

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 19 OF 2019

TEREZINHO P. SOCCARO DO MILAGRES
AND ANR.,

... Petitioners

Versus

PRAKASH CAIERO AND ANR.,

... Respondents

Mr. Ashwin D. Bhobe and Ms. Annelise Fernandes, Advocates
for the Petitioners.

Mr. C. A. Coutinho, Advocate for the Respondent no.1.

Coram:- C. V. BHADANG, J.

Date:- 27th March 2019

P.C.

By this petition, the petitioners are challenging the order dated 07.12.2018 passed by the learned Civil Judge Junior Division at Canacona in CMA No.9/2016 in Regular Civil Suit No.55/2016(Old Regular Civil Suit No.14/2006).

2. The brief facts are that the petitioners have filed the aforesaid suit against the respondents for injunction and other reliefs. The petitioners are seeking an injunction against the respondents from transferring, selling or disposing off the suit property in any manner. The respondents have raised a counter claim in the suit seeking injunction restraining the petitioners from interfering in any manner with the suit property or plucking coconut trees

standing in the suit property.

3. It appears that both, the petitioners as well as the respondents filed separate applications for temporary injunction which were decided by the learned Trial Court by an order dated 05.05.2012. By the said order, the learned Trial Court while dismissing the application filed by petitioners has granted injunction in favour of the respondents restraining the petitioners from entering into the suit property and/or in any manner interfering with the suit property and from plucking/taking the coconuts from the suit property during the pendency of the suit. That order has attained finality.

4. The respondents filed an application under Order XXXIX Rule 2A of the Civil Procedure Code against the petitioners on 03.07.2007. It was contended by the respondents that on 14.05.2007 when the original defendant no.2 had gone to the suit property in order to carry on the regular plucking of the coconut trees, he found that the plucking of the trees was already done. On inquiries it was found that the plucking was done by the petitioner no.1 in the first week of May 2007. The respondents contended that this was in breach of the order of injunction and therefore claimed that the petitioner no.1 be punished for contempt of the order of temporary injunction and his defence to the counter claim be struck off.

5. It appears that the petitioners endorsed say on the said application on 11.03.2008 specifically stating that they did not wish to file any reply to the said application.

6. The learned Trial Court on hearing the parties found that the application filed by the respondents was supported by an affidavit and the claim by the respondent was not denied as there was no reply filed by the petitioners. The learned Trial Court, although noted that normally in such matters, an inquiry is conducted, in the peculiar circumstances where the respondents have not contested the application, in the opinion of the learned Trial Court, there was no necessity to hold an inquiry. The learned Trial Court, therefore, by an order dated 05.05.2012 granted the application holding the respondents guilty of committing the breach of the order dated 19.08.2006. The learned Trial Court directed the petitioners to show cause, as to why they should not be punished with simple imprisonment and by striking off their defence.

7. Admittedly, the petitioners have not filed any reply as required by the said order. It is further a matter of record that the learned Trial Court by an order dated 27.03.2015 has struck off the defence of the petitioners to the counter claim. It transpired during the course of the arguments at bar, that the Trial Court is

hearing the parties on the question of sending the petitioners to civil prison.

8. Be that as it may, the petitioners filed an application on 14.08.2018 for recall of the order dated 05.05.2012 on the ground that the said order could not have been passed in the absence of an inquiry being conducted. The said application was opposed on behalf of the respondents. The Trial Court by the impugned order dated 07.12.2018, has dismissed the application for recall, which order is subject matter of challenge in this petition.

9. I have heard Mr. Bhobe, the learned Counsel for the petitioners and Mr. C. A. Coutinho, the learned Counsel for the respondent no.1. Perused record.

10. It is submitted by Mr. Bhobe, the learned Counsel for the petitioners that order as envisaged under Order XXXIX Rule 2A of Civil Procedure Code being a drastic order requires the Trial Court to conduct an inquiry before any such order is passed. It is submitted that the Trial Court could not have acted merely on the ground of the petitioners having not filed any reply to the application under Order XXXIX Rule 2A of Civil Procedure Code filed by the respondents. It is submitted that there was a clear case of recall of the order made out.

11. Mr. Coutinho, the learned Counsel for the respondent no.1 on the contrary has supported the impugned order. It is submitted that the petitioners have not only failed to file a reply to the application under Order XXXIX Rule 2A but have not filed a reply to the show cause notice as well. That the order has been partly executed inasmuch as the defence of the petitioners to the counter claim has been struck off by the order dated 27.03.2015. It is pointed out that the petitioners have not even challenged the said order dated 27.03.2015. It is submitted that the application for recall, filed six years after passing of the order in the year 2012 was clearly misconceived and has rightly been dismissed.

12. I have carefully considered the rival contentions and the submissions made and in the given circumstances, I am not inclined to interfere with the impugned order. It is necessary to note that the petitioners have clearly endorsed on the application filed under Order XXXIX Rule 2A of Civil Procedure Code stating that they did not want to file any reply to the same and thus in the normal circumstances, no exception can be taken to the learned Trial Court considering the allegations made in the said application as being uncontroverted. Acting on the basis of the contents of the application which were supported by an affidavit and to which there was no counter filed, the learned

Trial Court held the petitioner no.1 guilty of the breach of the order of temporary injunction and granted opportunity to show cause as to why an order of committal to civil prison/imprisonment and of striking off defence to the counter claim should not be passed. Even here, the petitioners failed to file any reply or to show cause. It is undisputed that the Trial Court has struck off the defence of the petitioners to the counter claim by an order dated 27.03.2015 which order is also not challenged by the petitioners. The learned Counsel for the respondent is right in contending that six years after the passing of the order dated 05.05.2012, the petitioners sought its recall by filing an application on 14.08.2018 on grounds which the Trial Court has already considered while passing the order dated 05.05.2018. The Trial Court in the said order has noted that normally an inquiry in such a case is necessary. However, in the peculiar circumstances of the case where the application had gone uncontroverted, there was no necessity to hold any inquiry. If at all the petitioners were aggrieved by the said finding, the normal course would have been to challenge the said order which is not done. As noticed earlier, the order has been partly executed inasmuch as the defence of the petitioners has also been struck off in the year 2015 which order has also not been challenged by the petitioners.

13. Considering the overall circumstances, I do not find that a

case for interference in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India is made out.

14. The petition is accordingly dismissed. This however, shall not come in the way of the petitioners to demonstrate before the Trial Court that there is no further case for sending the petitioners to civil prison is made out inasmuch as the defence of the petitioners to the counter claim has already been struck off.

15. I would hasten to add that this Court has not expressed any opinion on this issue and all rival contentions in this regard are left open.

16. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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