



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.128 OF 2024

Mrs. Fermeena Gracias alias
Fermeena Pradeep Khaunte
w/o Pradeep Jenardan Khaunte,
Housewife, aged 73 years,
Residing near Electricity Board Office,
Kadamba Depot Road,
Porvorim, Bardez, Goa. ... PETITIONER

VERSUS

1. The Authorized Officer and
Asst. Vice President of ASREC
(India) Ltd., Solitaire Corporate Park No. 2,
Unit No. 201-202A & 200-202B, Gr. Floor,
Andheri-Ghatkopar Link Road, Chakala (East),
Mumbai 400093

2. Vijaya Bank,
Through its Chief Manager,
Hughes Road, Opera House,
Gam Devi Branch, Mumbai

3. M/s. Morris Estates Pvt. Ltd.,
Having office at 1st floor, Flat No.103,
Manisha Apartment, Appasaheb Marathe
Marg, Prabhadevi, Mumbai, 400025 ... RESPONDENTS

Mr. Shivan Desai with Ms. Maria Viegas, Advocates for the
Petitioner.

Mr. Nikhil A. Vaze with Luis Fernandes, Advocates for Respondent
Nos. 1 and 3.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 30th August, 2024

ORAL JUDGEMENT

1. Rule.
2. Rule is made returnable forthwith.
3. The matter is taken up for final disposal with consent of the parties.
4. Heard Mr. S. Desai learned counsel for the Petitioner and Mr. Vaze learned counsel for Respondent Nos. 1 and 3.
5. The order which I propose to pass in the present petition requires no notice to Respondent No. 2.
6. The challenge in the present petition is to an order dated 23.04.2018 passed by the Debt Recovery Tribunal III at Mumbai in Securitisation Application No. 211 of 2016, whereby request to enlarge time to carry out amendment was rejected.
7. Mr. Desai would submit that an application was filed vide I.A. No.302 of 2018 for the purpose of extension of time to carry out amendment which was earlier allowed. The Tribunal refused to extend the time on the ground that such application was not filed within time and therefore, the consequence is rejection of amendment application.

8. Mr. Vaze appearing for the Respondent Nos. 1 and 3 submits that there is no illegality in such order, and the application for extension of time has been rightly rejected.

9. The matter is pending from the year 2016, wherein the petitioner filed an application for amendment which was allowed on 19.02.2018, thereby directing the Petitioner to amend the petition within 15 days.

10. The order allowing application on 19th February 2018 reads thus:

19.02.2018	<i>Roznama -MDRT-I T.S.A. No.211/2016</i>	<i>Next Date</i>
	<i>Affidavit in Reply to I.A. No. 879/2017 is filed by Respondent Bank. Heard both sides in I.A.No.879/2017. I.A.No.879/2017 is allowed for amendment in the pleadings sought by the Applicant in the above S.A. The Applicant is directed to carry out amendment within 15 days from today and shall file neat copy of S.A. on the next date of hearing. Call on 5th March 2018 for filing additional reply by Respondent Bank.</i>	<i>P.O. 05.03.2018</i>

11. The above order clearly shows that the application for amendment vide I.A. No. 879 of 2017 was allowed and the applicant was directed to carry out amendment within 15 days

12. There is no consequential order passed that incase Applicant fails to carry out such amendment within the said period, the application would be dismissed/rejected.

13. The Applicant filed an application for extension of time for carrying out amendment on 23.04.2018 by filing an affidavit by giving reasons in paragraph 3 that the Advocate appearing for the Petitioner is coming from Goa and therefore, he was unable to carry out such amendment due to personal difficulty. The application was supported by affidavit of the party which has not been considered at all.

14. The impugned order, no way discusses the grounds mentioned in the application for extension of time.

15. Even if the application is filed beyond period of 15 days, as granted by the Tribunal, such application could have been considered since the amendment was already allowed and no objection was raised by the other side.

16. The order, therefore, cannot be considered as proper since the valuable right has been taken away, even though amendment was allowed earlier.

17. In view of the above observations and fact that the contents of the application for extension of time are not at all taken into

account, the order needs to be quashed and set aside.

18. Accordingly, the impugned order is quashed and set aside. The time to carry out amendment is extended. The amendment to be carried out within 15 days from today by furnishing copy of the petition to the other side, to the Respondent and also to the newly added Respondent.

19. Respondent No. 3 is entitled to file reply on merit, including amended portion as per the time which is provided by the Debt Recovery Tribunal.

20. Since the delay was caused in the proceedings and even carrying out amendment, the Petitioner shall pay cost of Rs.5000/- (Rupees Five Thousand only) to the Advocates Library, High Court of Bombay at Goa, within one week.

21. Since the present proceedings are pending from the year 2016, the learned Debt Recovery Tribunal-III in T.S.A. No. 211/2016 is requested to expedite the proceedings and conclude the same within six months from today.

22. Rule is made absolute in the above terms.

23. Parties to act on an authenticated copy of this order.

BHARAT P. DESHPANDE, J.