

shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.2466 OF 2023 (F)

WITH

**WRIT PETITION NO.599 OF 2023, MISC.CIVIL APPLICATION
NO.2252 OF 2023 (F)**

WRIT PETITION NO.2466 OF 2023 (F)

VINAYAK DESAI ... PETITIONER

Versus

JOE MATHIAS AND ANR ... RESPONDENTS

WITH

WRIT PETITION NO.599 OF 2023

JOE MATHIAS AND ANR ... PETITIONERS

Versus

VINAYAK DESSAI ... RESPONDENT

WITH

MISC.CIVIL APPLICATION NO.2252 OF 2023 (F)

IN

WRIT PETITION NO.599 OF 2023

DINAMATI GOMES AND ANR ... APPLICANTS

Versus

JOE MATHIAS AND ANR ... RESPONDENTS

Mr. V.R. Tamba with Mr. Paresh Sawant and Mr. Matlock D'Souza, Advocate for the Petitioner in WP No. 2466 of 2023 (F), for the Respondent in WP No. 599 of 2023 and for the Applicants in MCA No. 2252 of 2023 (F).

Mr. Nitin Sardesai, Senior Advocate with Mr. Kabir Sabnis, Mr. Shivam Fadte and Ms. Clarina Colaco, Advocates for the Petitioners in WP No. 599 of 2023 and for the Respondents in WP No. 2466 of 2023 (F).

CORAM:- AVINASH G. GHAROTE, J.

DATED :- 13th March, 2024

ORAL ORDER

1. The Writ Petition No.599/2023 is by the Respondent in Civil

Miscellaneous Application No.83/2023/A, in Inventory Proceeding No.310/2004/A(new)(page 65), challenging the order dated 12/06/2023 passed by the learned Trial Court which issues notice to the Respondent (Petitioner in Writ Petition No.599/23) to deposit owelty money as demanded as per law. It is contended that the proceedings itself, were not maintainable on the ground that the Court had no jurisdiction to entertain them, on the ground that the rights of the parties already stood decided in the earlier proceedings, which being in the nature of a decree, was executable, apart from which the delay of 17 years is also one of the grounds raised. This Court by the order dated 22/08/2023 has while issuing notice, granted ad-interim reliefs in terms of prayer clauses (c) and (d) which have been continuing and which have the effect of stay of the proceedings in Inventory Proceeding No. 310/2004/A(new).

2. The Writ Petition No.2466/2023(F) challenges the order dated 04/07/2023 passed by the learned Trial Court in Civil Miscellaneous No.106/2023/A in CMA.No. 83/2023/A whereby the learned Trial Court has refused to grant an ex-parte ad-interim injunction.

3. Since both these proceedings, questions order, which are not on merits after hearing the parties, learned counsel for both the parties are agreeable that the matters can be remanded back to the learned Trial Court for a decision on merits after giving them the opportunity to place their objections/submissions/replies on record and then decide

the matters after hearing them. Accepting this statement, the order dated 12/06/2023 passed by the learned Trial Court in Civil Miscellaneous No.83/2023/A to the extent that it directs the Respondent to deposit the owelty money as demanded as per law is hereby quashed and set aside and the matter is remanded back to the learned Trial Court to hear the objections filed by the Petitioner before the learned Trial Court and decide them on their own merits.

4. Writ Petition No.2466/2023(F) is also disposed of by remitting back to the Trial Court to decide the Civil Miscellaneous No.106/2023/A in CMA.No. 83/2023/A to which the petitioner has already filed a reply on its own merits.

5. The objection as to the jurisdiction of the Court to entertain and decide the proceedings, shall be decided first. All questions are kept open. The parties shall appear before the trial court on 26.03.2024 and intimate to the Court the order passed in this proceedings, after which the learned Trial Court shall fix the program for deciding the matter, in terms above, as per its convenience.

6. All the pending petitions are disposed of in above terms, without cost.

AVINASH G. GHAROTE, J.