

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 742 OF 2018**

Mr. Elvino Dias,
Son of Mr. Joao Dias,
Age 46 years of age, married,
Self employed, Indian National,
Resident of H.No.345,
Near Dias building, Mangor Hill,
Vasco-Da-Gama, Goa,
Represented by his duly constituted POA
holder Mrs. Antonetta Dias,
resident of H. No.345, Near Dias building,
Mangor Hill,
Vasco-Da-Gama, Goa,
by virtue of POA dated 18/2/2017.

.... Petitioner

V e r s u s

1. Smt. Maria Monica Rodrigues,
Wife of Amioto Rodrigues,
Aged about 60 years, married,
Housewife, resident of H.No.346/B,
Near Dias Flats, Alto Mangor,
Vasco-da-Gama, Goa.
2. Shri Agostinho Jose Silva Furado,
Son of late Arfano De Loyola Patricio
Furtado, Aged 80 years,
Occupation-retired,
Person of Indian Origin,
Resident of Rua Professor Ernesto Neves,
N-5, 3840-302 OucaVagos, Portugal.
3. Smt. Carmina Angela Sergio De Almeida Neves Furtado,
Wife of Shri Agostinho Jose Silva Furtado,
Aged 76 years, Occupation-Housewife,
Portugal National,
Resident of Rua Professor Ernesto Neves,

N-5, 3840-302 OucaVagos, Portugal.

4. Mr. Tajudin Sahikh,
Son of Shri Hamid Shaikh,
Aged about 68 years, married,
Occupation-retired,
Indian National,
R/o Building no.1, Flat no.8,
Beach View Housing Colony,
Opp. M.P.T Work Shop, Baina,
Vasco-Da-Gama, Goa.

..... Respondents

Mr. S. S. Kantak, Senior Advocate with Adv. Abhijeet Kamat for the
Petitioner.

Adv. D. J. Pangam for Respondent no.1.

Adv. Ashwin D. Bhobe for Respondent no.4.

Coram:- C. V. BHADANG, J.

Date:- 21st February 2019.

Oral Judgment:

Rule, made returnable forthwith. The learned counsel for the
respective respondents waive service. Heard finally by consent of parties.

2. The petitioner, who is the defendant no.1 in Regular Civil Suit
no.78/2015/D on the file of the learned Civil Judge Junior Division Vasco is
challenging the order dated 5/5/2018 passed by the trial court, below Exhibit
D-41. By the impugned order, the learned trial court has dismissed the
application Exhibit D-41 filed by the petitioner for stay of the suit under
section 10 r/w section 151 of the Code of Civil Procedure (C.P.C, for short)

The stay of the subsequent suit i.e R.C.S no.78/2015/D was sought on the ground of pendency of an earlier suit between the parties being Regular Civil Suit no.52/2015/A . Admittedly the parties in both the suits are the same. The petitioner happens to be the defendant no.1 in both the suits.

3. It appears that on behalf of the petitioner reliance was placed on the order passed in W.P. No.678/2017 decided on 27/11/2017 (**Shri Haroon Ebrahim Vs. Ajit Sukhija and six others**) in support of the submissions made. However, a perusal of paras 5 and 6 of the impugned order shows that the trial court was under the impression that the stay of the subsequent suit is sought on the ground of pendency of Special civil suit no.58/2008, out of which the said writ petition arose. Perhaps on account of this misconception, the trial court has observed that the parties in the previous suit and the suit which is sought to be stayed are not the same, which is factually incorrect. I have gone through the impugned order and it does not show any consideration between the issues involved in the previous suit i.e. Regular Civil suit no.52/2015/A and the subsequent Regular Civil suit no.78/2015/D.

4. Mr. Pangam, the learned counsel for the respondent submitted that the subsequent suit is a suit under section 6 of the Specific Relief Act, which can never be the stayed under section 10 of CPC. It is submitted that if the suit

simplicitor under section 6 of the Specific Relief Act is stayed, the very purpose of filing the said suit will be frustrated. I am afraid this also not the reason given by the trial court while dismissing the application. In short, I find that the trial court has failed to consider the relevant facts in deciding the application and comparing the issues involved and the reliefs claimed in the two suits. In such circumstances, in my considered view, it will be appropriate that the trial court reconsiders the application on its own merits and in accordance with law.

5. The petition is thus partly allowed. The impugned order is hereby set aside. Application Exhibit D-41 is restored back to the file of the learned trial court for disposal on its own merits and according to law. It is made clear that this Court has not expressed any opinion on the merits of the rival contentions of the parties which are expressly left open. In the circumstances there shall be no order as to costs.

C. V. BHADANG, J.

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