

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 708 of 2014

Ms. Pratibha Shet,
Major, spinster,
R/O Near Raikar Nursing Home,
Vikas Nagar, Corlim,
Old Goa, Goa. Petitioner

Vs.
Choice Furnishing,
represented herein by
Mr. Biju Mohan
Major, businessman
having address at Choice Furnishing,
Gr. Floor, Manjunath Co-op Housing
Society Ltd., 18th June Road,
Panaji, Goa and 2 others. Respondents

Mr. Ajit R. Kantak, Advocate for the Petitioner.
Mr. S. M. Singbal, Advocate for the Respondents no. 1 and 3.
Mr. Deepak S. Fadke, Advocate for Respondent no.2.

CORAM: N. M. JAMDAR, J.

DATE: 12TH FEBRUARY, 2015.

ORAL ORDER:

By the order dated 15 November, 2014, the

petition was directed to be disposed of finally at the stage of admission. Accordingly taken up for final disposal.

2. By this petition, the petitioner challenges the orders dated 9 July 2014 and 28 October 2014 passed by the Civil Judge Senior Division, Panaji-Goa. By the impugned orders, respondents no.1 and 3 have been permitted to withdraw the amount of Rs.5,31,000/- and interest of Rs.1,62,329/-.

3. The petitioner is the original plaintiff. It is the case of the petitioner that she is the owner of the shop premises. According to the petitioner, the respondent no.2, who has no right in the shop, created some interest in the property in favour of respondents no.1 and 3. Notice was issued by the petitioner calling upon the respondents no.1 and 3 to vacate the premises. Thereafter, the petitioner filed the suit. In the written statement respondents no.1 and 3 took a stand that it is the respondent no.2 who is their landlord. According to them, they had paid the amount of rent to respondent no.2. A dispute arose between the parties as regards who is entitled to receive the amount of rent. During the proceedings, a direction was given to respondents no.1 and 3 to deposit the amount of Rs.9000/- per month as condition to continue in possession of the suit shop.

4. An application was filed by respondents no.1 and 3 to seek a declaration that they have paid the rent of the suit premises to respondent no.2, for the period from November 2001 to September 2006. The learned Civil Judge by the

order dated 16 January 2013 was pleased to hold that respondents no.1 and 3 have paid the rent of the suit premises to respondent no.2 for the period November 2001 to September 2006. This order was not challenged by the petitioner.

5. Thereafter, the petitioner, the respondent no.2 and respondents no.1 and 3 made applications to withdraw the amount which was deposited in the Court. The learned Civil Judge considered the rival contentions and came to the conclusion that respondents no.1 and 3 have been needless victims of contest between the petitioner and respondent no.2 and they have been made to deposit the rent twice. The learned Civil Judge accordingly by his order dated 9 July 2014 permitted the respondents no.1 and 3 to withdraw the amount of Rs.5,31,000/-. Thereafter, the respondent no.3 filed an application to withdraw the amount of interest of Rs.1,62,329/- which was also permitted to be withdrawn by the order dated 28 October, 2014. The petitioner has challenged both these orders in this petition.

6. There appears to be a serious dispute as to who is the landlord of the premises, which is to be adjudicated by the Civil Judge. It is no doubt true that there is an order directing respondents no.1 and 3 to deposit the amount of Rs.9000/-, per month but at this stage, the learned Civil Judge has come to a prima facie conclusion that respondents no.1 and 3 have made double payment. Since all these interim orders are subject to final decision, I am not inclined to interfere with the

amount of withdrawal of Rs. 5,31,000/-, more particularly, since the amount of Rs.5,31,000/- has already been withdrawn before filing the petition. It is, however, made clear that in case the learned Civil Judge comes to the conclusion that respondent no. 2 was not the landlord of the premises, it will be open to the petitioner to urge that the amount paid to respondent no.2, on their own violation by respondents no.1 and 3 shall not to be counted, and it will be open to the petitioner to urge this as ground on default. In case it is found that respondent no.2 is not the landlord of the premises since the respondents no.1 and 3, took a risk, it may be considered as a payment to a stranger and in the circumstances, it will be open to the Court to pass appropriate order directing the respondents no.1 and 3 to pay the amount to the petitioner. However, all the contentions in that regard are kept open. That being an adequate safeguard in respect of the rights of the petitioner no further orders are required to be passed in respect of the amount of Rs. 5,31,000/-.

7. As regards the amount of Rs.1,62,329/- is concerned, this amount still remains deposited in the Court. Considering the nature of the controversy enumerated above, it is appropriate if this amount remains deposited till the conclusion of the trial. This Court while issuing notice has already restrained respondents no.1 and 3 from withdrawing the amount. Same order, therefore, shall continue till the disposal of the suit. In any case the respondents no.1 and 3 have withdrawn substantial amount of Rs.5,31,000/-. Considering the above position, the writ petition is disposed of

keeping all issues open. It is directed that the amount of Rs.1,62,329/- deposited in the Court of Civil Judge Senior Division, "A' Court, Panaji, shall remain deposited till the disposal of the suit subject to final orders that will be passed by the Court. The Civil Judge will consider disposing of the suit at an early date, since it is of the year 2004.

N. M. JAMDAR, J.

Ap/-