

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 9 OF 2020.

SANDHYA KORGAONKAR AND ANR., ... Petitioners.

Versus

RADHABAI PEDNEKAR AND 12 ORS., ... Respondents.

Ms. Ashwini Agni, Senior Advocate with Ms. J. Sawaikar, Advocate for the petitioners.

Shri P. Talaulikar, Advocate for the respondent nos.1 to 5.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 30th January, 2020.

P.C.

The petitioners filed a suit for injunction against the respondents, who are said to be their close relatives. In that suit, the petitioners sought an *ad interim* injunction. That was not granted.

2. Aggrieved, the petitioners appealed before the District Court-I, at Mapusa. The respondents, too, entered their appearance in the appeal.

3. Initially, on 11.12.2019, the Appellate Court ordered the parties to maintain *status quo*. The matter stood posted to 3.1.2020. In the meanwhile, the respondents filed their reply in the appeal. They raised a preliminary objection about the maintainability of the appeal, as they did before the trial Court.

4. That objection was on the premise that the suit was hit by the

principle of *res judicata*. In the face of preliminary objection the respondents raised, the Appellate Court passed the following order:

“Since the objection as to maintainability is raised preliminary objection the matter is fixed/arguments on maintainability and the status quo granted by the order dated 11/12/19 is not extended as it is till this date of hearing. 03.01.2020.”

5. Aggrieved, the petitioners have filed this Writ Petition. This Court, on 9.1.2020, observed as under:

“6. In deed once the Court assumes jurisdiction, it continues to have seizing of the mater even the face of arrival asserts that the Court lacks jurisdiction. But that seizing holds good unless the Court decides on its own jurisdiction. Here the Appellate Court initially was prima facie convinced to order status quo. Later the respondents raised preliminary objection about the appeal maintainability. The Appellate Court could have continued the status quo and immediately decided on the preliminary objection. Now the Appellate Court refusing to extend the interim protection may cause irreparable damage to the petitioners' interest. Situation may be redeemable. In other words, If the respondents' preliminary objections were to be ruled in the negative, with no interim protection in the meanwhile, the possession becomes incongruous.

7. Under these circumstances, I hold that the parties shall maintain status quo as the Appellate Court ordered earlier for three weeks. Issue notice to the respondents returnable on 30.1.2020.”

6. Today, upon hearing both the parties, I reckon that this Court may dispose of the Writ Petition without entering into the merits of the matter. I, therefore, hold that the Appellate Court will hear both the parties first on the objection raised by the respondents no.1 to 5 concerning the maintainability of the appeal. Until the Appellate Court

considers that objection, *status quo*, which the Appellate Court initially granted and which stood restored by this Court's order dated 9.1.2020, will continue. Once the respondents no.1 to 5 could sustain their objection, there will be no occasion for the Appellate Court to consider the matter on the merits. On the other hand, if the Appellate Court finds the objection unsustainable, then it will hear the petitioner's appeal on the merits.

7. As I was about to close this Writ Petition, the learned counsel for the respondents no.1 to 5 has brought to my notice that the petitioners have filed a transfer application before the District Court, Panaji. That is, the petitioners wanted the appeal transferred from District Court-I to any other Court of co-equal jurisdiction. In that transfer application, the District Court, on 10.1.2020, stayed the appeal for 15 days.

8. Therefore, now because of the later developments if this Court directs the Appellate Court to hear the matter, that direction may conflict with District Judge's order in the transfer application. It is not the question of judicial hierarchy; it is a question of judicial propriety. After all, no order of any competent Court can be set aside or diluted collaterally until that very order is challenged at the higher echelons.

9. Under these circumstances, I further hold that the Appellate

Court will await the outcome of the transfer application and, thereafter, based on its outcome, will proceed with the matter, as directed by this Court.

DAMA SESHADRI NAIDU, J.

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