

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 624 OF 2014

1. Smt. Succorina Pereira,
Major in age, housewife,
And her husband

2. Shri Menino Pereira,
Major in age, service,

through POA holder
Succorina Pereira,

Both residents of
House No. 271, Batty,
Orlim, Salcete, Goa.

.... Petitioners.

Versus

1. Smt. Maria Savia Barreto,
Major in age, housewife,
And her husband.

2. Shri. Luciana Barreto,
Major in age, son of
Minguel Santaloo Barreto,

Both residents of
House No. 270, Batty,

Orlim, Salcete, Goa.

....Respondents.

Mr. S. S. Kantak, Senior Advocate with Mr. P. Talaulikar, Advocate for the petitioner.

Mr. Arjun Naik, Advocate for the respondents.

Coram:-N. M. JAMDAR, J.

Date:- 4 March 2015

ORAL JUDGMENT :

By an order dated 30 September 2014 it was directed that the petition may be disposed of at the stage of admission and accordingly taken up for final disposal by consent.

2. Rule. Rule made returnable forthwith. Mr. Arjun Naik, learned Counsel waives service of notice on behalf of the respondents.

3. By this petition, the petitioner challenges the order passed by the learned Civil Judge, Junior Division, Margao dated 9 June 2014 refusing to grant stay to the execution proceedings taken out by respondents/plaintiffs.

4. The petitioners sought stay to the execution proceedings primarily on the ground that what was sought to be executed was order of injunction and the petitioner had moved an application under Order 39 Rule 4 for modification of the said injunction pursuant to the liberty granted by this Court. Though the stay was refused by the impugned order this Court while issuing notice in the present petition, on 30 September 2014 has

protected the petitioner which order continued till date. Considering these circumstances, it was put to the counsel for the parties whether they are agreeable for disposal of the application made by the petitioners under Order 39 Rule 4 in a time bound manner and depending on the result proceed with the execution. The learned Counsel for the parties state that in the facts and circumstances of the case that will be an appropriate course of action to be taken. Even otherwise since the said petitioners had made an application for modification of order of injunction pursuant to liberty of this Court, it is appropriate that the same is decided before execution proceedings are taken further.

5. Accordingly the Writ Petition is disposed of by quashing and setting aside the order dated 16 September 2014. The learned Civil Judge will decide the application filed on 19 July 2014 by the petitioners under Order 39 Rule 4 within a period of four weeks from the date of appearance before the learned Civil Judge. The parties will remain present before the learned Civil Judge on 10 March 2015 at 10.00 a.m. The question of implementation of the order dated 9 June 2014 will depend on the outcome of the application filed under Order 39 rule 4. All the contentions of both the parties are kept open.

6. Ad-interim relief granted by this Court will continue till the disposal of the application filed under Order 39 Rule 4.

7. Mr. Kantak, learned Senior Advocate for the petitioners submits that if outcome of the application filed under Order 39

Rule 4 is adverse to the petitioners, the same may not be given effect for a period of two weeks, the learned Counsel for respondents opposes. Considering the consequences that would flow from rejection of the application filed under Order 39 Rule 4, it would be open to the Civil Judge to pass an appropriate order as regard to the protection.

8. Petition disposed of in above terms. No costs.

N. M. JAMDAR,J.

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