

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.359 OF 2013

WITH

**MISC. CIVIL APPLICATIONS NO.242 OF 2021 & 1841 OF
2021 (F)**

SHAIKH VAHIDULLA

....PETITIONER

Versus

ESSAR BUILDERS & 2 ORS.

....RESPONDENTS

**Mrs. A.Agni, Senior Advocate with Ms. J. Sawaikar, Advocate
for the Petitioner.**

Mr. Jose Filipe Melo, Advocate for Respondent Nos.1,2 & 3.

CORAM: M. S. SONAK, J.

DATE : 3rd FEBRUARY 2023

ORAL ORDER :

- 1.** The above civil misc. applications are allowed and the legal representatives of the deceased petitioner are permitted to be brought on record. Necessary amendment to be carried out forthwith.
- 2.** Mrs. Agni, learned Senior Advocate appears along with Ms. J. Sawaikar for the legal representatives of the deceased petitioner.
- 3.** The challenge in this petition was to the order of the Trial Court dismissing petitioner's application under Order XV-A of CPC.

4. The original petitioner's application under Order XV-A was disposed of by the learned Trial Judge by taking the view that the decisions cited on behalf of the petitioner concerned proceedings under the Rent Control Act. Mr. Melo, the learned Counsel for the respondents pointed out that several contentions had been raised on behalf of the respondents whom he represents and though the order is in favour of the respondents even these contentions were not adequately considered.

5. Considering that the suit has not proceeded due to interim orders obtained by the petitioner, it would be appropriate if this petition is disposed of by granting the legal representatives of the petitioner liberty to file fresh application under Order XV-A of CPC before the learned Trial Court. Mrs. Agni states that there are some decisions of this Court that favour the contentions of the petitioner. If so, liberty is granted to annex these decisions to the application.

6. If such an application is filed within a month from today, then, the trial Court to consider and dispose of such application within three months from the date of its filing by giving full opportunity to all the parties. It is clarified that all contentions of all parties including the contentions now raised by Mr. Melo are expressly left open and will have to be considered.

7. It is further clarified that this Court has not gone into the rival contentions but fresh opportunity is granted to the legal representatives of the petitioner in the above peculiar circumstances. Further, it is clarified that if such application is made the same will have to be decided without being influenced or affected by the view taken in the impugned order dated 05.02.2013.

8. The petition and the civil misc. applications therein are disposed of in the above terms.

M. S. SONAK, J.

NITI K
HALDANKAR

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