

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 43 OF 2017

1. M/s Laxmi Auto Care Centre,
A partnership firm registered under
Indian Partnership Act and having its
office at Laxmi Auto Care Petrol Pump,
Opp. Saraswati Mandir,
Yeshwantnagar, Tisk, Ponda Goa.
Through its Partners,

2. Archana Sarvottam Kamat,
Daughter of Sarvottam Kamat,
Major in age, resident of 2nd Floor,
Talaulikar Building, Yeshwantnagar,
Tisk, Ponda Goa.

3. Sanket Sarvottam Kamat,
Daughter of Sarvottam Kamat,
Major in age, resident of 2nd Floor,
Talaulikar Building, Yeshwantnagar,
Tisk, Ponda Goa.

... Appellants

Versus

1. Dattaprasad Shivanand Sawardekar,
Son of Shivanand Sawardekar,
Aged 38 Years, House No.216,
Dattawadi, Sanvordem Goa.

2. Sarvottam Narayan Kamat,
Aged 77 years, Businessman,
resident of 2nd Floor,
Talaulikar Building,
Yeshwantnagar, Tisk, Ponda Goa.

... Respondents

Mr. S. G. Desai, Senior Advocate with Mr. Pavithran A.V., Advocate for the Appellants.

Mr. Parikshit S. Sawant, Advocate for Respondent No.2.

Coram:- M. S. SONAK, J.

Date:- 9th October, 2020

ORAL JUDGMENT

Heard Mr. S. G. Desai, learned Senior Advocate who appears alongwith Mr. Pavithran for the Appellants. Mr. P. Sawant, learned counsel appears for Respondent No.2.

2. Though, the other Respondents are served, today, there is no appearance on behalf of such other Respondents.

3. The challenge in this appeal is to the order dated 16.01.2017 made by the learned Senior Civil Judge at Ponda in Special Civil Suit No.5/2014/A granting interim relief in favour of the Respondent No.1 (Plaintiff) and thereby restraining the Appellants from interfering with the possession of the Plaintiff in the suit property, which is a petrol pump.

4. There was no interim relief operating in this appeal. However, today, Mr. Desai, learned Senior Advocate for the Appellants points out that the Plaintiff instituted Civil Suit No.70/2015 in the Court of the District Judge, South Goa, *inter alia* against the Indian Oil

Corporation Ltd. (IOCL) as well as the Appellants herein seeking certain reliefs in relation to very petrol pump. Mr. Desai points out that in this Civil Suit, the IOCL has filed an application at Exhibit D-30 seeking temporary injunction against the Plaintiff who is impleaded here as Respondent No.1. This application for injunction was allowed by the learned District Judge vide order dated 28.08.2019, holding *inter alia* that the original plaintiff i.e. Respondent No.1 herein is not even in possession of the suit property i.e. petrol pump. In fact, by order dated 28.08.2019 the Plaintiff i.e. Respondent No.1 herein has been restrained from interfering with the suit property i.e. petrol pump. Mr. Desai submits that this subsequent development, will naturally impact the order which is impugned in this appeal.

5. According to me, the District Court in Civil suit No.70/15 has made the order dated 28.08.2019 much after the order dated 16.01.2017 which is impugned in this appeal. Based upon this subsequent development, it is always open to the Appellants to apply to the learned Trial Judge for exercising powers under Order 39 Rule 4 of the CPC with regard to the variation of the impugned order. In this manner, both the Appellants as well as the Respondent No.1 herein will get proper opportunity to urge and argue before the learned Trial Judge, in the first instance against the order dated 28.08.2019 made by the learned District Judge in Civil Suit No.70/15.

6. Therefore, without going into the merits or demerits of the impugned order in this appeal, this appeal is disposed of by granting liberty to the Appellants to take out an appropriate application before the learned Trial Court seeking variation or vacation of the order dated 16.01.2017 which is impugned in this appeal. In case such application is indeed filed before the learned Trial Court by the Appellants herein then, the learned Trial Court is directed to dispose of such application as expeditiously as possible and in accordance with law and on its own merits by granting opportunity of hearing to all the concerned parties. Further, while disposing of such application, the learned Trial Court ought not to be influenced by any of the observations made in the impugned order or for that matter the present order.

7. With liberty as aforesaid, this appeal is disposed of. There shall be no order as to costs.

8. All concerned to act on the basis of the authenticated copy of this order.

M. S. SONAK, J.

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