

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 857 OF 2019**

Shri Anand Narayan Naik

... Petitioner

Versus

Shri Namdev Narayan Naik & Ors.

... Respondents

Shri A.R. Kantak and Shri R.A. Kantak, Advocates for the
Petitioner.

Shri R.G. Ramani and Shri P. Kakodkar, Advocates for the
Respondent No.1.

Coram: DAMA SESHADRI NAIDU, J.**Date: 7th January 2020****ORAL ORDER:**

The respondents filed the suit in December 1999. That was dismissed in April 2019. Later, they filed First Appeal on 29th May 2019. It was within limitation. But before they could have their first appeal registered and the petitioner (that is, the defendant in the suit and respondent in that Appeal) notified, the petitioner applied to the Deputy Conservator of Forest (DCF) for permission to cut the trees standing on the suit property. The permission was granted on 7th June 2019. Once the trees were cut, the petitioner applied for its removal and transportation. It

was granted on 9th July 2019.

2. But on 18th July 2019, the District Court, North Goa, Panaji, in RCA No.60/2019, granted stay in terms of prayer clauses (a) and (b) of the interim application the respondents (that is, the appellants in the appeal) filed. Thus, the reliefs sought read as follows:

(a) An order of temporary injunction be passed restraining the respondent no.1, his family members, agents, servants or any other persons interested in him from interfering in the suit property in whatsoever manner including creating third party rights or from changing nature of the suit property in whatsoever manner viz. acts of cutting of trees, digging, excavation or construction or causing alienation, wastage, damage thereof in whatsoever manner.

(b) An order be passed staying the operation and effect of the impugned judgment, order and decree dated 17/04/2019 in RCS No.132/2015/A (new)/SCS No.126/1999/A (old) till the disposal of the appeal.

3. Indeed, the First appeal is in continuation of the original suit proceedings. Though the respondents, as the plaintiffs, may have suffered adverse findings in the suit, they still have an option to establish the legality of their claim in the First Appeal. At the same time, the petitioner before this Court, as the

defendant, has successfully repelled the respondents' contentions before the trial Court. So they cannot entirely be deprived of the fruits of the litigation. Under these circumstances, the Court is required to keep both the parties on an uneven keel.

4. Under these circumstances, the petitioner, as the respondent in the First Appeal, applied to the appellate Court for having the ex parte interim order modified, under Order 39 Rule 4 of CPC. But that was in vain. Accordingly, he has filed this Writ Petition.

5. Without prejudice to either party to the litigation, I hold that either party may approach the DCF for fixing the value of the felled trees or timber. On their approach, the DCF will estimate the value of the timber and issue a certificate to that effect to the approaching party. I hope given the perishable nature of the produce, the DCF will respond promptly.

6. Acting on the value fixed by the DCF, the petitioner in this Writ Petition will sell the produce in the market, as he originally desired, and provide Bank Guarantee for the value fixed by DCF. To that extent, the interim stay granted by the First Appellate Court on 18th July 2019 stands modified.

As a result, I dispose of the Writ Petition for it requires no further orders. Needless to observe that the petitioner will keep the Bank Guarantee alive until the disposal of the First Appeal.

DAMA SESHADRI NAIDU, J.

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