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IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 8 OF 2024
IN
APPEAL FROM ORDER NO. 17 OF 2024

1. Sarina Esmeralda Lopez nee Lobo, Indian Inhabitant, aged 63 years, Occ. Teacher, residing at Flat 302, Wahedna Apts. 75 Hill Road, Bandra, Mumbai – 400 050.

2. Xavier Peregriono Lopez, Adult, Indian Inhabitant, aged 71 years, residing at Flat 302, Wahedna Apts. 75 Hill Road, Bandra (W), Mumbai – 400 050. ... APPLICANTS

VERSUS

1. Dennis Francis Lobo, major of age, Indian Inhabitant, residing at 51, Massabielle, Manuel Gonsalves Marg, Bandra, Mumbai 400 050.

2. Bella Joaquim Lobo, major of age, Indian Inhabitant, residing at 18 Sea Mist, Manuel Gonsalves Marg, Bandra, Mumbai 400 050.

3. Kimberley Nunes Lobo, major of age, Indian Inhabitant, residing at 51, Massabielle, Manuel Gonsalves Marg, Bandra, Mumbai 400 050.

4. Anna Marie Schmidt Lobo, major of age, residing at 132, Bad Homburg Tannenwaldallee 61348 Germany.

5. Holger Schmidt, major of age, residing at 132, Bad Homburg Tannenwaldallee 61348 Germany.

6. Allen Mario Lobo, major of age, Indian Inhabitant, residing at 101, Shelter Apts. St. Francis Road, Bandra, Mumbai 400 050.

7. Annabelle Lobo, major of age, Indian Inhabitant, residing at 101, Shelter Apts. St. Francis Road, Bandra, Mumbai 400 050.

8. Francis Lobo (deceased) formerly of Aldona Carona, Bardez, Goa. ... RESPONDENTS

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Applicant No. 1 in person.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. Vinod Korgaonkar, Mr. Pancham Phadte, Mr. Sagar Rivankar, Mr. Vilas Pavithran and Ms. Kshama Naik, Advocates for the Respondents.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 31st JULY, 2024

ORAL ORDER:

1. Heard Applicant No. 1 in person and Mr. Coelho Pereira, learned Senior Counsel appearing along with Mr. Vinod Korgaonkar for the Respondents.

2. The present Application is filed for review of the order passed by this Court on 25.07.2024 in Appeal From Order No. 17 of 2024.

3. Applicant No. 1 would submit that there is an error apparent on the face of the record while observing that the learned Trial Court has negated the submissions or the contentions regarding the Covid period and the circular issued by the higher Courts. She submits that in fact, the learned Trial Court has even observed that the auction was conducted during the Covid period and if the Applicants are aggrieved by such procedure, they are entitled to file an Appeal before the Appellate Court for the purpose of setting aside the said order.

4. Applicant No. 1 would further submit that the auction was conducted during the Covid period somewhere during September 2021 and at that time, she along with her husband were unable to attend the auction proceedings in Goa as they were residing in Mumbai. She submits that the Applicants were taking treatment and for some time they were even admitted in the hospital, however, in their absence, the auction was conducted and that too, during the Covid period when in fact the Court was not supposed to pass any adverse orders in absence of the parties.

5. Applicant No. 1 submits that the observations of this Court and more specifically, in paragraph 45, is an error apparent on the face of the record. It is submitted that the Trial Court has observed otherwise and only for that purpose, they filed the Appeal before this Court including the challenge to the auction proceedings.

6. Applicant No. 1 submits that such a mistake on the face of the record needs to be corrected by reviewing its own order and by giving an opportunity to the Applicants to argue the matter for the purpose of putting up their case against the auction which was conducted during the Covid period.

7. Applicant No. 1 further submits that the Applicants were entitled to notice before the auction and since no such notice was issued and served on them, the entire auction stands vitiated. She further submits that the matter is now fixed for confirming such an auction and if no opportunity is given, the Applicants and other interested parties would be at a loss and would not be able to set the clock back once the properties are partitioned and allotted to the persons, who were trying to take up this matter as early as possible.

8. Mr. Pereira, first of all, raised an objection with regard to the maintainability of the Review Application. He submits that since the provisions of the CPC are not applicable to the matter of inventory, the Applicants are not entitled to seek review of the order passed by this Court by taking recourse to Section 114 of CPC. Further, he would submit that there are no provisions for review of the order passed by the Court under the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 [the Act of 2012, for short]. He fairly submitted that the procedure for review is found in Chapter XLV of the Act of 2012, which starts from Section 446, wherein it is provided that there could be an amendment to the partition in case of clerical or arithmetical error arising out of accidental slip/omission. Further, Section 448 provides a review by parties before the same Court i.e. the Inventory Court on certain conditions which are found mentioned in Clause (B) therein.

