

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 589 OF 2016

MR. AGNELO PAES AND ANR.

... Petitioner

Versus

MR. SARAT PAES AND ANR.

... Respondent

Mr. Raviraj Chodankar, Advocate for the Petitioners.

Mr. L. Assoldekar, Advocate for the Respondent nos. 1 and 2.

Coram:- F. M. REIS, J.

Date:- 17th November, 2016

P.C.

Heard Mr. Raviraj Chodanker, learned Counsel appearing for the Petitioners and Mr. Assoldekar, learned Counsel appearing for the Respondents.

2. This is a Petition taking exception to a roznama Order dated 14.06.2016 whereby the Respondents have been permitted to examine the witness to produce a plan allowed to be relied upon by the Respondents pursuant to an Order passed by this Court dated 30.10.2014.

3. Learned Counsel appearing for the Petitioners pointed out that after the Order was passed, the Respondents were negligent in paying the costs and examining the witness in support of such plan. Learned Counsel further submits that at that stage, the evidence of the

Petitioners was in progress and instead of examining the witness on behalf of the Respondents who are the Plaintiffs in the suit, the Respondents allowed the witnesses of the Petitioners to be examined in support of the defence. Learned Counsel further pointed out that only after the evidence of the Petitioners was closed, the Respondents sought permission of the Court to examine their witnesses in support of their case. Learned Counsel further submits that this was a calculative move on the part of the Respondents to cause prejudice to the Petitioners as the Petitioners would not be able to rebut the evidence and the plan sought to be produced. Learned Counsel has thereafter taken me through the roznama Orders passed during the course of the proceedings before the learned Judge to point out that the conduct of the Respondents clearly suggests that the Respondents were only bent upon in delaying the proceedings with malafide motives. In support of his submissions, the learned Counsel has relied upon the Judgment of the Apex Court reported in 2016 Supreme (SC) 587 in the case of Gayathri vs. M. Girish and 2013 AIR (SC) 1849 in the case of M/s. Bagai Construction Thr. its Proprietor Lalit Bagai vs. M/s. Gupta Building Material Store.

4. On the other hand, Shri Assoldekar, learned Counsel appearing for the Respondents, has pointed out that whilst disposing of the Writ Petition filed by the Petitioners, by Order dated 30.10.2014, the right to lead evidence in reply to the documents allowed to be produced by the Respondents, was clearly reserved for the benefit of the

Petitioners. Learned Counsel further pointed out that there is no prejudice as claimed by the Petitioners in allowing the witnesses of the Respondents, to be examined at this stage. Learned Counsel further pointed out that after the payment of costs as directed by this Court in the said Order dated 30.10.2014, the learned Judge posted the matter for further evidence of the Petitioners. Learned Counsel further pointed out that the Petitioners accepted this position and examined their witnesses and as such it is not appropriate on the part of the Petitioners to rescile on such stand and claim that the Respondents are not entitled to examine the witness in support of the documents. Learned Counsel has thereafter taken me through the records of the Court to point out that the matter was in fact adjourned as the Petitioners who sought leave to produce additional documents which was allowed to be produced by the learned Judge. Learned Counsel as such pointed out that there is no case made out for any interference by this Court in the impugned Order.

5. I have carefully considered the submissions of the learned Counsel and I have also gone through the records. The exercise of jurisdiction of this Court under Article 227 of the Constitution of India, is inter alia in a situation wherein there would be failure of justice in case the Order impugned is allowed to stand. In the present case, as rightly pointed out by the learned Counsel appearing for the Respondents whilst disposing of Writ Petition no. 700 of 2013 by Judgment dated 30.10.2014, there was a specific right reserved for

the Petitioners to lead evidence in reply to the material and other documents allowed to be produced by the Respondents. In such circumstances, even though the learned Judge by the impugned Order has permitted the Respondents to now examine the witnesses, no prejudice would occasion to the Petitioners as the Petitioners would be entitled to lead evidence in reply to any document produced in support of their case by the Respondents.

6. In such circumstances, I find that though otherwise it would be more appropriate to examine the witness of the Plaintiffs before the evidence of the Petitioners had started, nevertheless, merely because of such irregularities, it would not call for any interference by this Court as it does not by itself vitiate the impugned Order. There is no failure to justice to the Petitioners and consequently, there is no case made out for any interference under Article 227 of the Constitution of India.

7. Consequently, the Petition stands rejected.

F. M. REIS, J.

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