

IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL FROM ORDER NOS. 24/2018 & 29/2018

APPEAL FROM ORDER NO. 24/2018

Shabnam Paul ... Appellant
Versus
Herona Project Pvt. Ltd.
Thr. Its Director, Rohit Paul & 2 Ors. ... Respondents

Shri Devidas J. Pangam with Shri S.P. Munj, Advocates for the Appellant.

Shri M.J. Michael with Shri Prashant Agrawal, Advocates for the Respondent No. 1.

Shri Joaquim Godinho, Advocate for the Respondent No. 2.

APPEAL FROM ORDER NO. 29/2018

Maxwell Dias ... Appellant
Versus
Herona Project Pvt. Ltd.
Thr. Its Director, Rohit Paul & 2 Ors. ... Respondents

Shri Joaquim Godinho, Advocate for the Appellant.

Shri M.J. Michael with Shri Prashant Agrawal, Advocates for the Respondent No. 1.

Shri Devidas J. Pangam with Shri S.P. Munj, Advocates for the Respondent No. 2.

CORAM : C.V. BHADANG, J.

Reserved on : 24th September 2018

Pronounced on : 28th September 2018

ORDER:

Both these appeals, arise out of the order dated

04.05.2018, passed by the learned Trial Court in Civil Suit No. 4/2018 between the parties, as such, they are being disposed of by this common order.

2. The respondent no. 1-M/s Herora Project Pvt. Ltd. is a private limited Company, having its registered office at Dabolim, Goa (Company, for short). The said Company filed the aforesaid civil suit, against the appellants and the respondent nos. 2 and 3 herein. For the sake of convenience the parties are referred to in their original capacity. Land survey no. 37/0, admeasuring 811 hectares known as 'Deugoti Sordo', situated at Bati village, Sanguem Taluka and land survey no. 38, admeasuring 760 hectares, situated at Bati village, Sanguem Taluka are subject matter of dispute and are herein after referred to as the suit properties.

3. The original defendants represented to the plaintiff, that they are the owners of the said lands, however, there is some dispute as regards the land survey no. 37/0, between the defendants and the Revenue/Forest Department of the State. It was represented that the Forest Department was disputing only the eastern boundary of the said land, which according to the Department was a notified reserved forest.

4. It may be mentioned that the respondent no. 1-Company is represented by its Director Mr. Rohit Paul, who happens to be the ex-husband of the defendant no. 2-Ms. Shabnam Paul. The defendant no. 1-Mr. Maxwell Dias is the father of the defendant no. 2, while the defendant no. 3-Ms. Zulekha Mirza is the mother of defendant no. 2. The marriage between Rohit Paul and Shabnam Paul was dissolved by a consent decree on 03.11.2008.

5. Be that as it may, the material case is that the defendants had represented to the plaintiff that the dispute with the Revenue/Forest Department needs to be resolved and once, the clog on the title is removed and a clear title on the defendants is established, the defendants will share any gains/profits, arising out of the sale of the land, development rights, mining rights and/or exploitation of the resources of the said property, with the plaintiff. The defendant no. 2-Shabnam Paul also pestered and persuaded Rohit Paul to part with a sum of Rs.3 crores in favour of her father i.e. defendant no. 1, in order to take steps to clear the title of the suit property. According to the plaintiff, a total amount of Rs.3.40 crores was transferred to the account of the defendant no. 1, as set out in para 13 of the plaint.

6. There were two memorandums of understanding (MOUs) executed between the parties. The first of such MOU was dated 24.02.2015, which was succeeded by a subsequent MOU dated 30.12.2015. In the said MOUs, the defendant no. 1-Maxwell Dias alias Mehmood Mirza for M/s Dias Coutinho and Company, a partnership firm is shown as the first party, while the respondent no. 1-Company is shown as the second party. The parties have reduced in writing the terms of the advance, about the sharing of the profits/gain, arising out of the exploitation of the gains of the property, after the clog on the title of the suit property is cleared.