9. Mr. Pereira by inviting the attention of this Court to the various observations made in the order under review would submit that this Court has considered all the contentions raised by the Applicant and discussed/addressed all issues including the circular with regard to the Covid-19 pandemic. He submits that such discussions need not be interfered with and that too in an Application for Review, which is not maintainable. Mr. Pereira placed reliance on the decision of the Apex Court in the case of **Arun Dev Upadhyaya Vs. Integrated Sales Service Limited & Another, (2023) 8 SCC 11**.

10. The Applicants preferred an Appeal before this Court challenging the impugned order passed by the Inventory Court thereby rejecting their Application filed under Section 151 of CPC for recalling all the orders passed by the Inventory Court including the appointment of the Head of the Family till the licitation/ auction. After the rejection of such an Application filed under Section 151 of CPC, the Appeal was filed challenging the various other orders. The basic contention of the Applicants in the said proceedings is that the auction was conducted during the Covid period and too, without giving notice to them.

11. The order under review clearly goes to show that all connected issues raised by the Applicants were discussed in detail and more particularly, the contention of the maintainability of the Appeal and the Application filed under Section 151 of CPC for recalling the earlier orders without filing an Appeal under Section 451(2) of the Act of 2012. The order under review clearly observes that an Application under Section 151 of CPC for recalling the earlier orders passed by the Inventory Court is not at all maintainable since the provisions of CPC are not applicable to the inventory proceedings.

12. Apart from this, it is observed that the Applicants after their first appearance in the year 2015, failed to appear and contest the inventory proceedings. It is no doubt true that the Inventory Court took up the matter during the Covid period, however, it is clear from the circular itself, which has been quoted by the learned

Trial Court in its order that restricted matters were allowed to be taken up for hearing. Clause no. 2 of the said circular also shows that the Courts were cautioned not to pass any adverse orders in the absence of the Advocate and parties, who were not appearing in the matter due to Covid restrictions.

13. Though the learned Trial Court has observed in paragraph 27 that the circular says that no adverse orders could be passed, that could have been the ground for Appeal challenging the various orders passed during the said period. This is the only observation of the Trial Court on the aspect of the Covid circular. However, the contentions of the Applicants which were raised in the Application under Section 151 of CPC were clearly negated by the Trial Court for the simple reason that the Applicants were not entitled to take recourse to such circular as they were not parties before the Trial Court since the year 2015 itself. Secondly, the learned Trial Court also observed that no adverse orders were passed in the absence of the Applicants since they were not entitled to receive a fresh notice of auction being residents beyond the jurisdiction of the Inventory Court.

14. In the light of the above facts, the observations of this Court in paragraph 45 of the order under review cannot be considered as an error apparent on the face of the record.

15. The next aspect as pointed out by Mr. Pereira that the review itself is not maintainable has to be accepted. There is no provision under the Act of 2012 allowing the parties to file an Application under Section 114 of CPC seeking review of the orders passed by the Inventory Court or by the Appellate Court. The power of review must be statutorily given to the parties and has to be mentioned in the Act itself. When the Act of 2012 and more specifically, in Section 458 says that the provisions of CPC shall not be applicable unless specifically provided for, would clearly go to show the intention of the legislature of not empowering the Court to review its own order by taking recourse to Section 114 of CPC. The provisions of review in Chapter XLV starting from 446 to 448 of the Act of 2012 operate in a different condition. The restricted power of review is given to the Court only to amend the partition in case of clerical or arithmetic mistakes. Similarly, Section 448 deals with an Application for review to be considered by the Inventory Court itself only on the basis of grounds mentioned therein and not otherwise.

16. In **Arun Dev Upadhyaya** (supra), the Apex Court has discussed the powers of review of the Court in great detail and by examining the earlier decisions. There is no need for quoting such observations as it is now a settled proposition of law that a review cannot be allowed to be an appeal in disguise. In the case of the **Assistant Commercial Taxes Officer Vs. Makkad Plastic Agencies, (2011) 4 SCC 750**, the Apex Court has observed that when there is no review available, which is the creature of the statute, the Court is not empowered to entertain such an Application. In the absence of any statutory provision for review, exercising such power under the garb of clarification/ modification/correction is not permissible.

17. Under the Act of 2012, by which the inventory proceedings are conducted, there is no provision for review of the order passed by the Court, either by the Inventory Court or by the Appellate Court, except as provided under Sections 446 and 448 of the Act of 2012.

18. Besides, it is already observed that there is no apparent error on the face of the record. The Application deserves to be rejected and accordingly, the same stands rejected.

BHARAT P. DESHPANDE, J.

Signed by: ESHA SAINATH VAIGANKAR
Designation: Personal Assistant
Date: 02/08/2024 10:57:31