

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 284/2008

GOA PLAST PVT. LTD.
THROUGH ATTORNEY ISHWAR B. **Appellant**
MUCHANDI

V/s.

CHICO URSULA D'SOUZA **Respondent.**

Mr. V. Menezes, Advocate for the appellant.

Mr. A. F. Diniz, Advocate for the respondent.

STAMP NUMBER MAIN NO. 1644/2009

MRS. PRECIOSA FRANCISCA
FERNANDES (DECEASED) THROUGH **Appellant**
LR.

V/s.

MADHUKAR GAONKAR GAZINKAR **Respondents.**
AND OTHERS.

STAMP NUMBER MAIN NO. 1646/2009

MRS. PRECIOSA FRANCISCA
FERNANDES (DECEASED) THROUGH **Appellant**
LR.

V/s.

MADHUKAR GAONKAR GAZINKAR **Respondents.**
AND OTHERS.

Mr. J.P. Mulgaonkar, Advocate for the appellant.

STAMP NUMBER MAIN NO. 3050/2009

SHRI VIVEK SAKHARDANDE
(DECEASED) THROUGH LRS.

..... **Appellant**

V/s.

SMT. DOMENICA MAZZARA E
SEQUEIRA AND ORS.

..... **Respondents.**

Mr. A.F. Diniz, Advocate for the respondents.

FIRST APPEAL NO. 5/2010

SMT. FATIMA DE SEQUEIRA
NAZARETH AND ANR.

..... **Appellants**

V/s.

M/S. KIVIN INCORPORATION AND 14
OTHERS.

..... **Respondents.**

Mr. M.B. De Costa, Senior Advocate with Ms. K. Betquecar, Advocate
for the appellants.

FIRST APPEAL NO. 31/2010

MR. XAVIER D'SOUZA.

..... **Appellant.**

V/s.

M/S. LAURA M.O. AFONSO
FERNANDES AND 7 OTHERS.

..... **Respondents.**

Mr. R. Menezes, Advocate for the appellant.

Mr. Valmiki Menezes, Advocate for the respondents.

CORAM :- F.M. REIS, J.

Date : - 5th February, 2016.

ORAL ORDER :

All the above appeals were placed for orders in view of the order dated 20th June, 2015, passed by the learned Principal District Judge, North Goa, at Panaji whereby the appeals which were ordered to be transferred in view of the provisions of Section 20-A of the Goa Civil Courts Act, 1965, were directed to be placed before this Court for appropriate orders, as the learned Judge came to the conclusion that the Decrees which were challenged in the above appeals were passed by the Presiding Judge of the Court of the Ad-hoc District Judge who had co-extensive powers as the District Judge.

2. Mr. M.B. De Costa, learned Senior Counsel appearing for the appellant in First Appeal No.5/2010 has pointed out that the transfer of the suits from the Court of the learned Civil Judge, Sr. Division to the Court of the Ad-hoc Fast Tract Court is to be considered in terms of Section 24 of the Code of Civil Procedure. The learned Senior Counsel further points out that though such an order is shown to be an administrative order, nevertheless, according to him,

such order has to be treated as an order under Section 24 of the CPC., wherein there are specific powers to the District Judge to suo motu transfer suits in the subordinate Courts. The learned Senior Counsel further submits that once the suit has been decided by the District Court in exercise of its Civil Original jurisdiction, an appeal would lie before the High Court. The learned Senior Counsel, as such, submits that the learned District Judge was justified to pass the impugned order as, according to him, the appeal would have to be examined by this Court in a First Appeal.

3. Mr. Valmiki Menezes, learned Counsel appearing for the appellant in First Appeal No.284/2008 and for the respondents in First Appeal No.31/2010, has pointed out that the suits which were tried by the Ad-hoc District Judge, were in the capacity as a Civil Judge, Sr. Division and, as such, the Court of the District Judge has jurisdiction to try the appeals transferred by this Court, in view of the provisions of Section 20-A of the Goa Civil Courts Act. The learned Counsel further submits that otherwise, the appellants would forfeit the right of an appeal in case such an appeal is not decided by the learned District Judge. The learned Counsel, as such, submits that the appeals be

directed to be decided by the learned District Judge. The learned Counsel further points out that once this Court had transferred the matters to the learned District Judge by a judicial order, it was not open to the learned District Judge to hold that he had no power or jurisdiction to decide such appeals.

