

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 202 OF 2015

MRS. ROSALINA JAMSY ALMEIDA. ... Petitioner
Versus
MRS. ESTRELITA MARCELINO D'SOUZA
AND 3 ORS., ... Respondents

Ms. Asha A. Desai, Advocate for the petitioner.

Coram:- M. S. SANKLECHA, J.

Date:- 20th March, 2015

P.C.

This petition under Article 227 of Constitution of India, challenges the order dated 17 January, 2015 passed by the Civil Judge Junior Division, Margao in R.C.S. No.230/2000/C, allowing the application of the respondent no.4 (defendant no.4) to produce and rely upon an order of injunction dated 1 October, 2013, during the trial of the suit.

2. The grievance of the petitioner is that this very document namely order of injunction dated 1 October, 2013 was not allowed by order dated 6 December, 2013 of the Civil Judge to be brought on record by refusing to allow amendment of the written statement as sought by the respondents (defendants). Thus it was concluded issue and the impugned order could not have allowed the same. It is also contended by the learned advocate for the petitioner that as the application of the respondents (defendants) ought to have been dismissed as it was made under Order VII Rule 14 of the C.P.C., which is applicable

only when the document is sought to be relied upon by the plaintiffs and not the respondents (defendants) as in this case.

3. The issue of the respondents (defendants) relying upon the order of injunction dated 1 October, 2013 is not an issue concluded by the earlier order dated 6 December, 2013. As the earlier order dated 6 December, 2013 was made while rejecting an application to amend the written statement, it also records that the order of injunction dated 1 October, 2013 is in the nature of evidence, and the evidence need not be pleaded in the written statement. The impugned order dated 17 January, 2015 allows the production of order of injunction dated 1 October, 2013 on which the respondents (defendants) seek to rely upon in the trial. Moreover the mere heading of the application made by the defendants that it is under Order VII Rule 14 of the C.P.C. would not by itself determine the issue, as it is in fact an application under Order VIII Rule 1A(3) of the C.P.C., which covers documents being relied upon by the defendant only upon the leave of the Court. Thus no interference is warranted.

4. In these circumstances, there is no reason to exercise the supervisory jurisdiction under Article 227 of the Constitution of India with regard to the impugned order dated 17 January, 2015.

5. Accordingly, petition is dismissed. No order as to costs.

M. S. SANKLECHA, J.