

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISC. APPLICATION NO. 198 OF 2019.

SHANTILAL KHUSHALDAS AND
BROS. PVT. LTD. REP. BY ITS AUT.
REP. SUBRAMANY.,

... Applicant.

Versus

STATE OF GOA, THR. POLICE
INSPECTOR, MARGAO TOWN POLICE
STATION, MARGAO AND ANR.,

... Respondents.

Mr. A. D. Bhobe and Ms. Maria Carmita Mashelkar, Advocates for
the applicant.

Mr. P. Faldessai, Additional Public Prosecutor for the respondent
no.1.

Mr. V. Rodrigues, Advocate for respondent no.2.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Reserved on:- 2nd August, 2019.

Pronounced on:- 6th August, 2019.

ORDER

Heard Mr. Bhobe, learned Counsel for the applicant, Mr. P.
Faldessai, learned Additional Public Prosecutor for the respondent no.1
and Mr. V. Rodrigues, learned Advocate for the respondent no.2.

2. On 30.7.2019, this Court has passed following order:-

“Heard Mr. Ashwin D. Bhobe, learned Advocate for the petitioner for some time.

- 2. Perused the impugned judgment and order dated 26.7.2019 passed by the Deputy Collector and SDM, Margao in case no.MAG/MRG/18/Immtr-Act/01/2018.*
- 3. Issue notice to the respondents returnable on 16.8.2019.*
- 4. Mr. P. Faldessai, learned Addl. Public Prosecutor waives notice on behalf of respondent no.1.*
- 5. Ad-interim relief in terms of prayer clause (B) which reads as under is granted till the returnable date.
"Pending the hearing and final disposal of this petition, this Hon'ble Court be pleased to stay the operation/implementation /execution of the impugned order dated 26.7.2019 passed by the Deputy Collector in case no.MAG/MRG/18/Immtr-Act/01/ 2018."*
- 6. Authenticated copy of this order be expedited.”*

3. After passing the impugned order on 26.7.2019, the Sub Divisional Magistrate(for short “SDM”), allowed the application dated 27.2.2019 filed by the respondent no.2, thereby directing respondent no.1 to unseal the premises and hand over the possession of the premises to the respondent no.2. SDM has dismissed the application of the petitioner dated 20.2.2019.

4. My attention is drawn by the learned Counsel for the petitioner that on the date of passing of the impugned order dated 26.7.2019 the petitioner had prayed for stay of the impugned order. A certified copy of the impugned order was made available to the petitioner on 29.7.2019. It is surprising to note that the learned SDM did not pass any order on the application for staying operation of the order passed by him for a period of four weeks, despite making it clear in the said application that the petitioner desires to prefer a Writ Petition in the High Court.

5. It is further surprising to note that the petitioner on 29.7.2019 moved an application before the Margao Town Police on his letter head clearly indicating that he proposes to challenge the impugned order passed by the SDM by way of Writ Petition in the High Court and, therefore, requested the Police Inspector to keep in abeyance the execution of the impugned order dated 26.7.2019 and not to hand over possession of the premises to the respondent no.2. This application was duly received by the Police Inspector, Margao Town Police station

indicating the seal and signature in acknowledgment thereof.

6. The petitioner, with utmost despatch presented the petition before this Court on 30.7.2019. In view of the urgency demonstrated by the learned Counsel for the petitioner, urgent circulation was granted on the same day.

7. After hearing the learned Counsel for the petitioner and in the presence of learned Addl. Public Prosecutor this Court granted ad-interim relief to the petitioner in terms of prayer clause (B).

8. It is submitted by Mr. Bhobe, that respondent no.1 was notified of the circulation of the present petition. Vide letter dated 30.7.2019, it was served on the office of the learned Advocate General. It is also submitted that the concerned Police Inspector namely Tushar Lotlikar of the respondent no.1 was informed about the subject petition being filed and circulated challenging the impugned order.

9. It is submitted that respondent no.1 handed over the possession of the suit premises to the respondent no.² on 30.7.2019 itself despite having knowledge and notified about the present petition.

Correction carried
out in view of order
dated 8.8.2019

Sd/-
P.A.

10. Mr. Rodrigues, learned Counsel for respondent no.2 contends that respondent no.1 acted with utmost despatch in relation to the impugned order passed by the SDM. It is submitted that order of this Court was passed at about 2.30 p.m by that time possession had already been handed over to the respondent no.2 during the morning hours and, therefore, there is no illegality committed by the respondent no.1.

11. Without going into the merits of the case, suffice it to say at this stage that the action of the respondent no.1 in handing over the possession of the premises in question to the respondent no.2 is nothing but an act in haste without there being any imminent danger or urgency in respect of the premises in question, which was sealed from 18.5.2018 under Section 18(1) of Immoral Traffic (Prevention) Act 1956 pursuant to an order of SDM. The deliberate and hasty action on the part of

respondent no.1 is writ large which is significant in the light of the fact that the petitioner had, by his communication dated 29.7.2019 (annexure “I”) informed the respondent no.1 in advance, about the proposed filing of writ petition challenging the impugned order of SDM.

12. Even the action of the SDM in not passing any order on the application for stay(annexure”H”) moved by the petitioner on 26.7.2019 itself speak volumes. Prima facie, it can be said that action of the respondent no.1 in handing over the possession by unsealing the premises on 30.7.2019 between 11.20 hours to 12.30 hours is nothing but to circumvent the order of this Court that has been passed on the very same day despite having knowledge of such a petition being filed in the court. The respondent no.1 has tried to create a situation of fait accompli.

13. Normally, when this Court is seized of the matter, it is expected of the subordinate authority to stay their hands away. This

Court in case of ***Kishore Bhikansingh Rajput Vs. Preethi Kishor Rajut***¹

¹ 2007(4) ALL MR 231.

held thus:-

“8. Normally, when this Court is seized of the matter, it is expected of the subordinate courts to stay their hands away. It is difficult to understand as to what was an alarming urgency to proceed further and dismiss the petition when the learned Judge of the Family Court was very well aware that the order dated 15th September, 2006 was challenged before this Court by the present petitioner. No doubt, that the learned Family Court is right in observing that there was no stay by this Court. But as a matter of propriety and when the learned Judge was very much aware about pendency of the petition before this Court, the learned Judge ought to have stayed his hands away and waited till further orders to be passed by this Court. In that view of the matter, I am inclined to allow the petition.”

14. The respondent no.1, as a matter of propriety and when he was very much aware of the petition pending before this Court ought to have stayed his hands away and should have waited till further orders to be passed by this Court.

15. In view of the above, I hereby direct the respondent no.1 to restore the status quo and seal the premises pending the hearing and final disposal of this petition. Application stands disposed of in aforesaid terms.

16. Registry shall forward copy of this order to the Superintendent of Police, South Goa, for information.

PRITHVIRAJ K. CHAVAN, J.

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