7. According to the plaintiff, the defendant no. 1 failed to abide by the terms of the agreement. The plaintiff came to know of several acts of misfeasance and misappropriation of the money by the defendant no. 1, somewhere on 30.01.2018, which led the plaintiff to file the aforesaid suit for recovery of the amount of Rs.3.40 crores alongwith interest and for a decree directing the defendants to hand over the possession and to include the name of the plaintiffs in Form I & XIV as co-owners/occupants/licence holder of the property in question. The plaintiff also sought prohibitory injunction, restraining the defendants from alienating the aforesaid suit properties,

alongwith three other properties, namely, (i) flat no. 1101/E, Orchid Enclave Nahar Amrit Shakti, Andheri (East), Mumbai belonging to the defendant no. 1, (ii) house no. 222/A, block 5, MM residency, D'Mello vaddo, Carmona, Salcette, Goa, jointly owned by the defendant nos. 1 and 2 and (iii) property W 215, Regency Park, DLF city, Gurgaon, Haryana, belonging to the defendant no. 2.

8. The plaintiff filed an application for temporary injunction for restraining the defendants, from transferring, alienating, encumbering or creating third party interest in the aforesaid five properties namely, land survey no. 37/0 and survey no. 38 and the three properties as set out above.

9. The learned Trial Court by impugned order dated 04.05.2018 has granted ad-interim relief in the following terms:

“Heard learned Advocate Shri M.J. Michael who has pointed out the urgency in granting ex-parte stay in the matter. On perusal of records, it is seen that the suit is filed for recovery of money, injunction and possession. I have gone through the records. I am of the view that if ad-interim stay is not granted it may be impossible as the very purpose of the reliefs sought in this suit may be defeated. Therefore the prayer sought for at prayer 1 is granted till further orders. Comply with O.39 R.3 of CPC. Issue show

cause notice to the defendants returnable on 30.06.2018 at 2:30 p.m."

10. Feeling aggrieved, the defendant no. 2 has filed Appeal From Order No. 24/2018, while Appeal From Order No. 29/2018 is filed by the defendant no. 1.

11. I have heard the learned Counsel for the parties. Perused record.

12. Shri Pangam, the learned Counsel for the appellant in Appeal From Order No. 24/2018 submits that the three properties, namely, (i) the flat situated at Andheri (East), Mumbai, (ii) the house at Carmona, Salcette and (iii) the residential property at Gurgaon, Haryana, are not the subject matter of MOUs and as such, the learned Trial Court could not have granted a blanket injunction against all the five properties. Even insofar as the two properties mentioned in the MOUs are concerned, it is contended that the impugned order does not show that the learned Trial Court has considered the matter on well established principles for grant of ex-parte ad-interim relief. It is submitted that the Court would be slow in granting ad-interim relief, except where a strong *prima facie* case is made out and on finding that the application itself would be rendered

infructuous, on account of the delay. It is submitted that there is no consideration of any of these aspects in the impugned order, which is practically unreasoned. It is submitted that even where the Court is required to grant such relief, the ad-interim relief has to be granted for a short period, in order to enable the defendants to put in appearance and to contest the application. It is submitted that the impugned order is not made for any limited period and on the contrary, the interim relief is granted until further orders and the first returnable date was itself fixed after close to two months i.e. 30.06.2018. It is submitted that the impugned order needs to be set aside.

13. On behalf of the appellants, reliance is placed on the decision of the Supreme Court in the case of **Morgan Stanley Mutual Fund Vs. Kartick Das, (1994) 4 SCC 225 and Ramrameshwari Devi & Others Vs. Nirmala Devi & Others, (2011) 8 SCC 249**, in order to submit that the ad-interim relief, which is still operating has caused serious prejudice to the appellants.

14. Shri Godinho, the learned Counsel for the appellant in Appeal From Order No. 29/2018, has raised similar contentions. It is submitted that the order is unreasoned and does not show

that the Court has considered the necessary ingredients for grant of ex-parte ad-interim relief.

