

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 287 OF 2016

SMT. RASIKA VASUDEV MALIK. ... Petitioner
Versus
SHRI. NAMDEV SHIVRAM MALIK AND 5
ORS., ... Respondents

Mr. Parag S. Rao, Advocate for the Petitioner.

Coram:- S. B. SHUKRE, J.

Date:- 4th March, 2016

P.C:

Heard learned Counsel for the petitioner.

2. Leave to amend the prayer by adding a prayer for quashing of the notice dated 03.03.2016 issued under Section 149 Cr.P.C., is granted.

Petition to be amended forthwith.

3. It is submitted by learned Counsel for the petitioner that the petitioner is not a party-defendant to Regular Civil Suit No. 18/2016 and the order dated 26.02.2016, granting temporary injunction in favour of the plaintiff in the said suit operates only against the defendants therein. He further submits that the order dated 26.02.2016 nowhere makes any direction to or as against this petitioner. He further submits that inspite of this being the position, notice under Section 149 Cr.P.C. has been issued to the petitioner by the Police Inspector of Pernem Police Station.

4. I have gone through the copy of the plaint filed in Regular Civil Suit No. 18/2016 and also the order dated 26.02.2016 passed in that suit whereby, temporary injunction has been granted in favour of the plaintiff and against the defendants therein. The petitioner not being a party to the said suit, the order dated 26.02.2016 cannot be the order directed in any manner against the petitioner. There would be no question of the petitioner being affected by the said order dated 26.02.2016 or being affected in any manner in carrying out the construction in terms of construction license obtained by her from the Village Panchayat and Technical Clearance obtained from the Town and Country Planning Department after obtaining N.O.C. from the Health Department and Electricity Board. Therefore, no notice under Section 149 Cr.P.C., as issued in this case by the Police Inspector of Pernem Police Station, could have been issued.

4. Such being the nature of this case, I do not see that there is any need to issue notice to the respondents and the purpose of this petition would be served if the following order is passed:

(a) The notice dated 03.03.2016, in view of the observations made above, is hereby quashed and set aside.

(b) The petitioner being not a party to Regular Civil Suit No. 18/2016 would not be affected in any manner or bound by the order dated 26.02.2016 in the said suit.

(c) Petition is disposed of in the above terms.

5. Before parting with the order, I must mention here that the order dated 26.02.2016 passed by the learned Civil Judge Junior Division is hardly legible. It would be, therefore, advisable for the learned Civil Judge Junior Division to avail of services of Stenographer, wherever it is practicable.

6. Authenticated copy of the order be furnished to learned Counsel for the petitioner.

S. B. SHUKRE, J.

EV