

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 79 OF 2016

IN

WRIT PETITION NO. 858 OF 2015

M/S.JOLLY METALS, THROUGH ITS
PROPRIETOR MRS.SEEMA DIAS AND
ANR.,

... Applicants

Versus

STATE OF GOA, THROUGH CHIEF
SECRETARY AND 5 ORS.,

... Respondents

Shri. Nitin N. Sardesai, Senior Advocate with Mr. Kaif Noorani,
Advocate for the petitioners.

Shri P. Faldesai, Additional Government Advocate for respondents
No. 1 to 5.

Shri S. S. Kantak, Senior Advocate with Mr. J. P. Supekar for
Respondent No. 6.

Coram:- F. M. REIS &
K. L. WADANE, JJ.

Date:- 2nd February, 2016

P.C.

Heard Shri Nitin N. Sardesai, learned Senior Counsel appearing for the applicants, Shri P. Faldesai, learned Additional Government Advocate for respondents No. 1 to 5, Shri S.S. Kantak, learned Senior Counsel for the respondent No. 6.

2. This is an application filed by the petitioners to delete respondent No. 6. It is the contention of Mr. Nitin N. Sardesai, learned Senior Counsel that the applicant being the petitioner in the above writ petition, is the dominus litis and as such it is open to the petitioners to

withdraw the petition against any respondent at their own risk. It is further the contention of the learned Senior Counsel appearing for the applicants that there is no relief sought against the respondent No. 6 and according to him, the respondent No. 6 is not a necessary party to the petition.

3. On the other hand, Shri S.S. Kantak, learned Senior Counsel appearing for the respondent No. 6 has vehemently opposed the above application. Shri S.S. Kantak, the learned Senior Counsel has pointed out that the whole mechanism of the applicants is to exclude the name of respondent No. 6 who has brought sufficient evidence and material on record in support of their contention that the applicants are carrying out illegal activities in the subject property. The learned Senior Counsel further points out that on perusal of the averments in the petition it can be seen that there are averments which would suggest that the petitioners are relying upon the averments made in the PIL filed by respondent No. 6 against the petitioners and others. The learned Senior Counsel further points out that the petitioners have obtained an interim order in view of the default committed by respondent No. 5 and as such according to him in case the petitioner files an interim relief application in the PILWP, such order may come in the way of petitioner in filing such application. The learned Senior Counsel further submits that the action of the petitioners itself is malafide as according to him the respondent No. 6 has already filed an application to modify or

vacation of the interim order passed by this Hon'ble Court. Learned Counsel as such submits that the application may be rejected. The learned Senior Counsel further points out that in case costs are awarded, the same be paid to the State Legal Service Authority.

4. We have considered the application submitted by the petitioners and we have also gone through the records. It cannot be disputed that the petitioners being the dominus litis can unconditionally withdraw the petition against any of the respondents. However, this shall be subject to the own risk of the petitioner. Thus it is not open to us, at this stage, to examine whether the respondent No. 6 would be a necessary party or not or that the petition itself becomes defective. In such circumstances, we find that the petitioner can withdraw the writ petition against respondent No. 6 at their own risk.

5. Dealing with the contention of Shri S.S. Kantak, learned Senior Counsel that respondent No. 6 herein has brought clinching evidence to dispute the claim of the petitioners, this aspect can also be considered at appropriate stage. However, it is now well settled that any order passed at interim stage can be modified or corrected based on new material produced on record. In such circumstances, we find that in case the respondent No. 6 files any application for interim relief in WP No. 24/2015 such application can be examined on its own merit after hearing the parties in accordance with law. An interim order passed in this petition may not by itself dis-entitle filing

of such applications which would be examined on its own merit in accordance with law. It is not disputed that the said writ petition is also tagged with this writ petition. In such circumstances, no prejudice will be occasioned to respondent No. 6 in case the relief sought by the petitioners herein is allowed.

6. In view of the above, the applicants are permitted to withdraw the petition against respondent No. 6 at their own risk subject to payment of costs of Rs.2500/- in favour of Goa State Legal Services Authority. Amendment to be carried out within one week.

7. The application stands accordingly disposed of.

K. L. WADANE, J.

F. M. REIS, J.

ms