4. Mr. A.F. Diniz, learned Counsel appearing for the respondents in First Appeal No.284/2008 and STM No.3050/2009 has vehemently supported the impugned order passed by the learned Principal District Judge. The learned Counsel has pointed out that in terms of the scheme of Fast Track Courts, the Fast Track Courts are to be treated as the Courts of the District Judge and, as such, an appeal from a Judgment passed by the District Court will have to be before the High Court. The learned Counsel further submits that even whilst transferring the appeals from this Court to the learned District Judge this contention raised by the respondents was expressly kept open in his appeal and, as such, according to him, the learned District Judge was justified to come to such a conclusion. The learned Counsel further points out that in case the appeals are directed to be heard before the District Court, it would mean that the appeals are being

tried in the same Court, which is not permissible in law. The learned Counsel has, thereafter, taken me through Section 96 of the CPC to point out that an appeal would lie from a Judgment passed in exercise of original civil jurisdiction to the Superior Court which, according to him, is the High Court in the facts of the present case. The learned Counsel further points out that even the Apex Court has come to the conclusion that Fast Track Court Judges should be considered for promotion to the post of District Judge. The learned Counsel, as such, points out that though the concerned Judge was appointed as an Ad-hoc District Judge, under the Scheme of Fast Track Courts constituted by the Government, the Fast Track Court has to be treated as part of the District Court and, as such, an appeal from a Judgment passed by the Ad-hoc District Judge, has to be decided by the High Court. The learned Counsel has, thereafter, taken me through the impugned order passed by the learned Principal District Judge to point out that there is no infirmity therein which would call for interference of this Court.

5. Mr. Ryan Menezes, learned Counsel appearing for the appellants in First Appeal No.31/2010, has pointed out that once this

Court has transferred the matters to the learned District Judge, in exercise of powers under Section 20-A of the Civil Courts Act, it was not open for the learned District Judge to retransfer the matters to this Court for reconsideration. The learned Counsel further points out that the same Judicial Officer, who had passed the Judgment in the suit, cannot decide the appeal before the learned District Judge.

6. I had also permitted the Counsel practising in this Courts to address on this aspect as it would involve a decision in a number of appeals on the same aspect.

7. Mr. S. D. Lotlikar, learned Senior Counsel who sought permission to address, has submitted that the Judges of the Ad-hoc District Courts who decided the suits were Judges of the Court of Civil Judge, Senior Division and, as such, according to him, once this Court has transferred the appeals to the learned District Judge, in view of the amendment to the Civil Courts Act, the learned District Judge has to decide the appeals, in accordance with law. The learned Senior Counsel further points out that the learned Principal District Judge, as such, was not justified to pass the impugned order. The learned Senior

Counsel further submits that the Judges of the Fast Track Courts were only Ad-hoc District Judges though they continue to be in the cadre of Civil Judge, Senior Division. The learned Senior Counsel, as such, points out that the impugned order of the learned Principal District Judge deserves to be quashed and set aside.

8. Mr. J.E. Coelho Pereira, learned Senior Counsel also sought permission to argue. The learned Senior Counsel has pointed out that considering the scheme of Fast Track Courts, as well as the Judgments/orders passed by the learned Fast Track Courts, the question of passing the impugned order and transferring the appeals back to this Court for consideration is not at all justified. The learned Senior Counsel further points out that such appeals, in terms of the provisions of Section 20-A of the Civil Courts Act, had to be decided by the District Court.

9. I have considered the submissions of the learned Counsel and I have also gone through the records. On plain reading of the order directing the Ad-hoc District Judge to decide the suits, it is clear that such an order was an administrative order. As such, the question of

examining whether it was passed in terms of Section 24 of the C.P.C. would not arise. An order under Section 24 of C.P.C. is passed in specific situation stipulated therein whereby the learned District Judge can, inter alia, transfer suits for disposal to any subordinate Court. Apart from that, the law itself provides that such a transfer has to be to a Competent Court. As per the Code of Civil Procedure, the original suits are to be filed before the Court of Civil Judge, Sr. Division having jurisdiction. The District Court, though is a Court of original jurisdiction, nevertheless, no civil suits can be filed in private disputes before the District Court, unless the Government is a party. As such, any transfer by an administrative order cannot, in any way, lead to a situation where the parties would be deprived of their right of an appeal. It cannot be disputed that in terms of the provisions of the Civil Manual, the District Court has got power of superintendence and control over the business of the cases before the subordinate judiciary. In exercise of such powers, the High Court can consider relocation of suits before the subordinate judiciary. In exercise of such administrative power, the learned Principal District Judge directed that the suits be allotted to the Ad-hoc Fast Track Courts for expeditious disposal. When such transfers took place, there was no objection

raised by any of the parties to the effect that the Ad-hoc Fast Track Courts did not have power to decide such suits. After conclusion of the trial, the suits came to be disposed of. The parties, who were aggrieved, preferred appeals before this Court. At that relevant time, an appeal against a Judgment in a Suit valued at more than Rs.1,00,000/-. Section 22 of the Goa Civil Courts Act 1965, prior to the amendment in the year 2009, provides that in all suits decided by a Civil Judge of which the amount or value of the subject matter exceeds Rs.1.00 lac, the appeal from his decision shall be direct to the High Court. Section 6 of the Goa Civil Court Acts also provides that save as otherwise expressly provided in the said Act, the District Court shall be the Court of Appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force. As such, the appeals which were pending before this Court when the amendment to the Civil Courts Act was introduced in the year 2009, were appeals from the Judgments passed by the Civil Judge, Sr. Division, as the subject matter of the suit exceeds Rs.1.00 lac before the amendment of the year 2009. It is also to be noted that appellate jurisdiction can also be conferred on a Civil Judge, Sr. Division in terms of Section 23 of the said Act, as may be referred to

