

IN THE HIGH COURT OF BOMBAY AT GOA.

Appeal From Order No.42 of 2017.

1. Mr. Sangam R. Narvekar
s/o Rama Narvekar, major in age,
r/o H.No.448, Matuem,
major in age, Sancoale,
Mormugao, Goa.

2. Mrs. Natasha S. Narvekar
w/o Sangam R. Narvekar,
major of age, r/o H.No.448,
Matuem, major in age,
Sancoale, Mormugao, Goa. ... **Appellants.**

V/s

1. Costa River Transport Pvt. Ltd.,
a registered company under the
Indian Companies Act, 1956,
having its registered office at
E-8-56, Altinho, Mapusa,
Bardez, Goa – 403 507.

Represented by its Director,
Mr. Carl Joseph Cosme Costa,
aged 35 years, son of Carminho Costa,
Businessman, Indian National,
Residing at Altinho, Mapusa,
Bardez, Goa- 403 507.

2. Canara Bank,
A Government of India Undertaking,
ARM Branch, Panaji, Ground
floor, Mathias Plaza, 18th June
Road, Panaji, Goa – 403 001. ..**Respondents**

....

Shri Sudin Usgaonkar, Senior Advocate with Ms.
Vinita Palyekar, Advocate for the appellants.
Shri J.A.Lobo, Advocate for respondent no.1.
None for other respondents.

**CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 15.11.2017.
PRONOUNCED ON : 27/11/2017.**

JUDGMENT:

1. By this appeal, the appellants-defendants have challenged an order of temporary mandatory injunction passed by the learned Senior Civil Judge, Vasco on 6.10.2017, directing the eviction of the defendants-appellants from the suit premises, which admittedly belongs to the respondent no.1-plaintiff.

2. The parties shall be referred to as plaintiff and the defendants as per their original status for the sake of convenience.

3. Admittedly, the plaintiff is a Private Limited Company engaged in the business of operation of barges, had purchased the suit property known as "MATUEM" bearing Survey No.201/7 of Village Sancoale along with two structures which originally belonged to M/s. Trimurti Exports, which had mortgaged the same to plaintiff no.3-Canara Bank. Since M/s. Trimurti Exports failed to repay the borrowed loan amount, Canara Bank - defendant no.3

took possession of the suit premises under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") and published an E-auction on 19.3.2016 in a local daily newspaper. The plaintiff participated in the E-auction and as a successful bidder purchased the suit property. Defendant no.3 -Canara Bank executed the Sale Certificate on 18.05.2016 in favour of the plaintiff and handed over vacant possession of the suit property along with the suit structure to the plaintiff. It is also an admitted fact that said Sale Certificate is registered before the Sub Registrar, Mormugao, Goa on 2.6.2016.

4. The plaintiff, during inspection of the suit property, found the defendants no.1 and 2 in occupation of the suit property. On inquiry, it revealed that defendant no.1 is the employee of erstwhile owner, who had temporarily occupied the suit house and he would vacate it. It is further contended by the plaintiff that thereafter on 6.6.2016 he found defendants no.1 and 2 had again trespassed into the suit structure ad-measuring 35.456 sq.mtrs. The

plaintiff, therefore, had issued a legal notice dated 7.3.2017 to the defendants no.1 and 2. It had also obtained cancellation of Residence Certificate dated 27.7.2016 issued in favour of the defendants no.1 and 2. The plaintiff had also lodged a police complaint against defendants no.1 and 2 on 28.6.2017 for obtaining fraudulent Residence Certificate. It is also alleged by the plaintiff that defendant no.2, who is the wife of defendant no.1, threatened to involve the staff of the plaintiff in cases of outraging her modesty. She had abused the staff of the plaintiff in filthy and abusive language. The plaintiff has, therefore, filed the present suit seeking declaration, perpetual and mandatory injunction, *inter alia*, moved an application for temporary mandatory injunction praying for eviction of the defendants from the suit premises.

