



Esha

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO.33 OF 2024

GABRIEL FERNANDES AND ANR

... APPELLANTS

Versus

DEEPIKA SOLANKI AND 3 ORS.

... RESPONDENTS

Mr. Ashwin Ramani, Advocate for the Appellants.

CORAM:- BHARATI DANGRE, J.

DATED :- 4th April, 2025

P.C:

In continuation of the order dated 21.03.2025, the learned Counsel for the Appellants has placed before me a decision of the Apex Court in the case of Thungabhadra Industries Ltd. Vs. Government of Andhra Pradesh, 1963 SCC OnLine SC 94. I have perused the said decision, but unfortunately, according to me, the law laid down by the Apex Court in the aforesaid decision, in no way assist the learned Counsel for the Appellants in his submission that he can simultaneously maintain both the proceedings i.e. the Review Petition seeking review of the judgment passed by the first Appellate Court and at the same time, by standing before this Court, requesting that his Appeal be Admitted. It is for this very precise reason, unless and until finality is attached to the judgment passed by the first Appellate Court, the Second Appeal cannot be entertained.

2. In case of Thungabhadra Industries Ltd. (supra), the deliberation by the Apex Court is in the wake of the fact that the Review Petition was dismissed by the learned Division Bench of the High Court, on recording that since leave was granted by the Apex Court, Review Petition cannot be maintainable. Such not being the case here, the decision does not help the Appellants.

3. The apprehension expressed by the learned Counsel for the Appellants is to the effect that his limitation will start running since he has already filed an Appeal and after rejection of his Review, when he approaches this Court, he will be out of limitation. I am afraid that this assumption is totally unfounded as firstly, it is not certain that the Review Petition is going to be rejected, as the Appellants must have given a good ground certificate in the Review Petition on the assumption that he is likely to succeed in the Review Petition. In any case, since he was prosecuting the remedy which is available to him in law and as and when an occasion arises, if he files a Second Appeal, he will definitely be entitled to the benefit of Section 5 read with Section 14 of the Limitation Act.

4. In the wake of the aforesaid, the Second Appeal is dismissed in view of the pendency of the Review Petition.

BHARATI DANGRE, J.