

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.518 of 2018**

Rishabh Hitesh Shah and 2 Ors .. Petitioners
Vs.
Vijay Pal @ Vijay Pal Phour
and 2 Ors. .. Respondents

Shri Y. V. Nadkarni and Ms. D. Shirgam, Advocates for the petitioners.

Shri V. Rodrigues, Advocate for the respondent no.1.

Shri Nilesh Takkekar, Advocate for the respondent nos.2 and 3.

CORAM :- C. V. BHADANG, J.

DATE:- 18th June, 2018

ORAL ORDER :

Heard Shri Nadkarni, the learned Counsel for the petitioners, Shri Rodrigues, the learned Counsel for the first respondent and Shri Takkekar, the learned Counsel for the respondent nos.2 and 3.

2. On hearing the learned Counsel for the parties and on perusal of record, I find that the petition can be disposed of on a short count.

3. The first respondent had filed a suit under Section 6 of the Specific Relief Act (the Act, for short) for recovery of possession of the disputed premises from the petitioners. In that suit, there was an application for interim mandatory injunction

filed purportedly under Order XXXIX, Rules 1 and 2 of CPC read with Section 6 of the Specific Relief Act. The learned Trial Court granted that application by an order dated 16/02/2018. Feeling aggrieved, the petitioners challenged the same before the learned District Judge in Misc. Civil Appeal No.16/2018. The petitioners also sought stay of the order passed by the learned Trial Court, by which the petitioners were, *inter alia*, directed to put the first respondent in possession of the suit premises within 30 days. It appears that the learned District Judge found that under Section 6(3) of the Act, no appeal lies from any order or decree passed in the suit filed under Section 6 of the Act and in that view of the matter, the objection raised by the first respondent, was sustained and the application for stay has been dismissed by order dated 19/04/2018. Feeling aggrieved, the petitioner is before this Court.

4. On behalf of the petitioners, reliance is placed on the decision of this Court in the case of ***Rajeshree Pravin Sonawane and Ors; Vs. Arvind Kumar Fatechand***; 2014(2) BCR 111, in order to submit that an appeal would lie against the order passed in a suit under Section 6 of the Specific Relief Act. Specific Reliance is placed on paragraphs 6, 7 and 8 of the said judgment. Shri Nadkarni, the learned Counsel for the petitioners, in all fairness, states that the said judgment was not brought to the notice of the learned District Judge.

5. Shri Rodrigues, the learned Counsel for the first respondent has placed reliance on the decision in ***Vinita M. Khanolkar Vs. Pragna M. Pai & Others***; 1998(4) BCR 321.

6. Be that as it may, the substantive appeal challenging the order passed by the learned Trial Court is still pending before the Trial Court and is fixed on 12/07/2018. In the circumstances, it would be appropriate if the learned District Judge decides the appeal on its own merits expeditiously and in accordance with law.

7. Shri Rodrgiues, on instructions, states that the respondent shall not seek execution of the impugned order during the pendency of the appeal or claim any benefit of the impugned order. The statement is accepted. This, in my considered view, would take care of the apprehension expressed on behalf of the petitioners of losing possession in execution of the impugned order.

8. In the result, subject to the statement made on behalf of the respondent no.1 as above, the petition is disposed of. The learned District Judge shall decide the appeal as expeditiously as possible and in accordance with law and preferably, within a period of eight weeks from the receipt of this order. The learned District Judge shall decide the appeal without being influenced by

the observations and findings in the impugned order. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

SMA