The learned Counsel has placed reliance on the decision of the Supreme Court in the case of **A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Others, (2012) 6 SCC 430** and **Shiv Kumar Chadha Vs. Municipal Corporation of Delhi & Others, 1993 SCC (3) 161**.

The learned Counsel has also placed reliance on the decision of this Court in the case of **Golden Ocean Group Ltd. Vs. Salgaocar Mining Industries Pvt. Ltd. & Others, 2010(6) ALL MR** and on an unreported decision in the case of **Narcinva Damodar Naik & Others Vs. Rukma Abhijit Sadekar & Others** (Appeal From Order No. 44/2016 decided on 18.07.2016) and in the case of **Pradip Mahatme Vs. Rukma Abhijit Sadekar & Others** (Appeal From Order No. 45/2016 decided on 18.07.2016)

15. On the contrary, it is submitted by Shri Michael, the learned Counsel for the respondent no. 1 that the appellants/ original defendants after having obtained the amount of Rs.3.40 crores, are now refusing to abide by the terms and conditions of the MOUs and the learned Trial Court was justified in granting

the ad-interim relief, in order to safeguard the interest of the plaintiff. Insofar as the three properties, which are not subject matter of the MOUs are concerned, it is contended that the properties, which are the subject matter of the MOUs may not be sufficient to satisfy the money decree, if passed and there is nothing wrong in granting injunction insofar as the three properties are concerned, which are not subject matter of the dispute. The learned Counsel has taken me through the messages exchanged between the defendant no. 2-Shabnam Paul and Rohit Paul, in order to submit that the defendant no. 2 was pestering Rohit Paul to help her father with the amount of Rs.3 crores, in order to get the title on the property cleared. It is submitted that the defendant no. 2 had gone to the extent of giving up her claim of alimony as Rohit Paul was also facing financial difficulties. It is submitted that the defendants have committed breach of the MOUs. It is submitted that the defendant no. 2 has now filed an execution case for recovery of the alimony, as part of the consent terms for dissolution of marriage. It is submitted that the conduct of the defendants, would entitle the plaintiff to the relief as has been claimed and granted.

The learned Counsel has placed reliance on the decision of the Supreme Court in the case of **A.**

Venkattasubbiah Naidu Vs. Chellappan & Others, AIR 2000 SC 3032, Quantum Securities Pvt. Ltd. & Others Vs. New Delhi Television Ltd., AIR 2015 SC 3699 and Asian Resurfacing of Road Agency Pvt. Ltd. & Others Vs. Central Bureau of Investigation, AIR 2018 SC 2039.

16. Shri Michael, the learned Counsel for the respondent no. 1 has submitted that the appellants have filed their reply to the application for temporary injunction and also a written statement in the suit and the application for temporary injunction is now fixed for hearing on 01.10.2018. It is submitted that the appellants, at no point of time, have applied for vacating the ad-interim relief, under Order XXXIX, Rule 4 of CPC. It is submitted that in any event, the Trial Court may be directed to decide the application expeditiously and this Court may not interfere with the impugned order at this stage.

17. I have given my anxious consideration to the rival circumstances and the submissions made and I am not inclined to interfere with the impugned order. *Prima facie*, the MOUs executed between the parties and the receipt of Rs.3.40 crores by the defendant no. 1 is not disputed. The appellants have entered appearance in the suit and have filed their reply and the

application for temporary injunction is fixed for hearing before the learned Trial Court on 01.10.2018, i.e. within less than a week from today. Any observations one way or the other, even of a *prima facie* nature, may result into prejudice to either of the parties, before the Trial Court.

18. The Supreme Court in the case of **A. Venkattasubbiah Naidu** (supra) has held that Order XXXIX, Rule 1 of CPC is the repository of the power to grant orders of temporary injunction with or without notice. Albeit, the grant of ad-interim ex-parte relief is drastic in nature and can be granted on well established principles and can be granted in exceptional circumstances. Order XXXIX, Rule 3 of CPC provides that the Court shall in all cases, except where it appears that the object of granting injunction would be defeated by the delay, before granting an injunction, direct notice of the application being issued to the opposite party. Thus, the normal rule is that a notice has to be issued. However, there is an exception, to this rule where the Court finds that the very object of granting injunction can be defeated, by delay, the Court can grant ex-parte injunction. The provisions of Rule 3 of Order XXXIX of CPC say that where it proposes to grant ad-interim relief without giving notice to the opposite party, the Court shall record the

reasons for its opinion that the object of granting the injunction would be defeated by delay.

