

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.16 OF 2015
IN
PARSI SUIT (L) NO.18 OF 2015**

Ayesha Jamshed Madon ...Plaintiff
V/s.
Jamshed Bejon Madon ...Defendant

.....

Mrs. Nityoah Mehta with Mr. Ashish Anand i/by M/s. Nityoah Suneel & Associates, Advocates for the Plaintiff.
Ms. Zenobia S. Irani, Advocate for the Defendant.

.....

CORAM : A. K. MENON, J.

DATE : 28TH JANUARY, 2016.

PC.:

This is an Application taken out by the Plaintiff seeking following reliefs:

“a) that pending the hearing and final disposal of the Suit, that the Defendant to remove himself from the Plaintiff's property and further be restrained by an order and injunction of this Hon'ble Court from entering the Property at Exhibit C to the Plaint and or any part thereof of the property situated at Capella Forest Retreat & Homestay, survey no.210, subdivision 1, 376/1 Boqueachi Arrady, Parra, Bardez, Goa 403510, belonging to the Plaintiff and not to disturb the peaceful possession and ownership of with respect to the Plaintiff's property through himself, his servants and or agents and or in any way howsoever and whatsoever,

b) that pending the hearing and final disposal of the Suit, the Defendant be restrained by an order and injunction of this Hon'ble Court from selling, alienating,

transferring and or creating any third party rights, directly or indirectly, by himself and or through his servants and agents property described more particularly at Exhibit D to the Plaint,

c) that the Defendant be ordered and directed to pay towards alimony pendant lite to an amount of Rs.75,000/- per month beginning from the filing of the Suit, And or any such reasonable amount as this Hon'ble Court may deem fit and proper.

d) that pending the hearing and final disposal of the Suit the Defendant be ordered and directed to pay towards maintenance and education of Master Zal an amount of Rs.50,000/- per month, beginning at least from January, 2015 together with 25% rise each year, and or such are the reasonable amount as this Hon'ble Court may deem fit and proper,

e) the Defendant be ordered and directed to pay to the Plaintiff, the legal expenses of at least rupees five lakhs towards the plaint and proceedings and or such amount as the Hon'ble Court may deem fit and proper,

f) that pending the hearing and final disposal of the Suit, the Defendant be restrained by an order and injunction of this Court from poisoning the ears of the minor son Master Zal and or disturbing the routine of the child,

g) that pending the hearing and final disposal of the Suit, the Defendant be restrained by an order and injunction of this Hon'ble Court from meeting with and or harassing her at any place whatsoever,

h) that pending the hearing and final disposal of the Suit, the Defendant be ordered and directed to furnish to the details of the Defendant's investments, Income tax returns for the past five years, the details of properties held by the Defendant, details of fixed deposits, shares and stocks, investments, etc.

i) that pending the hearing and final disposal of

this petition, the Defendant be ordered and directed to pay compensation of an amount of Rs.fifty lacs only,

j) Interim and ad-interim reliefs in terms of prayer clauses (a) to (i) above,

k) For costs,

l) for such further and other reliefs as the Hon'ble Court may think fit and proper in the circumstances of this case.”

2 The learned Advocate for the Plaintiff firstly submits that the property in question is purchased by her exclusively in her own name where she runs a home-stay in the name and style of 'Capella Forest Retreat & Home-stay' (“suti property”). It is her case that the Defendant/Husband was staying separately for about seven years but in April, 2015, he has forcibly occupied one of the rooms named Magnolia in the suit property constructed jointly by the plaintiff and the defendant. It is submitted that since mid November, 2013, the Defendant moved out of the suit property and was staying at his own house but as a result of his now occupying Magnolia, it has seriously affected her home-stay business. The Defendant is refusing to vacate the said room even when the Plaintiff requested him, on many occasions, when she had lucrative booking enquiries for Magnolia but it could not let out to any customer in view of the Defendant occupying the same.

3. In support of her contention, she has relied upon the sale deed dated 6.8.2004, which discloses that the Plaintiff alone was the purchaser of the land described in the Schedule to the Deed of Sale which admeasures about 2400 sq.mtrs. It is not in dispute that this property is purchased by the Plaintiff. However, admittedly, the house constructed upon the land and which is named as 'Capella Forest Retreat & Homestay' was built by both the parties jointly. In the circumstances, the Plaintiff does not claim exclusive ownership of the house but only of the land.

4. As far as the other reliefs are concerned, It is not in dispute that the adjoining property is owned by the Defendant and in the plaint, the Plaintiff has annexed a copy of the Sale Deed under which the suit property was purchased in or about June, 2006. It is also not in dispute that upon the defendants property, there is a cottage constructed. The Defendant claims to be exclusive owner of the suit property and of the cottage constructed thereupon. There is dispute as to who has constructed. It is the Plaintiff's case that the Defendant is likely to sell his own property which is adjacent to that of the Plaintiff and he will continue to occupy Magnolia to her detriment.

5. As far as the dispute relating to the suit property is concerned, the learned counsel for the Defendant has relied upon e-mails dated

17.12.2012, 25.3.2015, 21.4.2015. It is pointed out that in paragraph 4 of the E-Mail dated 25.3.2015 addressed by the Plaintiff to the Defendant at about 9:46:42 Indian Standard Time, the Plaintiff states as follows:

“ So keep thinking and when you are ready to come to the table then we can have a cup of tea together. Till then I guess it's back to status quo except that I have now agreed that you could move into my second best room Magnolia so be comfortable.”

4 This according to the learned Advocate for the Defendant is sufficient to establish that the Defendant has not forced his way into Magnolia but he has done so on the request by the Plaintiff as evident from the paragraph quoted above. In fact, there is no denial of the contents of this E-mail dated 25.3.2015. In the circumstances, prima-facie, it does not appear that the Plaintiff is correct in submitting that the Defendant forced his way in Magnolia as stated in the paragraph 23 of the Affidavit in support.