5. The defendants no.1 and 2, in their written statement, *inter alia*, raised an objection of maintainability of suit for non-joinder of necessary party as well as the issue of limitation. The defendants nos.1 and 2 have denied most of the averments in the plaint. However, it is contended that since May 2005 defendant no.1 along with his wife is residing in the

suit premises bearing H.No.448 as a statutory tenant, as he was employed as a driver of the Offshore Hi-tech Engineering Private Limited represented by its Director, Shri D.N.Kamat. According to the defendants no.1 and 2, in view of the oral contract with him, he was allowed to reside in the suit premises by paying cash amount of Rs.500/- per month towards rent. He was getting salary of Rs.5,000/- per month by adjusting the amount towards payment of rent. The defendants no.1 and 2 further contend that no rent receipts were issued in spite of oral request. Having worked for some period with the Offshore Hi-Tech Engineering Private Limited, he was absorbed in Offshore Hi-Tech Engineering Private Limited. Defendant no.1 worked with the Offshore Hi-Tech Engineering Private Limited and then was transferred to the new organization of Trimurti Exports. Defendants no.1 and 2 have placed various documents on record to substantiate their contentions as regards their residence in the suit property since 2005.

6. The learned trial Court, after hearing the respective sides and after going through the record,

by the impugned order, directed eviction of defendants no.1 and 2 from the suit premises and to deliver vacant and peaceful possession of the same to the plaintiff, inter alia, restraining the defendants, their relatives, legal representatives, agents etc., restraining from interfering with the right of the plaintiff to its lawful possession over the suit property.

7. I heard Shri Usgaonkar, learned Senior Counsel appearing for the appellants-defendants no.1 and 2 and Shri Lobo, learned counsel appearing for respondent no.1- plaintiff.

8. It is submitted by the learned Senior Counsel appearing for the defendants that, in view of an oral agreement of lease, the defendants no.1 and 2 were in possession of the suit premises since May 2005 which, according to him, is manifest in para nos. 9 and 10 of the plaint. The defendants no.1 and 2 were in possession of the suit premises on 27.4.2016 also but, despite knowing this fact, the plaintiff had purchased the suit premises in E-auction. The defendants were still in possession on 6.6.2016 and, according to the learned Senior Counsel, there are no

pleadings in the plaint, at any point of time that the defendants no.1 and 2 have vacated the suit premises or for that matter, the defendants were thrown out. He drew my attention to para 18 of the plaint which reads thus:

“Defendant nos.1 and 2 were continued to make some excuses and were in occupation of the suit structure”.

9. While assailing the impugned order, it is argued by the learned Senior Counsel that there was no question of maintaining the status quo ante, as no case has been made out by the plaintiff for restoration of the status quo ante. On the date of filing of suit i.e. on 4.9.2017 the defendants no.1 and 2 were in possession and, therefore, the impugned order is nothing but a manifestation of perversity and illegality, as the learned trial Court failed to appreciate the pleadings and the documents on record. The learned Senior Counsel does not dispute the title of the plaintiff over the suit premises. He, however, admits that there is no document showing Agreement of Lease between the defendants no.1 and 2 and its landlord.

10. Per contra, Shri Lobo, learned counsel appearing for the plaintiff-respondent no.1, took me through the pleadings as well as the documents tendered by the defendants no.1 and 2 as well as the documents obtained by the plaintiff under the Right to Information Act, which according to him, are all fabricated documents tendered by the defendants no.1 and 2, in order to show this possession over the suit premises. It is also argued by Shri Lobo, learned counsel for respondent no.1, that all the documents have been created after the plaintiff entered into an agreement of purchase of the suit property. It is submitted that there is not a single document tendered by the defendants no.1 and 2 to show that they were in settled possession of the suit premises right from 2005 to 2016. There are inconsistent pleas in the written statement and that the defendants have played a fraud upon the Court. The learned counsel, therefore, supported the impugned order.

11. It is a settled position of law that a relief of interim temporary mandatory injunction is to be granted in special circumstances. Such relief can only be granted only to restore *status quo* and not granted

to establish a new state of things differing from the state which existed at the date when the suit was instituted. In other words, such relief can only be granted to restore the *status quo* of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted. It can be said that in order to compel the undue acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. The Hon'ble Supreme Court in the case of **Dorab Cawasji Warden Vs. Coomi Sorab Warden and others (AIR 1990 SC 867)**, carved out certain guidelines, which are as follows:-

"i) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

ii) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

iii) The balance of convenience is in favour of the one seeking such relief".

12. The guidelines are neither exhaustive nor complete or absolute rules, and there may be

exceptional circumstances needing action, applying them as pre-requisite for grant or refusal of such injunctions would be a sound exercise of a judicial discretion. Keeping this ratio in mind, it is essential to scrutinize the record.

