeared for respondents. Hence, application was adjourned till today.
3. The application was called out in the first session and since none appeared for the respondents, it was kept back. The matter was again called out in the second session, however, none appeared for the

respondents.

4. This application is preferred for seeking following relief:

“a) To pass appropriate order vacating the stay of proceedings in the Inventory as passed by this Honourable Court and that the proceedings being I.P. No.421/2012/F be allowed to proceed and the application as filed by the legal representatives of the petitioner herein be consequently allowed in terms as granted by the Honourable Trial Court in its order dated 23/01/2023.”

5. The applicants are impleaded as respondents in Writ Petition No.403/2018. The petitioners in Writ Petition No..403/2018 had challenged the judgment dated 21.02.2018 passed by learned District Judge-1, North Goa, Mapusa in Miscellaneous Civil Appeal No.90/2016 and drawing up the Minutes of Auction dated 08.07.2016 by Civil Judge Junior Division, Mapusa in Inventory Proceedings No.421/2012/F.

6. The Writ Petition was initially heard by this Court on 3rd April 2018 and vide order passed on that day notice was issued to respondents therein and ad-interim stay was granted of the Inventory Proceedings in terms of prayer clause ‘c’. Thus, stay was granted to Inventory Proceedings No.421/2012/F. Subsequently, interim relief was continued on further dates of hearings. Vide order dated 2nd July 2019, Rule was issued. Hearing was expedited. Ad-interim relief was continued during pendency of the petition. It was clarified that inquiry in CMA No.27/2015 can proceed.

7. Learned advocate Mr Lobo submitted that the respondent No.2 had withdrawn Port. Civil Miscellaneous Application No.27/2015/F vide order dated 02.03.2021 passed by the learned Civil Judge Junior Division, 'F' Court, Mapusa. Writ Petition No.403/2018 was filed challenging the auction dated 08.07.2016 in Inventory Proceedings No.421/2012/F which has attained finality. The sole ground of challenge was that the enquiry was pending which was in C.M.A. (Port) No.27/2015/F. The interested parties who are the children and wife of original petitioner No.1 filed application dated 23.01.2023 to withdraw the owelty monies deposited before the Inventory Court pursuant to finalisation of the auction. The trial Court vide order dated 15.02.2023 passed an order stating that no owelty money to be paid to the interested parties in view of earlier stay granted by the High Court. The High Court had passed interim order dated 03.04.2018 granting stay in the Inventory Proceedings No.421/2012/F. The interim relief was extended by the High Court vide order dated 02.07.2019. The interim relief of stay expires within a period of 6 months unless extension is granted for good reason. Mr Lobo has relied upon the decision of the Supreme Court in the case of *Asian Resurfacing of Road Agency Private Limited and Another v/s. Central Bureau of Investigation*¹ and further clarificatory order dated 25.04.2022 in Miscellaneous Application No.706/2022. It is submitted that the conduct of legal representatives indicated that they have accepted the auction held on 08.07.2016. The application dated 23.01.2023 show the intention of respondents to accept the auction dated 08.07.2016.

¹ (2018) 16 SCC 299

8. The applicant No.1 had initiated Inventory Proceedings No.421/2012/F which are pending before Civil Judge Junior Division contending that Mrs Burnice @ Mrs Bercice Jack de Souza @ Mrs Berenisse Escolastica Andrea Castelino @ Mrs Bernice D'Souza died on 11th January 1982. Subsequently, father of applicant namely Mr Jack D'souza @ Mr Pedro Lourencinho Jacinto Rosario D'Souza @ Mr Jacinta D'Souza @ Mr Pedro Lorecinho Jacinto Rosario D'Souza @ Mr Pedro Lourencinho Jacinto Rosario de Souza @ Mr Jacinto De Souza died on 15th July 1982. They had executed a Deed of Gift dated 23.11.1979 duly registered in the Office of the Sub-Registrar of Bardez at Mapusa, Goa. The deceased persons left behind assets comprising of immovable property at Nachinola, Bardez, Goa.

9. The respondents herein and applicants No.2 to 5 filed Port. Civil Misc. Application No.27/2015 in Inventory Proceedings No.421/2012 and sought Declaration that Deed of Gift dated 12th November, 1979 is null and void and consequently the original applicant be restrained from proceeding with the partition taking into account bequeathed under Gift Deed. Vide order dated 28.10.2015 the learned Civil Judge directed that both the sides should be given chance to produce their evidence in support of their rival contentions in respect of the validity of the Deed of Gift.

10. The learned Civil Judge proceeded with Minutes of Auction on 08.07.2016. The respondents filed Miscellaneous Civil Appeal No.90/2016 before the learned District Judge. The Appeal was dismissed by judgment dated 21.02.2018.

11. The respondents approached this Court by preferring Writ Petition No.403/2018. Interim relief has been granted by this Court and the Inventory Proceedings No.421/2012 are stayed. It is clarified that inquiry in CMA No.27/2015 can proceed. In the case of *Asian Resurfacing of Road Agency Private Limited* (supra), it was directed that where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from date of apex Court's order unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The respondents did not move the Court for extension of stay nor contested the application.

12. The applicants have brought to the notice of this Court that, the interest parties, viz., children and wife of original petitioner No.1 filed an application dated 23.01.2023 to withdraw the owelty monies deposited before Inventory Court. Vide order dated 23.01.2023 the Court ordered that owelty money to be paid to interested parties cannot be paid in view of stay granted by this Court. The applicants have also pleaded that the respondent No.2 has withdrawn Port. Civil Misc. Application No.27/2015/F vide order dated 08.03.2021. Reliance is placed on application and Roznama in Port. Civil Misc. Application No.27/2015/F dated 08.03.2021. It is pertinent to note that one of the ground of challenge in the Writ Petition is that although the Inventory Court was seized of the controversy in (Port) Civil Misc. Application No.27/2015 pending trial in the said Inventory Proceedings

No.421/2012/F proceeded with the Auction in Inventory Proceedings.

13. Considering the aforesaid facts and circumstances the relief sought in this application can be granted.

ORDER

- (i) Miscellaneous Civil Application No.352/2023 is allowed in terms of prayer clause (a) of the application.
- (ii) Miscellaneous Civil Application stands disposed of.

PRAKASH D. NAIK, J.

MARIA SUZANA REBELLO Digitally signed by MARIA SUZANA REBELLO
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