

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1107 OF 2016**

Shri Amar T. Borana,
son of Tolaji Borana,
Aged 59 years, businessman,
resident of H.No.134(2)
Butem Bhat Mercês,
Tiswadi Goa
through his constituted attorney
Shri Suresh Borana,
aged 33 years, businessman,
r/o H.No.134(2) Butem Bhat,
Mercês Tiswadi Goa.

... Petitioner

Versus

Confraria do Fundo Reunido of
Mercês Church,
through its President,
resident of Mercês, Ilhas Goa.

... Respondent

Mr. M. B. Da Costa, Senior Advocate with Ms. A. Tari,
Advocate for the petitioner.

Mr. E. Dias, Advocate for the respondent.

Coram:- F. M. REIS, J.**Date:- 3rd April, 2017****ORAL JUDGMENT**

Heard Mr. M. B. Da Costa, learned Senior Counsel

appearing for the petitioner and Mr. E. Dias, learned counsel appearing for the respondent.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. The learned counsel appearing for the respondent waives service.

4. The challenge in the above petition is to the relief granted by the learned Trial Judge whereby the keys were directed to be kept in the custody of the Nazir in respect of the subject premises until disposal of the suit.

5. Upon hearing the learned counsel appearing for the petitioner and the respondent, it is undisputed that there is an order of injunction granted in favour of the petitioner whereby the respondent, their servants, office bearers, agents or any other persons acting or purporting to act on their behalf are restrained

from interfering with the peaceful possession and enjoyment of the suit house no.134/2(new) 124/2(old) situated at Buttem Bhat, Mercas Tiswadi Goa in survey No.139/1 of Village Morombi-O-Grande, Tiswadi Goa, till the disposal of the suit. It is not disputed that the said order was challenged before the Appellate Court which came to be rejected. On perusal of the order passed by the learned Trial Judge, it clearly provides that the keys were directed to be kept with the Nazir on the ground that the issue of possession has to be decided at the stage of deciding the suit on merits. But however, the temporary injunction has already been disposed of in terms referred to herein above. While directing the keys to be kept with the Nazir at the time of the disposal of the application for temporary injunction, the learned Trial Judge has observed in the order dated 26.09.2014 thus :

"As the matter is coming up before the Appellate Court today at 2.30 p.m., the defendant is directed to deposit the keys with the Nazir of the Court and obtain a stay from the Appellate Court within two weeks failing which the keys shall be handed over to the

plaintiff."

6. The above order clearly provides that in case the respondent are not successful in obtaining an order in their favour from the Appellate Court, the keys were directed to be handed over to the plaintiff/petitioner herein. Mr. Dias, learned counsel appearing for the respondent does not dispute that no orders were obtained from the Appellate Court in the context of the said observations by the learned Trial Judge. In such circumstances, the question of keeping the keys with the Nazir until the disposal of the suit would not at all be justified.

7. Mr. Dias, learned counsel however points out that the respondent are agreeable to hand over the keys to the petitioner provided the petitioner does not change the user of the premises which are meant for residential purpose. Mr. Da Costa, learned Senior Counsel appearing for the petitioner upon instructions states that the petitioner shall not change the purpose for which the premises were given on rent in terms of the agreement. In

view of the consent of the learned counsel appearing for the respondent, the petitioner is entitled to collect the keys from the Nazir. Hence, the impugned order dated 20.09.2016 is quashed and set aside. The Nazir shall hand over the keys to the petitioner in terms of the said earlier order. Needless to say, the occupation shall be in terms of the agreement between the parties and in accordance with law. All contentions of both parties on merits are left open. Rule stands disposed of accordingly. The petition stands disposed of accordingly.

F. M. REIS, J.

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