

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 151 OF 2016

FRANCIS JOHN (DECEASED)
REPRESENTED THROUGH HIS LRS.,

... Petitioner

Versus

CLARA FERNANDE (SINCE DECEASED)
REPRESENTED BY LRS AND 2 ORS.,

... Respondents

Adv. J. Abreu Lobo for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 3rd May, 2016

ORAL ORDER:

On 4/3/2016, notice was issued to the respondents indicating that the matter is likely to be heard finally at the stage of admission. There is no appearance on behalf of the respondent though served.

2. I have heard Shri Lobo, the learned counsel for the petitioner and the petition is being disposed of finally.

3. The petitioners, who are the original plaintiffs are challenging the order dated 10/7/2015 by which the learned Senior Civil Judge has refused to grant police protection for enforcement of the order of temporary injunction.

4. By order dated 31/12/2001, the petitioners have been granted an order of temporary injunction whereby the respondents/defendants

or anybody on their behalf were restrained from interfering with the suit public road and also having further restrained from obstructing the 3 metres public road through which the annual process of St. Sebastian passes.

5. The learned counsel for the petitioners points out that on several earlier occasions police protection was granted. It is submitted that the learned trial Court was not justified in refusing police protection on the ground that police had failed to send the report. It is submitted that it is not within the powers of the petitioners to secure the police report. The learned counsel for the petitioner states that CMA no.61/10/II is pending before the learned trial court for breach of injunction under Order 39 rule 2A of C.P.C. The learned counsel points out that the observations by the trial court are not correct. The learned counsel has placed reliance on the decision of this court in the case of "EASTERN STAR HOTELS AND RESORTS PVT. LTD. VS. INDRANATH BAGKAR" reported in LAWS (BOM)-2012-10-83, in order to submit that in similar situation this Court had directed the trial court to reconsider the application.

6. I have considered the circumstances and submissions made. It is a matter of record that earlier the trial court had granted police protection, to the petitioner in order to prevent the breach of the order of temporary injunction. It is further a matter of record that application for taking action for breach of temporary injunction is

pending before the trial court. The learned counsel for the petitioner has submitted that the annual procession of St. Sebastian is in the month of February every year. In such circumstances, it would be in the fitness of things that the trial court re-considers the application for grant of police protection and also decides the application being CMA No.61/2010 as expeditiously as possible. In such circumstances, the petition is disposed of with the following order:

- i) The impugned order is hereby set aside.
- ii) The learned trial Court shall decide the application afresh after calling for the police report and in accordance with law.
- iii) The trial Court shall also decide the application no.CMA NO.61/2010/C as expeditiously as possible and preferably within a period of three months from the receipt of this order.
- 1v) The writ petition is disposed of in the aforesaid terms.

C. V. BHADANG, J.

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