

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1117 OF 2016

SHRI. VISHRAM KRISHNA KANTAK (DEC)
THR. LRS. AND ANR.,

... Petitioners

Versus

CANACONA MUNICIPAL COUNCIL, THR.
ITS CHIEF OFFICER AND 19 ORS.,

... Respondents

Mr. Hanumant D. Naik, Advocate for the Petitioners.
Mr. P. A. Kamat, Advocate for the Respondent nos.11 to 20.
Mr. S. Chopdekar, Advocate for the Respondent nos. 2 to 7.

Coram:- F. M. REIS, J.

Date:- 22nd December, 2016

P.C.

Heard Mr. H. D. Naik, learned Counsel appearing for the Petitioners and Mr. Kamat, learned Counsel appearing for the Respondent nos. 11 to 20.

2. The above Petition seeks for transfer of the proceedings of Regular Civil Suit no. 109 of 2010 pending before the learned Civil Judge, at Canacona, to some other Civil Court.

3. After hearing the learned Counsel appearing for the Petitioners and the Respondents, on the last date of hearing, a report was called from the concerned Presiding Judge. The report has been submitted which was perused and thereafter placed in sealed cover and handed over to the Registrar of this

Court for safe custody.

4. Mr. H. D. Naik, learned Counsel appearing for the Petitioners, submits that the Petitioners have apprehension that the Petitioners will not get justice in the matter pending before the learned Judge as, according to him, on an earlier occasion, the concerned Judge had friendly relationship with the family of the Petitioners. It is further pointed out that even for some birthday functions, the concerned Judge had attended a birthday function at the premises of one of the Petitioner no. 2. The learned Counsel further pointed out that though the Petitioner has no allegations of bias against the concerned Judge, it would be appropriate in the interest of justice to transfer the matter to any other Court for deciding the suit. The learned Counsel further pointed out that the apprehension of the Petitioners is on the basis that an application for temporary injunction was filed by the Petitioners came to be dismissed by the learned Judge which Order was set aside by the Lower Appellate Court. The learned Counsel further pointed out that this itself has created an apprehension in the minds of the Petitioners that the Petitioners may not get justice from the learned Judge. The learned Counsel has pointed out that the Petitioners had filed an application before the learned District Judge for transfer of the Suit which came to be dismissed by an Order dated 11.08.2016. The learned Counsel has thereafter taken me through the observations of the

learned Judge to point out that the core issues raised by the Petitioners have not been addressed by the learned Judge and, as such, the Petitioners are entitled to get the proceedings transferred to some other Court.

5. On the other hand, Shri P. A. Kamat, learned Counsel appearing for the Respondent nos. 11 to 20, has pointed out that the above Petition is an abuse of process of Court as, according to him, the allegations are vague and without any substance. Learned Counsel further pointed out that the learned District Judge had in fact called for a report from the concerned Judge and on the basis thereof, found that there was no case for any transfer of the Suit from the Court of Civil Judge, Junior Division at Canacona to some other Court. Learned Counsel further submits that in fact the Petition deserves to be rejected for suppression of material facts as, according to him, though the Suit was filed in the year 2010, the transfer application was moved by the Petitioners to get the matter transferred only after the Suit was ordered to be expedited by this Court on 21.11.2016. Learned Counsel further pointed out that the Petitioners have not disclosed the fact that the Suit has been expedited and only because of such direction, the learned Judge has been taking up the matter expeditiously would not be a ground for transfer of the Suit.

6. I have carefully considered the submissions of the learned Counsel and I have also gone through the records. I have also perused the report submitted by the learned Presiding Judge. In the present case, the apprehension of the Petitioners that the Petitioners may not get justice from the learned Judge is merely on the ground that the learned Judge had dismissed the application for temporary injunction which came to be set aside by the learned Lower Appellate Court. Merely passing a judicial Order cannot by itself be a ground for transfer of the proceedings from the concerned Court. The allegations about attending the functions are vague and no particulars thereof have been mentioned. Looking into the report submitted by the learned Judge about attending a function of a birthday celebration along with her husband would not by itself be a ground to create any apprehension in the minds of the Petitioners that the Petitioners will not get justice from the learned Judge. In fact, these allegations were never raised by the Petitioners when the application for temporary injunction was under consideration. Passing an Order of transfer has to be exercised sparingly and on the basis of some cogent and conclusive material on record. A transfer can lead to affect the moral of the Presiding Judge in performing their duties in the administration of justice.

7. In such circumstances, as the Petition lacks particulars to support the alleged apprehension of the Petitioners that the

Petitioners may not get justice from the learned Presiding Judge, I find that the question of seeking any transfer on such ground by the Petitioners would not at all be justified. The learned District Judge in fact has examined the matter and has found that there is n case made out for transfer of the proceedings before the learned Judge. The Presiding Officer always ensures that the disputes are adjudicated in accordance with law.

8. In view of the above, I find that there is no merit in the above Petition which stands accordingly rejected.

F. M. REIS, J.

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