

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 22 OF 2023

WITH

CIVIL APPLICATION NO. 1789 OF 2023-F

IN

APPEAL FROM ORDER NO. 22 OF 2023

SHIVRAJ A. POROB AND ANR. APPELLANTS.

VS

AVADOOT POROB @ DATTARAM

PORON (DECEASED) AND 5 ORS. RESPONDENTS.

Mr. A. D. Bhobe and Ms. S. Shaikh, Advocate for the appellants.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. T. Mashelkar and
Ms. D. Parab, Advocate for the respondent nos. 2 to 6.

CORAM: PRAKASH D. NAIK, J

DATED: 18th OCTOBER 2023

ORAL ORDER.:

1. The appellants are aggrieved by order dated 24.7.2023 passed by the Civil Judge, Senior Division "A" Court at Mapusa rejecting the application Exh.D-129 preferred by the appellants in Inventory Proceedings No.260/99/A.
2. Inventory proceedings were commenced in respect of deceased estate leaver Avadoot Porob alias Dattaram Porob before the Court of Civil Judge, Senior Division at Mapusa which were numbered as

Inventory Proceedings No.260/99/A.

3. The appellants filed an application under Section 413(c) read with Section 415(3) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 wherein it was contended that final list of assets has been drawn. The appellants filed separate application, regarding renewal of lease of shop at item nos. 1 to 7 and industrial shed and plot at item no.8, where the lessor is respectively the Mapusa Municipal Council and Goa Industrial Development Corporation. It is necessary that conference of interested parties be convened under Section 413(c) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 to issue notice to discuss issues of renewal of lease which is of benefit to all the interested parties, who may ever take the assets in the licitation. Conference of interested parties is required to discuss doubt or differences and which may have bearing on the partition. It was prayed that conference of interested parties be convened under Section 413 (c) of the aforesaid Act.

4. Respondent had opposed the application vide reply dated 14.7.2023 on the ground that application is not maintainable in law. It is filed to delay the proceedings. Interested parties have not stated as to what doubt the appellants have and what differences have been raised and by whom is not specified. Section 415 has no relevance to the doubts and differences which is alleged by interested parties.

Holding of conference will not serve any purpose.

5. The learned Civil Judge, Senior Division, “A” court at Mapusa dismissed the aforesaid application Exh.128 vide order dated 24.7.2023. It was ordered that there is no doubt that the conference of the interested parties can be convened under Section 413 of the Act. However, the meeting/conference is sought to be held in order to discuss the issue of renewal of the lease of the said items. The interested parties discussing themselves with respect to the renewals would not help the parties as the landlord is not a party. Hence, there is no question of holding any conference on the said ground.

6. The appellants filed another application Exh. D-129 for issuance of notices to Mapusa Municipal Council and Goa Industrial Development Corporation stating that from the valuation report and subsequent disclosure by Head of the Family it is admitted position that Head of the Family has failed to obtain renewal of lease hold properties which are listed under item nos. 1 to 8. The said item nos. 1 to 7 are shops leased from Mapusa Municipal Council and it is apprehended that if the same are put up for auction, the successful bidder may not receive the fruits of bid because ultimate decision for renewal of the lease is with the Mapusa Municipal Council. With respect to item no. 8 which is lease hold plot and factory from Goa Daman and Diu Industrial Development Corporation and which lease has expired on 24.7.2006, any successful bidder in the Court

auction may not obtain renewal of the said lease premises in his/her name since the decision for such renewal is at the discretion of the Goa Industrial Development Corporation. In these circumstances, it is just and proper that notice be issued to Mapusa Municipal Council to give their say in respect to item nos. 1 to 7, in the matter of ultimate renewal to the successful bidder. It was also prayed that notice be also issued to Goa Industrial Development Corporation to give their say in the matter in respect of item no. 8.

