

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 956 OF 2019.

CAETANO FLORIANO
FERNANDES AND ANR.,

... Petitioners

Versus

ROSARIO MARIANO FERNANDES.,

... Respondent.

Shri Ashwin D. Bhobe, Advocate for the petitioners.

Shri C. A. Coutinho, Advocate for the respondent.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 4th December 2019

P.C.

The sole respondent, as the plaintiff, filed Regular Civil Suit No.52/2019/A against the petitioners, for a perpetual injunction. In that suit, the plaintiff has also secured an *ad interim* injunction. Through that order, the trial Court restrained the defendants from changing the physical features of the suit property. Later, the plaintiff filed Exh.16-D, a CMA yet to be numbered, under Section 151 of CPC. He has sought police protection. The trial Court ordered notice in that application.

2. Immediately, thereafter, the plaintiff came up with another application under the same provision seeking an *ex parte* order for police protection. On that day, the presiding Judicial Officer was absent. So another learned Judge accepted that application. As a result, on 2.11.2019, the plaintiff secured an *ex parte* police protection. Assailing that order, the

defendants have filed this Writ Petition.

3. Heard Shri A. Bhobe, the learned counsel for the petitioners; Shri C. A. Coutinho, the learned counsel for the respondent.

4. Indeed, the trial Court, in its wisdom, has chosen to put the defendants on notice in the plaintiff's application for police protection. In the meanwhile, the plaintiff may have apprehended that the defendants are changing the physical features irretrievably, so he should be granted an *ex parte* order pending the service of notice. That is not unusual. What is unusual, though, is his pressing another application precisely on the same cause of action—in front of another Judicial Officer. Plainly put, it is an abuse of process. True, the plaintiff is said to have pleaded in the second application about the first application.

5. That the plaintiff has mentioned in the second application about the pending first application does not mitigate the abuse.

6. Imminent fall out, dire need, exigent circumstances, compelling cause are no excuses, not even palliative pleas, to abuse the process. Overburdened with cases, with dockets exploding all around, everyone eloquently speaking and caustically writing about the judicial delays—the social media not excluded—the judges are under tremendous pressure to perform, rather to outperform themselves. So they do not scan the pleadings with a hawk's eye. They implicitly rely on the counsel's fairness. Most of the times, this faith is not misplaced, but sometimes it is—resulting in acutely embarrassing situations or affecting the parties and

the very adjudicatory system with dire consequences.

7. That said, given the property condition and the plaintiff's apprehension, I reckon it will serve the interest of justice if parties strictly maintain status quo as of today.

8. As the trial Court had decided—justifiably so—to hear the defendants before it passed an order in the application for police protection, I set aside the impugned order, dated 2.11.2019, and remand the matter to the trial Court. It goes without saying that the trial Court will hear both the parties and pass an appropriate order in the first CMA yet to be numbered, rather than the second one, which, in my view, is not maintainable.

With these observations, I dispose of the Writ Petition.

DAMA SESHADRI NAIDU, J.

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