5. The learned Advocate for the Plaintiff then submitted that the Plaintiff is also entitled to injunction restraining the Defendant from disposing his property situated alongside Capella Forest Retreat & Homestay, survey no.210, subdivision 3, 376/1 Boqueachi Arrady, Parra, Bardez, Goa 403510, and further submitted that the Defendant is

intending to sell the house property with a view to pressurise the Plaintiff to permit the Defendant to stay at Capella Forest Retreat & Homestay. Apropos this apprehension, the learned counsel for the Defendant has made a statement that the Defendant has no such intention of parting with possession or alienating, encumbering or otherwise disposing and or selling the his property more particularly described in the schedule to the Sale Deed dated 23.6.2006 or the land upon which the cottage is constructed. In this view of the matter, the Defendant shall file written undertaking in this court.

6. As far as the Plaintiff's property is concerned, it is common ground that the house is constructed out of the joint funds. In the circumstances, there is nothing on record to show that the Defendant is not entitled to reside in one room. The Defendant has not in any manner obstructed the Plaintiff from conducting her business and Ms. Irani the learned counsel for the defendant has made a statement that he has no intention to obstruct the Plaintiff's business of conducting home-stay except that he continues to reside in the room 'Magnolia' and has occupied the room only at the instance of the Plaintiff. That having been said, it is not as if the Defendant is being permitted by this Court or by this order to continue to stay at Magnolia. In my view, there is no prima-facie case made out for granting injunction restraining the Defendant from occupying the said

room in the facts of the case.

7. As far as the other prayers are concerned, the learned Advocate for the Defendant submits that the cost of the maintaining and educating their son Zal has been entirely borne by the Defendant and he will continue to do so without any contribution being made by the Plaintiff unless she so desires. In relation to this claim for maintenance cost and education cost, I specifically asked the Plaintiff's counsel whether she has any evidence on record to show that she is bearing the cost of the child's education. Ms. Mehta learned counsel for the plaintiff conceded that neither in the plaint nor affidavit in support of the Motion or compilation tendered in support of Notice of Motion there is any evidence to suggest that the plaintiff has borne the entire cost of educating the child. In other words, on behalf of the defendant, statement is made by the counsel on instructions that the defendants will continue to bear and pay all cost of maintenance and education of son Zal which he has been doing. The other point urged before me today is the fact that the plaintiff is unable to maintain herself and she seeks order directing the defendant to pay alimony at Rs.75,000/- per month or such other sum the Court may fix. In this respect there is no material on record to show the income of defendant. On query from the Court as to plaintiff's information or assessment as to what income of the defendant is, the learned Advocate

for the plaintiff conceded that she has no information of income of the defendant and in particular to support her claim to Rs.75,000/- for maintaining herself. It is admitted by Ms. Mehta that all income from letting of premises to house guests is collected by the plaintiff and the defendant has no claim to the same.

8. The learned Advocate for the plaintiff sought to rely upon certain admissions in the written statement filed on behalf of the defendant more particularly those contained in paragraph 18 in support of her contention that even according to the defendant, the plaintiff is unable to manage herself. However, reliance upon this argument is misplaced inasmuch as the defendant's contention is to the fact that if business is being not being managed properly it would be difficult for the defendant to sustain it. There is nothing on record to show that the plaintiff is unable to maintain herself and that she cannot maintain standard of living that the defendant is enjoying. As far as other reliefs sought in the Motion are concerned, if fact, in paragraph 8.1 the defendant has admitted that no income from homestay guest of the plaintiff is appropriated by the defendant. As far as other prayer which is material is one which seeks legal expenses of Rs.5,00,000/- and injunction restraining the defendant from disturbing routine of their son Zal. As far as prayer for

legal expenses are concerned, it is premature. I am not inclined to entertain prayer in relation to the allegations of influencing the son are concerned. There is nothing on record that an attempt is made by the defendant to influence the child in any manner against the plaintiff or plaintiff's interest.

9. In the circumstances I find that no prima facie case is made out by the plaintiff for grant of any relief so also balance of convenience does not appear to be in her favour and interest of justice will be served by passing the following order :

The defendant shall within a period of two weeks from today filed a written undertaking to this Court to the following effect :

(a) That he shall not alienate, encumber or otherwise sell or dispose of premises and cottage and property called "BOKASHI ARADI" along known as "BOKIANCHI ARADI" situated Parra, within the limits of Gram Panchayat of Parra, Bardez Taluka, Registration District of North Goa, State of Goa not described in the Land Registration Office nor enrolled in the Taluka Revenue Office Surveyed under no.210, Sub-Division-3, totally admeasuring 1600 sq. mtrs. as described in schedule to the deed of sale dated 23rd June, 2006 and that pending hearing and final disposal of the suit.

(b) that he shall not claim any part of the income that the plaintiff may

generate from homestay guest business at Capella Forest Retreat & Homestay Resort.

(c) As far as the son Zal is concerned, the defendant shall undertake to bear and pay the entire cost of educating the child Zal in the present school as well as costs and expenses in relation to further education so also all costs of living that the child may have to incur will be borne and paid by the defendant.

(d) The defendant shall also state that he has never attempted to prevail upon the plaintiff to sell her property situated at Capella Forest Retreat & Homestay and hereafter he shall not do so or ask the Plaintiff to discontinue her home stay business or prevent her from running the business in any manner pending hearing and final disposal of the suit.

(e) The plaintiff shall also not be entitled to sell or dispose of suit property including the land without leave of the court. Motion is disposed of in the above terms

There will be no order as to costs

(f) List the matter on 2nd March, 2016 for directions.

(A. K. MENON, J.)