him by the District Judge. All these aspects suggest that appeals can be filed against the judgments passed by the learned District Judge in suits between private parties before the High Court, except in cases where the Government is a party or specifically provided. All this would show that the appeals which were preferred before this Court, were against judgments passed in the capacity as the Civil Judge, Senior Division, which were thereafter transferred in view of the amendment in the year 2009. The contention of the learned Senior Counsel Mr. M.B. De Costa and the learned Counsel Mr. A.F. Diniz appearing for the respective parties that such a transfer by the learned District Judge has to be considered in terms of Section 24 of the CPC cannot be accepted. As has been pointed out herein above, the order of transfer was an administrative order which is in the context of the administration of the business of the subordinate judiciary by the District Judge.

10. It is a trite that the District Judge and the High Court are entitled to pass orders for administrative exigency and expediency to transfer suits or proceedings to the Court of competent jurisdiction and in the present case, to the Fast Track Courts to ensure speedy disposal of the suits. So long as the power can be and is exercised

purely for administrative exigency without impinging upon or prejudicially affecting the rights or interests of the parties in any judicial proceeding, it cannot be held that administrative powers must yield place to judicial powers simply because in a given circumstance they coexist. On the contrary, the present cases illustrate how exercise of administrative powers were more expedient, effective and efficacious to ensure speedy disposal of the suits. In such circumstances, I find that the learned District Judge was not justified to pass the orders dated 20th June, 2015 transferring the appeals before this Court. As has been pointed out herein above, the suits were decided in the capacity as the Civil Judge, Sr. Division and the appeals would lie to the Appellate Court as per their pecuniary jurisdiction to the Forum as provided under the Civil Procedure Code.

11. The only aspect which remains to be examined is, what is the status of the Fast Track Court Judges who were appointed under the Scheme of the Fast Track Courts though as Ad-hoc District Judges. The Apex Court in the Judgment reported in **(2002) 5 SCC 1**, in the case of **Brij Mohan Lal v/s. Union of India and ors..** has observed that “No right will be conferred on judicial officers in service for

claiming any regular promotion on the basis of his/her appointment on ad hoc basis under the Scheme. The service rendered in Fast Track Courts will be deemed as service rendered in the present cadre. In case any judicial officer is promoted to higher grade in the parent cadre during his tenure in Fast Track Courts, the service rendered in Fast Track Courts will be deemed to be service in such higher grade.” Taking note of the said observations, it is seen that the Apex Court has clearly held that the Fast Track Courts' Judges would continue to be in the cadre of the Civil Judge, Senior Division and their appointment as Ad-hoc District Judges cannot, in any way, deny them from taking benefits from such appointments. In such circumstances, the Fast Track Courts' Judges presiding over the Fast Track Courts continue to be in the cadre of the Civil Judge, Sr. Division. It cannot be disputed that the Courts can have concurrent jurisdiction.

12. In such circumstances, when the suits ordered to be considered by the learned District Judge based on an administrative order, the Judgments were passed in the capacity as the Court of the Civil Judge, Sr. Division. Once this view is taken, the appeals filed by the appellants had to be decided by the District Judge in view of

the statutory amendment to the Civil Courts Act.

13. The grievance of the learned Counsel that some appeals decided by the Fast Track Courts' Judges as Civil Judge Senior Division, are also being tried by the same Presiding Judge of the Fast Tract Courts, would not at all arise and it can be duly considered by the learned Principal District Judge whilst making the allotments of such appeals. The contention of the learned Counsel on that count would, as such, no longer survive.

14. In that view of the matter, the learned Principal District Judge was not at all justified to pass the impugned order in appeals when there was a judicial order passed by this Court, transferring the matters to the learned District Court for consideration. Once this Court has passed such a judicial orders, it is binding on the learned District Court and, as such, it was expected of the learned District Court to decide the appeals, in accordance with law, instead of remitting back the matters to this Court.

15. In view of the above, I pass the following :

ORDER

(I) All the above appeals are directed to be sent to the Court of the Principal District Judge, North Goa, at Panaji.

(II) The learned Principal District Judge is directed to allot the matters to the learned Additional District Judge, in the light of the observations made herein above, as expeditiously as possible.

(III) The concerned Courts are directed to dispose of the Appeals within three months from the date of receipt of the order .

F.M. REIS, J.

ssm.