13. Para 13 of the plaint indicates that the plaintiff was put in peaceful and vacant possession of the entire property including the suit premises by defendant no.3 and that is how the plaintiff became the owner and possessed the said property from 2.6.2016 onwards. The documents on record namely the Village Panchayat of Sancoale, thereafter transferred the House Tax of the suit premises in the name of the plaintiff, Vide Resolution 4 (18) dated 30.3.2017. The plaintiff has paid the House Tax of the suit premises for the financial year 2017-18. The mutation of the suit premises has also been carried out by due process of law and the revenue records namely Form No.I and (XIV) including the Electricity Meter appears in the name of the plaintiff. The plaintiff has come up with a specific case that when he entered the suit premises on 6th June, 2016 he was shocked to see defendants no.1 and 2 trespassed into

the suit premises of an area ad-measuring 35.456 sq.mtrs. In other words, according to the plaintiff, after obtaining the Sale Certificate on 18.5.2016 and his registration before the Sub Registrar, Mormugao, vacant possession of the suit premises was delivered to him peacefully with effect from 2.6.2016. Admittedly, the suit came to be filed on 4.9.2017. However, when the plaintiff noticed the defendants no.1 and 2 presence in the suit premises on 6th June 2016, he questioned the defendants. It appears from the pleadings that since defendant no.1 was the erstwhile employee of the Trimurti Exports and have some belongings in the suit premises, they had come to clear the same and would vacate the same. The plaintiff has specifically contended that the suit structure was never a residential house but, used as office by the erstwhile owner. It is contended that the defendants no.1 and 2 continued to make excuses and were occupying the suit structure. Thus, from the pleadings in plaint, it is apparent that on the date of e-auction, which was held on 27.4.2016 the defendant nos.1 and 2 were in possession of the suit premises. However, on the date of registration of the Sale Certificate dated 2.6.2016, the plaintiff was put in

peaceful and vacant possession of the suit premises, meaning thereby defendant nos.1 and 2 were not found in possession of the same. It appears that on 6th June 2016 the defendants were found to have trespassed into the suit premises, by the plaintiff. It would be pertinent to note that various documents which are tendered by the respective parties even, at this *prima facie* stage, supports the contention of the plaintiff that defendants no.1 and 2 have fraudulently obtained certain documents in order to buttress the contention of the possession of the suit premises right from 2nd June 2005, which is evident as almost all the documents appear to have been created after the plaintiff entered into the process of purchase of the suit premises.

14. The learned counsel appearing for the plaintiff drew my attention to a document dated 17.6.2016 tendered by the defendants, which indicates that the employer of defendant no.1- viz Offshore Hi-tech Engineering Private Limited wrote a letter to Sarpanch of Sancoale informing that defendant no.1 is residing in House no.448 i.e. suit premises since May 2005 and that the said Offshore

Hi-tech Engineering Private Limited has no objection by the office of Sarpanch issuing him a residential certificate for his personal use. My attention has been drawn by the learned counsel for the plaintiff to an order of Debts Recovery Tribunal dated 26.4.2016 by which an interim relief sought by Trimurti Exports and others was rejected, which had been sought against Canara Bank. Once the relief was rejected by Presiding Officer, D.R.T. Mumbai, there was no question of issuing the aforesaid letter on 17th June, 2016 by the Offshore Hi-tech Engineering Private Limited of Village Panchayat, Sancoale.

15. By notice dated 7.3.2017, the plaintiff through its counsel requested Sarpanch of village Sancoale, for cancellation or revocation of Residential Certificate issued by it to the defendants. In para nos.8 and 9 of the said notice, the plaintiff's counsel clarified that the defendants have obtained false documents of Offshore Hi-tech Engineering Private Limited stating that he is residing at House no.448 from May 2005. The Secretary of the Panchayat, by its letter dated 18.4.2017, informed the plaintiff that the certificate issued by it in favour of the defendants

bearing No.VPS16-17/606 dated 27.6.2016 has been cancelled/ revoked vide Resolution No.7 (42) dated 30.3.2017. Thus, it is apparent that even the Village Panchayat, Sancoale, had cancelled the Residence Certificate obtained by the defendants no.1 and 2.

