

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 39 OF 2019

1. Oscar Jose Ferrao
@ Toscar Jose Ferrao & anr. ... Appellants

V e r s u s

1. The Deputy Town Planner,
Town and Country Planning Dept.,
and 6 Others. ... Respondents

Mr. Ashwin D. Bhobe, Advocate for the Appellants.

Mr. Vishwadh Sardessai, Additional Government Advocate for
the Respondent nos.1 to 3.

Mr. P. N. Raiker, Advocate for the Respondent nos.5, 6 and 7.

Coram :- C. V. BHADANG, J.

Date : 1st July 2019

ORAL ORDER

1. The challenge in this appeal is to the order dated 24.06.2019, passed by the learned Trial Court in Civil Suit No.20/2019 thereby vacating the ad-interim exparte order of injunction dated 16.03.2019 and dismissing the application, exhibit 27, for temporary injunction filed by the petitioners-plaintiffs.

2. The petitioners have filed the aforesaid suit against the respondents in which they sought temporary injunction in the following terms :

“(a) That pending the hearing and final disposal of the present suit, this court by way of temporary injunction be pleased to restrain the defendant no.5, his agents, servants, or relatives or any other person on his behalf from in any manner carrying out any reconstruction or any construction activities in the suit property bearing survey no.20/0 of Curti Village, based on the Technical Clearance Order dated 7-6-2018 and Construction License issued by defendant no.4 dated 8-10-2018.

(b) that pending the hearing and final disposal of the present suit, this court by way of temporary injunction be pleased to restrain the defendant nos.6 and 7 from in any manner encroaching, illegally extending or making any addition to the suit house and or reconstruction or repair to the suit house beyond the plinth area of the suit house as shown in the survey plan of the property bearing survey no.20/0 of Curti either by themselves or

through defendant no.5 or through any other person.”

3. It appears that the learned Trial Court granted an ad-interim ex parte injunction in terms of prayer clause (a) and (b) on 16.03.2019. The respondent nos.5, 6 and 7 filed an application, exhibit D-15, for vacating the ad-interim relief, inter alia, on the ground that these respondents had a valid permission/licence from the Town and Country Planning Department and the same cannot be challenged before the Civil Court. The learned Trial Court instead of taking up the said application along with the application for temporary injunction filed by the petitioners, decided application, exhibit D-15, separately by an order dated 30.03.2019 and dismissed the application thereby refusing to vacate the ad-interim relief. The application for temporary injunction was thereafter fixed for hearing on 24.06.2019. On that day, the petitioner sought an adjournment on the ground that their Advocate was admitted in hospital. The learned Trial Court refused to grant an adjournment and has instead vacated the ex parte order. Admittedly, the respondent nos.5, 6 and 7 have not challenged the order dated 30.03.2019, below-exhibit D-15. The learned Counsel for the respondent nos.5, 6 and 7 submitted that the respondents are in the process of challenging the said order.

4. I have heard Mr. Bhobe, the learned Counsel for the petitioner, Mr. Raiker, the learned Counsel for the contesting respondent nos.5, 6 and 7 and Mr. Sardesai, the learned Additional Government Advocate for the respondent nos.1, 2 and 3. Perused record.

5. It appears that the learned Trial Court vacated the ad-interim relief granted on 16.03.2019 while refusing to grant an adjournment on the ground that the Advocate for the petitioner was admitted in hospital. This is not a case where there were several adjournments sought. In my considered view, the adjournment sought on the medical ground of the Advocate ought to have been considered favourably. Prima facie, at this stage, it would appear that the impugned order vacating the ad-interim relief was passed in the face of an earlier detailed order dated 30.03.2019 by which the learned Trial Court has refused to vacate the ad-interim relief.

6. Be that as it may, considering the over all circumstances, the appeal is allowed. The impugned order is hereby set aside. The ad-interim exparte injunction granted on 16.03.2019 is hereby restored.

7. The learned Trial Court shall decide the application for temporary injunction on its own merits and in accordance with law as expeditiously as possible and, in any event, within a period of four weeks from the receipt hereof.

8. Rival contentions of the parties on merits are left open.

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

C. V. BHADANG, J.

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