

IN THE HIGH COURT OF BOMBAY AT GOA

TRANSFER APPLICATION NO. 1 OF 2018

SUNIL KOHLI, REP. BY NAVAL BOWRY., ... Applicant

Versus

FILOMENO SALDANHA AND 2 ORS., ... Respondents

Shri Shirin V. Naik, Advocate for the Applicant.
Shri J. Abreu Lobo, Advocate for the Respondents No.1 & 2.
Shri Zeller D'Souza, Advocate for the Respondent No.3.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 25th April 2018

ORAL ORDER :

Heard Shri Shirin Naik, learned Advocate for the applicant, Shri J.A. Lobo, learned Advocate for the respondents no.1 & 2 who also filed his reply raising preliminary objections and otherwise vehemently opposing the application for transfer and Shri Zeller D'Souza, learned Advocate for the respondent no.3.

2. The main plank of arguments on behalf of the applicant is that the learned Judge seized of the Civil Revision Application challenging the order of the Director of Panchayats was the same Judge who in his capacity as the then Civil Judge Senior Division had taken a particular view while disposing off the injunction application filed by the applicant. The Judge according to him would be inclined to take the same view and in

view thereof, it was most appropriate that the file be transferred to any other Court of competent jurisdiction.

3. It was the contention of Shri Lobo, learned Advocate for the respondents no.1 & 2 that there was no allegation of bias against the Judge. It was also not the ground on behalf of the applicant that the Judge would take a contrary view than that held by him as the Civil Judge Senior Division. It was also his contention that the matter which was decided by the said Judge in his capacity as a Civil Judge Senior Division was in a different matter arising from the order passed by the Director of Panchayats and it was not as if the order of the Trial Court was biased, and/or contrary to the material on record. The order of the Civil Court had attained finality for want of challenge and the application was not based on sound grounds and thus liable for dismissal. There was also no grievance against the Judge in question who had taken charge of the Court from 7/02/2017 till the filing of the present application and therefore on all these counts the application for transfer was not tenable.

4. Shri Zeller D'Souza, learned Advocate for the respondent no.3 contended that though an argument was canvassed that the Judge while deciding the matter as a Senior Judge had dismissed the application for injunction, would take a different view in his capacity as an Additional District Judge affecting the outcome of

the proceedings was fallacious. By analogy, it was his contention that if such an argument was adopted then a Judge deciding a matter at an interlocutory stage would not be entitled to decide the matter on merits, having taken a view one way or the other. Besides, it was his contention that the applicant had knowledge that the Judge in question was hearing the matter right from February 2017 who had earlier dismissed the injunction application and before whom time was sought time and again till 1/10/2017 and only thereafter was the application moved for transfer of these proceedings. It was further his argument that a remedy of revision was available to the applicant for challenging the order of the Director of Panchayats passed on 3/07/2015. Instead of availing the said remedy, the applicant had taken recourse to the filing of a Writ Petition which was kept pending for clearance of the office objections and ultimately disposed off as withdrawn at his instance. No case whatsoever was made out for the transfer of the proceedings and therefore the same had to be dismissed with compensatory costs.

5. i have considered the contentions of Shri Naik, learned Advocate for the applicant, those of Shri J.A. Lobo, learned Advocate for the respondents no.1 & 2 and Shri Zeller D'Souza, learned Advocate for the respondent no.3. The contention of Shri Naik that the Judge had taken a particular view while deciding the matter as a Senior Civil Judge on the aspect of the

availability of the access would affect his decision while sitting as a revisional authority is misplaced to say the least. Besides, there is no allegation of any bias and even otherwise the applicant was well aware that the said Judge who had earlier decided the proceedings assuming it had some bearing on the outcome of these proceedings, had knowledge that he was presiding from 7/02/2017 and yet had not moved with an expedition seeking transfer of the proceedings from the said Court to any other Court of coordinate jurisdiction. Moreover, if at all the contention is to be accepted then every other case would have to be transferred since the Judge taking a prima facie view would be precluded from deciding a proceeding on merits having once taken such a view.

6. i do not find any merit in the application which stands dismissed with no order as to costs. Ad-interim order accordingly stands vacated.

NUTAN D. SARDESSAI, J.

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