16. The plaintiff had also lodged a complaint with Inspector of Police, Verna Police Station, Goa, against defendants no.1 and 2 for having committed fraud to obtain Residency Certificate and its receipt was duly acknowledged by the concerned Police Station. Another complaint was also lodged with the police against the defendant by the General Manager of the plaintiff on 29th June 2017 wherein it is alleged that defendant no.2 wife of defendant no.1 entered the suit premises at 6.00 p.m. on 28th June 2017 and questioned the Security Personnel posted over there. She abused them in filthy language and threatened to file false cases for outraging her modesty.

17. The learned counsel for the plaintiff has also drawn my attention to a legal scrutiny report, title clearance certificate. Legal opinion in respect of the suit property submitted by Advocate Nandkumar R.

Bale to the Manager, Canara Bank indicate that the land is not affected by any tenancy or revenue Legislation.

18. The learned counsel for the plaintiff has also drawn my attention to one more important document namely the Ration Card on the basis of which the defendants claimed their possession over the suit premises.

19. The copy of the Ration Card, which appears to have been issued on 26.10.2016 indicates address of the defendants as "14, KHAREWADA, Sambhaji (Vaso-da-Gama), Mormugao", reveals name of defendant nos.1 and 2 and their daughter. However, another photostat copy of the same ration card (record page no.68) indicates that the address has been scored and instead of it was written as "448, Sancoale, Vasci-da Gama, Mormugao" which is suit premises. The interpolation/forgery is apparent on the face of record.

20. The Election Identity Card (record page no.70) filed by the defendants indicates address of the

suit premises. However, the said Election Identity Card appears to have been issued on 18th June 2017 i.e. after the purchase of suit property by the plaintiff. The plaintiff, in its reply, to the application for stay dated 8.11.2017 has categorically mention about the documents alleged to have been obtained by playing fraud and that most of the documents are forged.

21. As regards the driving licence of the defendant no.1 of which photostat copy is on record at Ex.69, indicates the address of the defendants as House no."448 Matvem Sancoale, Mormugao Goa" i.e. suit premises. However, according to the plaintiff, when he obtained the extract of driving licence from the Transport Department its address was found to have been changed only on 1.8.2016, which vitiates the case of the defendant. The said extract is at Ex.R2, indicating that address was changed on 1.8.2016 in order to suit the defendants contention and it fortifies the case of the plaintiff that almost all the documents have been subsequently created in order to support false claim of residence by the defendants.

22. Even the Election Card at Ex.R3 (photostat copy) on record reveals that the address of the defendants no.1 and 2 as "H.No.285, near Aslam Backery, New Vadem of village Mormugao, Goa". It is stated that this Election Card was not produced before the trial Court and it is produced for the first time before the Appellate Court.

23. Thus, the defendants no.1 and 2 appear to have obtained new Election Card indicating address of the suit premises on 16.8.2017.

24. The defendants no.1 and 2 have tendered a Certificate issued by the Child Development and Project officer, Mormugao certifying that the daughter of the defendants having address at "H.no.448, Matvem, Dabolim, Sancolae, Goa is SNP beneficiary of Anganwadi Centre No.107, Matve Dabolim-Goa". However, the plaintiff has obtained a clarification under R.T.I. Act from the said office and the said department had informed that defendant no.1 must have mentioned the suit house as his address in the application. Therefore, the department simply replied on the said address on his information and the

department does not validate residential proof of the defendant. The said document is at Ex.R4. The plaintiff has tendered a letter from employees Private Financial Organization, which was also obtained under R.T.I. wherein the Public Officer, Central Public Information Office informed that the residential address of the defendant is not available as per office record. The said letter is at Ex.R5.

25. From the aforesaid documents tendered on record, there is hardly any substance in the contention of the defendants no.1 and 2 that they are residing in the suit premises from May 2005 as neither there is any material in support of their case nor any Certificate of their erstwhile owner or affidavit indicating that the defendants have been inducted as tenants in the suit premises. The conduct of defendants no.1 and 2 is apparent which needs no further elaboration even at the prima facie stage.

