

CIVIL REVISION APPLICATION NO.65 OF 2002

1. Shri Ganesh Narayan Bhatkar,
major, married, Ex-Government
Employee.
2. Shri Gurudas Narayan Bhatkar,
major, married, Government
Employee.
Both Indian Nationals,
residing at c/o Bhatkar
Building, Hotel Blessings,
Opp. Centurion Bank,
Next to Hotel Trimurti,
Plot No.97 "Casa de Morad"
M. G. Road, Panaji, Goa. ... Applicants.

versus

1. Laxmikant Shripad Bhandari
(deceased) through legal
representatives:
 - 1(a) Smt. Kunda Laxmikant
Bhandari, major, wife of
the deceased, and
 - 1(b) Shri Deepak L.Bhandari,
major, son of the deceased,
both 1(a) and 1(b) residents
of Villa Olivant Marchon,
General Bernard Goes Road,
Panaji, Goa. ... Respondents.

Mr. V. A. Lawande, Advocate for the Petitioners.

Mr. P. A. Kholkar, Advocate for the Respondent Nos.
1(a) and 1(b).

CORAM: P. V. HARDAS, J.

DATED: 28TH MARCH, 2002.

ORAL JUDGEMENT

By consent of the parties, this Civil Revision
Application is taken up for Final Hearing.

2. This Civil Revision Application has been filed

against the Order of the learned Civil Judge, Senior Division, Panaji, in Execution Application No.39/1999/B, dated 13th September, 2001, allowing the application filed by the Non Applicants/Decree Holders for attachment of immovable property of the Applicants/Judgment Debtors. The learned Trial Court by its aforesaid Order had attached the immovable property surveyed under Chalta No.97 of P.T. Sheet No.42 of city survey, Panaji and had prohibited the present Applicants/Judgment Debtors from alienating, transferring or charging the said property or any person taking benefit from such alienation or charge. The Applicants/Judgment Debtors being aggrieved by the aforesaid Order have filed the present Civil Revision Application.

3. Mr. V. A. Lawande, the learned Advocate appearing for the Applicants has urged before me that after the passing of the Decree and during the pendency of the Execution Application, the Applicants/Judgment Debtors had been paying regularly Rs.5000/- per month to the Decree Holders and the Decree Holders by virtue of their conduct had agreed to the payment of the decretal amount by instalments. According to the learned Advocate appearing for the Applicants, the Non Applicants/Decree Holders, despite their acquiescence have proceeded with the execution of the Decree and have been successful in obtaining the attachment of the immovable property.

4. Mr. P. A. Kholkar, the learned Advocate appearing for the Respondent Nos.1(a) and 1(b) has submitted that the Decree Holders had never consented for the payment of the decretal amount by instalments. According to him, the aforesaid amount paid by the Applicants/Judgment Debtors had been accepted by him without prejudice to his right. In fact, according to Mr. Kholkar, the learned Advocate appearing for the Respondent Nos.1(a) and 1(b), the Non Applicants/Decree Holders had also objected to the application which was filed by the Applicants/Judgment Debtors for payment of the decretal amount by instalments. Thus, according to him, by no stretch of imagination can it be said that the Decree Holders had consented to the payment of the decretal amount by instalments.

5. I have perused the Order of the learned Trial Court and it is clear that there was no agreement for payment of the decretal amount by instalments and the amount so paid by the Applicants/Judgment Debtors was accepted by the Non Applicants/Decree Holders without prejudice to their rights. If, this is so, the Non Applicants/Decree Holders were perfectly justified in seeking the attachment of the immovable property.

6. The Order which is passed by the learned Trial Court cannot be faulted with on the ground urged before me by Mr. V. A. Lawande, the learned Advocate appearing for the Applicants. On perusal of the Order of the learned Trial Court, I find that there is no irregularity in exercise of its jurisdiction by the Court and according to me, there is, therefore, no merit in this revision.

7. Civil Revision Application No.65/2002 is accordingly dismissed with no order as to costs.

8. Interim stay granted stands vacated.

9. Parties to appear before the Trial Court on 10th April, 2002 at 10.30 a.m..

(P. V. HARDAS)
JUDGE