

**IN THE HIGH COURT OF BOMBAY AT GOA****LD-VC-CW-406-2020**

Salgaocar Engineers Pvt. Ltd. &amp; Others .... Petitioners

Versus

M/s Zarapkar &amp; Parkar &amp; Others .... Respondents

Mr. Nitin Sardesai, Senior Advocate with Mr. Vibhav Amonkar,  
Advocate for the Petitioners.

Mr. S. D. Lotlikar, Senior Advocate with Mr. Shivan Desai,  
Advocate for Respondent No. 2.

Mr. Deep D. Shirodkar, Additional Government Advocate for  
Respondent No. 3.

**Coram:-    G.S. KULKARNI, J.  
(Vacation Judge)**

**Date:-    24<sup>th</sup> December, 2020**

**ORAL ORDER:**

This writ petition is moved urgently today by the petitioners who are plaintiffs in Commercial Suit being Case No. COMS/0000023/2020, instituted before the Commercial Court

at Panaji. The case of the petitioner is that an ad-interim temporary injunction was granted in its favour, by the Trial Court by an order dated 16/12/2020 which reads as under :-

*“16.12.2020*

*Called out today Adv V. Amonkar present alongwith Senior Council N. Sardesai and Adv. Carmita for Plaintiff Adv B. Lawande present for Defendant-1 Adv L. Rodrigues alongwith Adv Lotlikar present for Defendant-2 Adv H. Naik present for Defendant-3 O.P. During course of arguments it is brought to notice that yesterday def. no.3 had already issue issued transport permit to def. no. 2 when TI was partly argued and pending before the Court. In view of suit not to render infructuous the def. nos. 1 and 2 are directed not to lift or sell the dump no. 1 to 5 of the surface plan of Inspection Notes of Receiver till T.I. Application is disposed off. Matter is adj./E.”*

2. The petitioners contend that the injunction application was taken up for hearing by the learned Trial Judge,

and by an order dated 23/12/2020 the said application came to be rejected as also the ad-interim order dated 16/12/2020 was vacated. The petitioners however contend that the reasoned order as passed by the learned Trial Judge is still not available and it is informed to them that the reasoned order would be available on 28/12/2020. The petitioners hence moved an application for continuation of ad-interim order dated 16/12/2020, however, the said application stands rejected by the learned Trial Judge by the following order, as impugned in the present petition:

*“23.12.2020*

*Called out today Adv. V. Amonkar present alongwith Senior Council N. Sardesai and Adv. Carmita for plaintiff and Adv. B. Lawande present for Defendant-1 Adv. L. Rodrigues alongwith Adv. Lotlikar present for Defendant-2 Adv. H. Naik present for Defendant-3.*

*D-26-Order passed on exb D-4 Application for temp. inj. U/o XXXIX of the Code of Civil Procedure 1908 filed by the plaintiff at exb D-4 stands dismissed consequently order dated 16/12/2020 stands vacated Adj/M taken up after date D-27 Adv. For plaintiff filed*

*application for extension of ad-interim order dated 16.12.2020 – op-application stands dismissed adj/M.”*

3. Mr. Sardesai learned Senior Advocate for the petitioners submits that the approach of the Trial Court to vacate the ad-interim order dated 16/12/2020 and /or not continue the same, and at the same time not to make available the reasoned order rejecting the injunction application was not correct. He submits that such practice being followed by the Courts is deprecated by the Supreme Court as seen from several decisions. To support this contention he has referred to the decision of the Supreme Court in **State of Punjab & Others Vs. Jagdev Singh Talwandi**, (1984) 1 SCC 596 as also to a recent judgment of the Supreme Court in **Balaji Baliram Mupade Vs. State of Maharashtra**, 2020 SCC OnLine SC 893. Mr. Sardesai submits that if the protection which was granted by the Trial Court is not continued till the reasoned order is made available to the petitioners, a serious prejudice would be caused to the petitioners. He would thus submit that the ad-interim protection as granted by the Trial Court and which continued to operate till yesterday, when the impugned order was passed, needs to be continued by

this Court, exercising jurisdiction under Article 227 read with Section 151 of the Code of Civil Procedure.

4. The contesting respondent is respondent no .2/ defendant no.2, who is represented by Mr. S.D. Lotlikar, learned Senior Advocate. Mr. Lotlikar, at the outset has raised a preliminary objection to the maintainability of this petition. He submits that the remedy for the petitioners is to file an appeal before the Appellate Court, as per the provisions of Section 13 of the Commercial Courts Act, 2015. He submits that on this count alone this writ petition needs to be dismissed. Respondent no.3 - Directorate of Mines and Geology which is also represented by Mr. Deep Shirodkar, learned Additional Government Advocate.

5. I have heard learned Counsel for the parties for sometime. In my opinion there is much substance in the contention as urged by Mr. Lotlikar, that the remedy for the petitioner is to file an appeal against the impugned order, before the appellate Court as per the provisions of Section 13 of the Commercial Courts Act 2015. Mr. Lotlikar, would also be correct in his contention that even when an ad-interim injunction as earlier granted was refused to be continued by the Trial Court, it

would be still an order against which an appeal would be maintainable, under Section 13 of the Commercial Courts Act.

6. Be that as it may, in the above peculiar circumstances, keeping in mind the interest of justice, when a query was made to Mr. Lotlikar, as to whether his clients would stay their hands in not taking any further action qua the 5000 MT of Iron Ores in dispute, Mr. Lotlikar, on instructions, very fairly submits that till 29/12/2020, his client would not to take any action to disturb the status quo as it exists, in respect of 5000MT of Iron Ore. Statement of Mr. Lotlikar is accepted. In my opinion it would be in the interest of justice that such statement of Mr. Lotlikar shall operate only up to 29/12/2020 so to enable the petitioners to take recourse to the appropriate remedy as available in law. Mr. Lotlikar's statement in no manner should be constructed as any expression on the merits of the dispute which this Court has not examined. Hence all the contentions of the parties on merits are expressly kept open to be agitated before the Appellate Court.

7. It is being informed by Mr. Sardesai that there is a likelihood that the designated Appellate Court is not available due to the ensuing vacation. In the event if the regular Appellate

Court for any reason is not available or is unable to take up the petitioners appeal, in that event, certainly it would be permissible for the petitioners to move the alternate Court, which Mr. Sardessai informs is the Court of District Judge-1, Margao. In any case the appropriate Court be moved by the petitioners on or before 29/12/2020 as there shall be no further extension of the benefit of the statement as made by Mr. Lotlikar, as the only remedy available to the petitioner would be to approach the Appellate Court.

8. The petition is accordingly disposed of in the above terms, to enable the petitioners to take recourse to the appropriate remedy as noted above.

9. In the meantime, considering the settled position in law as laid down in the decisions as noted above, it would be appropriate that the learned Trial Court at the earliest, makes available to the parties, the reasoned order dated 23/12/2020, rejecting the petitioners injunction application, so that the parties are aware of their respective position under the said order.

10. Needless to observe that the Appellate Court, shall make an endeavour to hear the parties on the petitioners appeal, and pass appropriate orders.

11. The parties to act on an authenticated copy of this Order.

**G.S. KULKARNI, J.**

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