26. The only question would be whether the relief granted by the trial Court, at an interlocutory stage, can be said to be just and proper? In view of the judgment of the Hon'ble Supreme Court in the case

of **Dorab Cawasji Warden** (supra), it can be safely said that the plaintiff has established a strong case for trial and is definitely on higher standard than merely a *prima facie* case, which is required for prohibitory injunction. The aspect of balance of convenience and irreparable loss is indeed in favour of the plaintiff. In the written statement a vague pleading is made in para 11 and 12 indicating the defendant no.1 as a statutory tenant and accordingly pays monthly rent of Rs.500/-. However, it is not clear to whom monthly rent is paid and whose tenant was defendant no.1? It is contended that Shri D.M. Kamat, Director of Offshore Hi-Tech Engineering Private Limited allowed defendant no.1 to reside in the premises by paying cash amount of Rs.500/- which is inconsistent in what has been stated in para 11 of the written statement. Since, the suit premises has already been purchased by the plaintiff, it is not the case of defendant no.1 that he became tenant of the plaintiff or that the plaintiff accepted and allowed him to continue in the suit premises after its vacant possession was delivered to the plaintiff. In such circumstances, in view of the ratio laid down by the Hon'ble Supreme Court in the case of **Doorab Cawasji Warden** (supra), which

squarely covers the field, the learned trial Court has been right in directing mandatory injunction at the interlocutory stages, in view of all the attending circumstance of the case. It is not that the relief was granted to establish a new state of things differing from the state which existed on 2nd June 2016. The relief of interlocutory mandatory injunction, thus, appears to have been granted only to preserve the status quo of the last non-contested status. It can be definitely said that it would require for undoing illegal act done by the defendants and to restore the possession of the plaintiff, which appears to have been wrongfully taken by the defendants no.1 and 2, on the basis of various forged documents. These are, of course, prima facie, observations and not the observations finally on merits.

27. In case of **Mohd. Mehtab Khan and others Vs. Khushnuma Ibrahim Khan and others reported in 2014 (2) Mh.L.J.150**, it is held by the Hon'ble Supreme Court that when the trial Court refused an interim mandatory relief in a suit under Section 6 of the Specific Relief Act, normally the Appellate Court should not interfere with the same

when the view of the trial Court was a possible view. Par 15 of the judgment can be quoted for advantage which reads thus:

"15. In a situation where the learned Trial Court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the Appellate Court could not have interfered with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned Trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The Appellate Court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the Appellate Court was wrong in its conclusions what is sought to be emphasized is that as long as the view of the Trial Court was a possible view the Appellate Court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in [Wander Ltd. v. Antox India \(P\) Ltd.](#)[3] Para 14 of the aforesaid judgment which is extracted below would amply sum up the situation:

"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such

*appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in [Printers \(Mysore\) Private Ltd. v. Pothan Joseph](#): (SCR 721) "... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseinton & Co. v. Jhanaton* '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'." The appellate judgment does not seem to defer to this principle."*

The ratio would be applicable to the present case, in view of the fact that order granting the relief, can be a possible view and, therefore, it is needless to disturb the same merely because facts of the case calls for a different conclusion.

28. In the case of **Kishore Kumar and another Vs. Praveen Kumar Singh**, reported in **(2006) 3 SCC 312**, the Hon'ble Supreme Court had

laid down the principles to be kept in view of while passing an order of restoration of the status quo ante by order of an interim mandatory injunction. It is held that it is an extraordinary relief granted only when it was supported by requisite finding justifying its grant. There is a requirement of clear prima facie finding that the plaintiff established that he was in possession of the suit premises on the date of filing of suit and passing of status quo order and that he had been subsequently dispossessed in violation of the subsisting of the status quo order.

29. From the discussion already made hereinabove, the plaintiff has established its case. However, from the documents on record, it is apparent that the defendants no.1 and 2 have tried to establish their possession on the basis of so called documents which were obtained subsequently and, therefore, it is needless to interfere in the impugned order passed by the trial Court.

30. The learned counsel for the plaintiff has placed reliance on a judgment of the Hon'ble Supreme Court in the case of **S.P.Chengalvaraya Naidu Vs.**

Jaganna reported in 1994 (1) SCC 1. The Hon'ble Supreme Court observed thus:

"The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants- defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party. We, therefore, allow the appeal, set aside the impugned judgment of the High

Court and restore that of the trial court. The appellants shall be entitled to their costs which we quantify as Rs 11,000. Appeal allowed”.

This ratio, even at prima facie stage, will have its bearing upon instant case.

31. As such, from the discussion hereinabove, I do not deem it necessary to interfere in the impugned order passed by learned trial Court. Consequently, the Appeal stands dismissed. Costs in cause.

PRITHVIRAJ K. CHAVAN, J.

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