

Maria S.

**IN THE HIGH COURT OF BOMBAY AT GOA**

**CIVIL REVISION APPLICATION NO.27 OF 2019  
Converted to  
WRIT PETITION NO.204 OF 2024.**

1. Mr Shaikh Maksood Moosa, 48 years of age, Indian National, r/o. Flat No.102, Murgao Avenue, Near Desterro Church, Vasco-da-Gama.
2. Mrs. Shaikh Zahira, d/o. Mr. Gulzar Mulla, 38 years of age, r/o. Flat No.102, First Floor, Murgao Avenue, Desterro, Vasco, Goa.
3. Mr. Shaikh Hussain Sheikh Moosa, since deceased through his legal representatives
- 3a. Mr Shaikh Riyaz, son of late Shaikh Hussain Sheikh Moosa, 46 years of age, and his wife
- 3b. Mrs. Shaik Rizwana, w/o. Shaik Riyazz, 45 years of age, Both Indian National, both r/o. Flat No.202, 1<sup>st</sup> floor, Murgao Avenue, Near Desterro Church, Vasco-da-Gama, Goa.
- 3c. Mr. Shaik Rafat, s/o. Late Shaikh Hussain Sheikh Moosa, 45 years of age, and his wife
- 3d. Mrs. Shaik Nazneen, w/o. Shaikh Rafat, 35 years of age, Both Indian National, Both r/o. Flat No.203, 1<sup>st</sup> floor, Murgao Avenue, Near Desterro Church, Vasco-da-Gama, Goa.

.... Petitioners.

*Versus*

1. Mr Anil Maruti Sawant, son of Maruti Sawant, 46 years of age, married, Building with Office at 3<sup>rd</sup> floor, Paes Avenue, Near Bus Stand, Vasco-da-Gama, Goa.
2. Mr Shaik Zain, s/o. Late Shaikh Hussain Sheikh Moosa, 44 years of age, and his wife
3. Mrs. Shaik Alia, w/o. Shaik Zain, 35 years of age, Both Indian National, Both r/o. Flat No.103, 1<sup>st</sup> floor, Murgao Avenue, Near Desterro Church, Vasco-da-Gama, Goa.
4. Mrs. Sahida Shaikh Hussain, 69 years of age, housewife, Both r/o. Flat No.103, 1<sup>st</sup> floor, Murgao Avenue, Near Desterro Church, Vasco-da-Gama, Goa.
5. Mr. Amit C. Prabhu, Proprietor, M/s. Prabhu Real Estate, Shop No.1, Ground Floor, Murgao Avenue, Near Desterro Chapel, Vasco-da-Gama, Goa. .. Respondents.

**Mr. E. O. Mendes, Advocate for the Petitioners.**

**Mr. Vallabh D. Pangam, Advocate for the Respondent No.1.**

**CORAM: VALMIKI SA MENEZES, J.**

**DATED: 22<sup>nd</sup> February 2024**

**ORAL JUDGMENT:**

Leave granted to convert the Civil Revision Application No.27/2019 to a writ petition under Article 227 of the Constitution of India. Registry may register this petition as a Writ Petition.

2. Rule. Rule made returnable forthwith. With the consent of the parties, the petition is heard and disposed of finally at the stage of admission.

3. This petition takes exception to an order dated 11.04.2019 passed by the Civil Judge Senior Division at Vasco-da-Gama in Execution Application No.15/2013/E, whereby the Executing Court has directed the judgment debtor to execute a conveyance deed in favour of the decree-holder/respondent No.1, who is the original plaintiff.

4. The background facts which have led to the filing of this petition are as under:-

a) Respondent No.1 was the original plaintiff in Special Civil Suit No.47/2009/A filed before the Civil Judge Senior Division, Vasco-da-Gama who had obtained a decree dated 04.05.2013. The decree directed defendants no.1, 2 and 3 who are the present petitioners to execute a deed of conveyance transferring title to Flat No.102, admeasuring 143 sq. mts along with a stilt parking area of 15 sq. mts in Murgao Avenue, at Vasco, and to hand over vacant possession of the suit premises upon payment of the balance consideration of ₹10,00,000/- by the plaintiff to the defendants. In addition, the decree directed the defendants no.1 and 2 to pay the plaintiff damages at the rate of ₹25,000/- per month from 10.01.2009 till delivery of possession of the flat.

b) The above-referred execution proceedings were filed by the respondent No. 1 decree holder on 01.07.2013 to execute the decree seeking the Executing Court's assistance for registering a draft deed

of sale submitted by the decree-holder. In addition, the execution proceedings sought recovery of the amounts directed by the decree of the trial Court. It appears from the record that no objections were filed by the judgment debtor under Section 47 CPC.

c) Instead, the judgment debtor/original plaintiff filed First Appeal No.15/2022 before this Court impugning the decree; however, in this Appeal, though interim relief was sought seeking a stay of the decree and execution proceedings, the same has not been pressed for till date.

d) Instead, the defendants/judgment debtors opposed the execution proceedings by contesting an application at Exhibit D-53 of the execution proceedings, in which the decree-holder sought the Court's order to accept a draft sale deed submitted by it and further directions to the judgment debtor to execute the deed of sale in performance of the part of the decree which directs execution of sale deed for the suit premises.

e) The impugned order dated 11.04.2019 has rejected these objections and directed the judgment debtor to execute the sale deed in terms of the draft submitted by the decree-holder.

5. It is the primary contention of the petitioners that the Executing Court ought not to have proceeded with the execution proceedings in view of the fact that the First Appeal No.15/2022 against the original decree is pending before this Court. The other contention raised by the petitioners is that the petitioners were never given an opportunity to raise an objection to the executing proceedings itself in terms of Section 47 CPC.

Supporting the impugned order, respondents have contended that the objections are not maintainable in view of the fact that the petitioners, though served in 2013 have been consistently seeking time to file a reply to the execution proceedings but no objections have been forthcoming. The respondents contend that there is no cause for interference with the impugned order in view of the narrow jurisdiction in terms of Article 227 of the Constitution.

6. From the record it is clear that the execution application which was filed on 01.07.2013, was served upon the petitioners in that year itself and since then the petitioners have not raised any serious objection in terms of Section 47 CPC to its maintainability. The only grounds raised by the petitioners before the Executing Court are that the First Appeal was pending before this Court against the judgment and decree dated 04.05.2013. There is also no objection specifically raised to the content of the draft sale deed submitted by the decree-holder although the only objection raised even at that stage was that the Court ought not proceed with ordering the judgment debtor to execute a sale deed, in view of the pendency of the First Appeal.

7. From the record it is also clear that though First Appeal No.15/2022 has been filed raising a challenge to the decree, civil application No.10/2022 filed therein, to seek a stay of the decree and execution proceedings was not pressed for and is pending disposal since 04.04.2019. In view of there being no stay sought from the Appellate Court, the Executing Court itself would not refuse to proceed with the executing of the decree. Clearly, therefore, the petitioners have followed a wrong course by approaching the Executing Court to stay the proceedings rather than seeking such an interim order in the First Appeal itself. In that view

of the matter, no fault can be found with the impugned order dated 11.04.2019 which has been correctly passed. There is no infirmity that can be seen in the impugned order either in terms of the procedure followed by the Executing Court or in the exercise of its jurisdiction in an execution proceeding.

8. In that view of the matter, the petition is dismissed.

9. Rule stands discharged. No costs.

**VALMIKI SA MENEZES, J**

MARIA SUZANA REBELLO

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