7. Respondents had opposed the application for issuance of notice vide reply dated 14.7.2022. It was pleaded that item no.1 to 7 of list of assets are leased premises. What is listed in the inventory is lease property. Court is dealing with inventory of the items which are leased. Only lease holder or their heir are required to be present for the auction and not landlord. Item no. 8 is leased by Goa Industrial Development Corporation. Court is dealing with inventory of the item which are under lease. Only lease holders or their heirs are required to remain for the auction and not landlord. Hence, MMC and GIDC are not required to be present for the auction.

8. Interested parties nos. 6 and 7 filed reply to the application dated 14.7.2023(Exh. D-129) and stated that application is bad in law. It is filed with sole ulterior motive to delay the proceedings. Matter is at the stage of the auction/licitation and there is no necessity to issue notice to any authorities at the belated stage and

the application may be rejected.

9. Learned Civil Judge, Senior Division rejected the application Exh.129 vide order dated 24.7.2023. Learned Judge has observed that notices to which authorities sought to be issued are not the parties to the present proceedings. Proceeding is an inventory proceeding instituted with respect to the estate of the estate leaver. There is no question of the Court issuing notice to them asking for their say in respect of renewal. Items which are enlisted are lease hold rights in the said items.

10. Learned Advocate Mr. Bhobe, submitted that inventory proceedings are now fixed for auction. Apprehension of the applicant is with regards to lease hold rights in the properties which are put for auction. Successful bidder in the Court auction should not face any issue pertaining to renewal of the lease. Application Exh. D-129 was in the interest of all the interested parties. Application has to be granted to ensure that rights of the successful bidder in the auction to be held will not be defeated and the rights that would be acquired by the successful bidder in such auction are protected. Learned Judge has failed to consider the said aspect of the matter and rejected the application Exh. D-129. The purpose of issuance of notice to the parties by virtue of application Exh. 129 was limited to the extent of ascertaining the information regarding renewal of lease hold rights. Issuance of notice to the parties sought to be joined was required.

Properties referred to in the application were leasehold properties in respect of properties which were not renewed. Application Exh.D-129 was maintainable. Refusal of the application Exh. D-129 has resulted in creating uncertainty in respect of the properties referred to in the said application. The interest of successful bidder needs to be protected so that the mandatory deposit of bid amount will not be infructuous.

11. Learned Senior Advocate Mr. S. Usgaonkar, submitted that application preferred by the appellants is not maintainable in law. Authorities to whom notices were to be issued are not the parties to the proceedings. Inventory proceedings is the family matter. Interested parties can join the proceeding. Outsiders cannot intervene. They cannot participate. Section 375(3) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 explains meaning of the word “Interested party”. Said definition does not include party to whom the appellants are seeking joinder or issuance of notice. Section 387(3) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 provides that the Court shall order that first summon or original process be served on the moiety holder of the estate leaver, on the heirs, on their spouses, unless they are married under the regime of absolute separation of assets, on the legatees and the creditors. Section 395(1) Any person may, at any stage of the Inventory proceeding, apply that he may be

impleaded as interested party, legatee or creditor. Such application shall be accompanied by documents and a list of witnesses and the application was not maintainable in law. The application was preferred to delay the proceedings.

12. Application Exh. 129 was preferred for a limited purpose for issuance of notice to Mapusa Municipal Council and Goa Industrial Development Corporation. Purpose of making such application was to ascertain whether lease agreement is renewed. Parties are suppose to know when the properties are public auction, whether lease agreement has been renewed. Purpose of issuing notice to the parties referred to in an application Exh. D-129 is not to seek participation of the said party in the inventory proceedings to decide the main issue involved in the inventory proceedings but it was only for a limited purpose. There is no impediment in allowing application only to that extent. There is no oblique motive in preferring such application. It is in the interest of successful bidder. Notice can be issued to such party only for seeking information about renewal of lease. Hence, grant of such application was not in violation of provision of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

ORDER

- (i) The Appeal is allowed in terms of prayer clause (b).
- (ii) Impugned order dated 24.6.2023 passed by the Civil Judge,

Senior Division at Mapusa in Inventory Proceeding no. 260/99/A below Exh.D-129 is set aside.

(iii) Appeal from Order No. 22/2023 and Civil Application No. 1789/2023/F stand disposed of.

PRAKASH D NAIK, J.

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