

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-OCW-209-2020****IN****LD-VC-CW-291-2020**

Rosario Fernandes

... Petitioner

Vs

Gandha Vishant Kamat & Ors.

... Respondents

Shri Nigel Da Costa Frias, Advocate for the Applicant.

Shri A.D. Bhohe, Advocate for the Respondent No1.

Coram : DAMA SESHADRI NAIDU, J.**Date : 14 December 2020****ORAL ORDER :**

The petitioner is the plaintiff in Regular Civil Suit No.126/2020/A before the Civil Judge, Senior Division at Mapusa. He filed the suit against the respondents for a perpetual injunction. In that suit, he has also applied for a temporary injunction. Initially, the trial Court refused to grant ad interim injunction but kept the interlocutory application for consideration on the merits. Aggrieved, the petitioner has filed a Miscellaneous Civil Appeal No.46/2020 before the District Judge-I, North Goa, Mapusa. Initially, the appellate Court granted interim relief in terms of prayer clauses (a) to (c) of the appeal through an ex-parte order dated 15.10.2020.

(a) For a temporary injunction restraining the Respondent No.3, his servants, agents, labourers, contractors, assignees and/any other persons acting through or under the Respondent No.3 from carrying out any construction activity in the property bearing Survey No.155/5 of the Village Candolim, Bardez Goa.

(b) For a temporary injunction restraining the Respondent No.3, his servants, agents, assignees and any other persons

acting through or under the Respondent No.3 from occupying and/or to sell and/or creating third party rights in any manner in the said building in bearing Survey No.155/5 of the Village Candolim, Bardez Goa, abutting the property owned by the Plaintiff.

(c) For a temporary injunction restraining the Respondent No.3, his servants, agents, assignees and any other persons acting through or under the Respondent No.3 from using/occupying the building/structure in suit property bearing Survey No.155/5 of the Village Candolim, Bardez Goa for any commercial purpose.

2. But later, when the respondents entered appearance, the appellate Court refused to extend the interim relief; nor has it passed any order on the merits. Under those circumstances, it is said to have been based on the first respondent's undertaking given by the first respondent that he would not carry out any construction activity in the set back areas. Aggrieved, the petitioner has come to this Court invoking Article 227 of the Constitution of India.

3. Now, the learned counsel for both the parties, that is, the petitioner and the third respondent, agree that this Court may dispose of this petition with a direction to the trial Court to consider the application for a temporary injunction on the merits. They also agree that until then this Court may require both parties to maintain status quo vis-a-vis the disputed property. If this arrangement is to be made the miscellaneous appeal the petitioner filed before the District Court becomes infructuous. Then, the petitioner's counsel informs me that the petitioner will withdraw that appeal and will go back before the trial Court.

4 Under these circumstances, without advertng to the merits, I dispose of the Writ Petition holding that the petitioner will withdraw the Miscellaneous Civil Appeal No.46/2020 pending before the District Court. On his withdrawing that appeal the trial Court will take up the interlocutory application under Order 39 Rule 1 of CPC and consider it

on merits. It shall do so expeditiously three weeks after the petitioner withdraws the Miscellaneous Civil Appeal No.46/2020.

5. Until the trial Court disposes of the interlocutory application the parties will maintain status quo in terms of prayer clauses (a) to (c) as set out above and withdrawal of the appeal shall take place within one week from today. Needless to observe that the Court leaves all the contentions of the parties intact.

DAMA SESHADRI NAIDU, J.

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