The Hon'ble Supreme Court in the case of **Morgan Stanley Mutual Fund** (supra) has held that even if, such an injunction is granted ex-parte, it would be for the limited period of time.

19. It can thus be seen that these are only the measures taken by the Court in order to ensure that no serious prejudice arises out of ex-parte injunction order, to the party suffering an order of ex-parte injunction. The principles apart, which are otherwise well settled, the question whether, a case for grant of ad-interim relief is made out or not, would depend upon facts and circumstances of each case. Furthermore, the Appellate Court would be slow in interfering with the order of ad-interim ex-parte relief, except where, gross irreparable loss or prejudice, resulting from continuing the ex-parte injunction is demonstrated. This is because the party affected can always approach the Trial Court and can either move for vacating the ad-interim relief under Order XXXIX, Rule 4 of CPC or request for the application to be decided at an early date.

20. Coming to the present case, as noticed earlier, *prima facie*, execution of the MOUs and the receipt of Rs.3.40 crores is not disputed. The Trial Court has observed that if ad-interim relief is not granted, the very purpose of the relief sought in the suit is defeated. It is true that the Trial Court would have done well to elaborate the matter further and normally, would have directed the order to operate till a particular date and could also have made the notice returnable at a shorter date than what is done. However, considering the overall circumstances and particularly, the fact that the application is coming up for hearing before the Trial Court, within less than a week from today, I am not inclined to interfere with the impugned order.

21. Insofar as the three properties, which are not subject matter of the MOUs are concerned, it is contended by the learned Counsel for the appellant that the Trial Court could not have extended the relief in respect of these properties also. This is countered on behalf of the respondent no. 1 on the ground that as the two properties, which are subject matter of MOUs (being part of the reserved forest as claimed by the Government), may not be sufficient to satisfy the money decree, if eventually passed.

22. I have carefully considered the submissions and perused record. Basically, the suit is for a money decree for Rs.3.40 crores alongwith interest and for incorporating the name of the respondent no. 1-plaintiff in Form No. I & XIV as co-owner, occupier, lease holder and for possession of the two properties, namely, survey no. 37/0 and survey no. 38 of Batim village. The Trial Court will take this aspect into consideration while deciding the application and shall decide whether, the injunction needs to be granted in respect of the three properties, which are not the subject matter of the MOUs. Making any further observations in this case, one way or the other, would cause prejudice to the parties, at the hearing of the application for interim relief.

23. The decisions relied upon on behalf of the appellants turned on their own facts. In the case of **Ramrameshwari Devi** (supra), the suit was protracted from the year 1992 to 2011, while in the case of **A. Shanmugam** (supra), there was a suit filed by the watchman against his dispossession by the owner and the suit was found to be protracted by resorting to falsehoods, concealment, distortion, obstruction and confusion in pleadings and documents.

In the case of **Golden Ocean Group Ltd.** (supra), an ex-parte order was passed on 13.04.2010, when both the defendants had already put in their appearance on 15.03.2000. This was one of the circumstances, which found favour with this Court while setting aside the ex-parte order.

Even in the case of **Narcinva Damodar Naik** (supra), this Court found that the order was passed against the respondent nos. 6 and 7, who had “no truck with the lis”. It was found that the injunction was granted even against the respondent no. 2, who was a Chartered Accountant and was acting purely in his professional capacity and had no right or interest in any of the properties on basis of the family arrangement of 1994.

24. In the result, both the Appeals are dismissed. The learned Trial Court shall decide the application as expeditiously as possible and in any event, within three weeks from the receipt hereof, without being influenced by any of the observations made herein. In the circumstances, there shall be no order as to costs.

C.V. BHADANG, J.