

IN THE HIGH COURT OF BOMBAY AT GOA**LETTER PATENT APPEAL NO. 1/2013**

Balaji Ramnath Naik,
Major, r/o. Bordem, Bicholim, Goa,
through his attorney,
Datta S. Naik, major, married,
r/o. 2/1, Dattaprasad Building,
M.G. Road, Panaji, Goa.

..... Appellant.

V/s.

Shri Shantadurga Kumbharjuvenkarin
Devasthan, Orgao, Marcel, Goa
through its attorney,
Premanand Naik,
major of age, Indian National,
r/o. Cumbharjua, Ilhas, Goa.

..... Respondent.

Mr. R. G. Ramani, Advocate for the appellant.

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. V. Korgaonkar,
Advocate for the respondents.

**CORAM :- MOHIT S. SHAH, CJ &
SMT. ANUJA PRABHUDESSAI, J.**

Date : - 21 August, 2015.

ORAL JUDGMENT : (PER MOHIT SHAH, CJ.)

This appeal is directed against the Judgment and Order dated 4th October, 2012 of the learned Single Judge of this Court, by which the learned Single Judge has restrained the appellant by a

temporary injunction, pending hearing and final disposal of the suit bearing Regular Civil Suit No.24/2012/B pending before the Court of Civil Judge, Jr. Division at Ponda, from carrying out any construction activity in the suit property bearing Survey No.57/10 of Village Orgao, Ponda Taluka, subject to the respondent herein (original plaintiff) depositing before the trial Court a sum of Rs.1.00 lakh. There is no dispute about the fact that the sum of Rs.1.00 lakh has been deposited by the plaintiff in compliance with the aforesaid condition, stipulated by the impugned Judgment. The deposit of Rs.1.00 lakh is subject to further orders to be passed in the suit.

2. Learned Counsel appearing for the appellant (original defendant) sought to raise various contentions, on merits of the dispute and submitted that undue hardship is being caused to the appellant/defendant by the impugned order of injunction. The learned Counsel for the respondent/plaintiff has, however, raised a preliminary objection about the maintainability of the LPA on the ground that the learned Single Judge has exercised the jurisdiction under Article 227 of the Constitution and, therefore, this LPA is not maintainable. The learned Counsel has placed heavy reliance on the Judgment dated 6th July, 2015 of the Supreme Court in ***Jogendrasinhji Vijaysinghji vs.***

State of Gujarat and others, reported in 2015 (7) Scale 495. By the aforesaid decision, the Supreme Court has held that an order passed by a Civil Court can only be assailed under Article 227 of the Constitution and, therefore, a letters patent appeal or an intra-court appeal in respect of an order passed by Single Judge dealing with an order arising out of a proceeding of a Civil Court would not lie before the Division Bench. In view of the aforesaid decision, it is held that the present LPA is not maintainable.

3. At this stage, however, the learned Counsel for the appellant/defendant submits that he had already removed the roof of his building and in view of the interim relief granted in favour of the respondent/plaintiff during the pendency of the proceeding the suit structure has come down. He submits that though the learned Single Judge has directed the trial Court to dispose of the suit as expeditiously as possible, in terms of Section 32(1) of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975, the issue is required to be referred to the Mamlatdar. The decision given by the Authority on a reference under Section 32 is appealable under Section 24 of the Act and the order of the Appellate Authority is further revisable before the Administrative Tribunal. The learned Counsel

therefore submits that continuation of litigation will take a number of years and that despite the directions of the Court the Civil Court will not be in a position to proceed with the trial of the suit till the issue is finally adjudicated. He submits that the temporary injunction granted by the learned Single Judge which is to operate till final disposal of the suit will cause undue hardship to the appellant/defendant.

4. In the facts and circumstances of the case, this appears to be a fit case for invoking suo motu jurisdiction of this Court under Article 227 of the Constitution for directing the Civil Court to refer the issue to the Court of Mamlatdar for deciding the status of the defendant. The learned Civil Court shall refer such issue to the Court of Mamlatdar having jurisdiction as expeditiously as possible and, in any case, within two weeks from the date of receipt of copy of this order and with a further direction to the Mamlatdar to decide the issue as expeditiously as possible and in any case, within a period of six months from the date of receiving reference. In case any party is aggrieved by the order of the Mamlatdar, an appeal shall be filed within 60 days from the date of receipt of copy of the Judgment of the Mamlatdar and the Appellate Authority shall decide the appeal within a period of three months from the date of filing of such appeal. In case,

any party is aggrieved by the order of the Collector, a revision may be filed before the Administrative Tribunal within the period of limitation. If such a revision is filed within the period of limitation i.e. within 60 days, the Administrative Tribunal shall decide the revision within two months. The Mamlatdar, Collector and the Administrative Tribunal shall treat the above time limit as mandatory and peremptory and shall submit compliance report to this Court upon disposal of the matter by the respective Authorities .

The parties, as well as their Advocate shall cooperate for expeditious disposal of the above proceedings. Upon final determination by the concerned Authorities, the Civil Court shall take up the suit for final disposal within two months from the date of receipt of copy of the order of the concerned Authority.

This order shall, however, not come in the way of the appellant, if he so desires, filing a review petition before the learned Single Judge of this Court.

SMT. ANUJA PRABHUDESSAI, J.

MOHIT S. SHAH, CJ.

ssm.