

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO. 24 OF 2015

1. Shri Cedric J.J. D'Souza,
Son of Shri Leo D'Souza,
aged 64 years, married, retired,
2. Smt. Emily D'Souza,
Daughter of Shri Anthony Carvalho,
aged 53 years, married, housewife,

Both Indian National,
Resident of House No. 91, Altinho,
Mapusa, Bardez-Goa.

... Applicants/
Petitioners

Versus

1. Shri Ravji J. Kolwalkar,
C/o R.K. Batteries,
Shop No. 1, Ground Floor,
Blossom Plaza,
At Karaswado,
Mapusa, Bardez-Goa.

... Respondent

Mr. Gautam N. Pednekar with Ms. Priti Mandrekar, Advocates for the Applicants/Petitioners.

Mr. Jayant Mulgaonkar, Advocate for the Respondent.

CORAM:- C. V. BHADANG, J.

DATE:- 13th OCTOBER, 2015.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Mr. Mulgaonkar, learned Counsel waives service on behalf of the respondent. Heard finally with the consent of the parties.

2. By this application, the applicants are challenging the order dated 10.04.2015 passed by the Ad-hoc Senior Civil Judge, Mapusa, by which the application filed by the respondent/defendant no. 1 purportedly under Section 35 of the Goa, Daman & Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (the Act of 1968, for short) has been allowed, thereby directing the respondent-plaintiff/Assistant Engineer to restore the electricity supply to the suit shop. The order also shows that the Court had directed issuance of notices on payment of process fee.

3. It is contended by the learned Counsel for the petitioners that according to the petitioners, the respondent is not a tenant and the suit shop was given to the respondent on leave and license basis. It is contended that as such, the provisions of Section 35 of the

aforesaid Act of 1968 would not apply. It was also contended that the respondent has not raised any counterclaim that they are the tenants. It is submitted that even otherwise, under Section 35 of the Act of 1968, the Court has to conduct an enquiry and the impugned order does not show whether it is an interim or a final order.

4. On the contrary it is submitted by Mr. Mulgaonkar, the learned Counsel for the respondent that in the written statement the respondent has contended that they are the tenants. The learned Counsel also fairly submitted that the trial Court will be required to conduct an enquiry in the matter and the impugned order only relates to Section 35(4) of the Act of 1968.

5. Having heard the learned Counsel for the parties, I find that no case is made out for interference. This is because, when the respondent, admittedly is in possession and since, the issue about the status is still *sub judice*, the respondent *prima facie* cannot be denied with the essential amenities, until the respondent is evicted in due course of law.

6. In that view of the matter and further having regard to the fact that the impugned order, which is passed without hearing the petitioners would only be in the nature of an ad-interim order. The petitioners would be entitled to file a reply to the application and raise all the contentions as may be available in law. The learned trial Court shall pass appropriate orders in accordance with law, after hearing the parties.

Subject to this, the Writ Petition is dismissed. Rule is discharged, with no order as to costs.

C. V. BHADANG, J.

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