

IN THE HIGH COURT OF BOMBAY AT GOA

WP/40/2021

1. Mr. Neeraj Gupta,
 major in age, 44 years, residing at
 House No.785, "Shantam",
 Alto Betim, Bardez, Goa – 403 521
 and anr. Petitioners

V e r s u s

Mr. Amin Shaikh,
 major in age, residing at
 House No.4/67A, Mollem bhat,
 Saligao, Bardez, Goa – 403 511. Respondent

Mr. Yogesh Nadkarni, Advocate for the Petitioners.
 Mr. Ganesh R. Naik, Advocate for the Respondent.

WP/830/2021 (Filing No)

Amin Shaikh Petitioner

V e r s u s

Neeraj Gupta and anr. RESPONDENTS.

Mr. Ganesh R. Naik, Advocate for the Petitioner.
 Mr. Yogesh V. Nadkarni, Advocate for the Respondents.

CORAM: DAMA SESHADRI NAIDU, J.
Date: 6th April 2021.

ORDER:**WP/830/2021 (Filing No)**

The petitioner is the plaintiff in Regular Civil Suit No.208/2019/A before the Civil Judge, Senior Division, at Mapusa, Goa. He wanted the trial Court to injunct the respondents from forcibly evicting him. In that suit, he wanted to amend the plaint. It was on the grounds that he had to

incorporate the subsequent developments. Similarly, the petitioner wanted to amend the interlocutory application he had filed under Rules 1 and 2 of Order 39 CPC.

2.The trial Court, through a common order, substantially allowed both the applications: it allowed the petitioner to incorporate what it felt to be later developments but did not allow him to delete a particular plea. The trial Court reckoned that deletion, if allowed, would amount to the petitioner's withdrawing an admission. Aggrieved, the petitioner filed Writ Petition No.17/2020 assailing that part of the common order affecting the suit. On the same lines, the petitioner also filed this Writ Petition (WP/830/2021 (Filing No)), assailing the other part of the common order affecting the interlocutory application.

3.This Court, first, took up for consideration WP No.17 of 2020. Through its judgment, dated 2.2.2021, refused to interfere with the trial Court's order. That said, it clarified the order:

24. So, I dispose of the writ petition with these observations:

- (1) The impugned order, dated 4.12.2020, suffers from no legal infirmity. So, it calls for no legal interference.
- (2) That said, the order needs clarification.
- (3) The duration of the lease and the petitioner's right to possession beyond the lease period because of some other supervening event are two different things.
- (4) One does not contradict the other; they both can co-exist.
- (5) It is for the trial Court to examine whether the alleged 'oral agreement' about the petitioner's continued possession until the amount repaid is a 'subsequent event. And it is so, whether it affects the suit originally filed.
- (6) It is also for the trial Court to examine whether it can permit the respondents to deposit the disputed amount so that it can delink the possession issue and rule independently on the issue of repayment.
- (7) The parties are free to plead and press for appropriate relief in the light of the above clarifications.

4.Close on the heels of the above disposal, now, the second writ petition has come up for consideration.

5.Indeed, Shri Ganesh Naik, the learned counsel for the petitioner, has strenuously contended that this Court's Judgment, dated 2/2/2021, has

already been challenged before the Supreme Court. The adjudication in this Writ Petition based on the common order shall depend on the SLP outcome.

6.To my specific query whether the Apex Court has passed any interim order in the SLP, the learned counsel has fairly submitted that the SLP is at “a preliminary stage”. It seems the petitioner so far has only secured Diary No.8752 of 2021; the regular SLP is yet to be numbered, leave alone considered.

7.It has been well established that mere filing of an SLP does not automatically affect judicial proceedings before other courts, be it a High Court or other courts. I, therefore, hold that the Judgment dated 2/2/2021 which is still holding the field applies on all fours to this Writ Petition, too. That is, whatever clarification given in that Judgment shall apply as well to the issues raised in this Writ Petition.

8.Before parting, I nevertheless observe that if the petitioner succeeded before the Supreme Court in the SLP, which is yet to be numbered, it is needless to observe that that judgment would ultimately guide the pending proceedings before the Trial Court. Thus, the petitioner suffers no prejudice.

W. P. NO. 40 of 2021:

The petitioner's counsel brings to my notice that there are two interim applications pending before the trial Court: (i) the application for temporary injunction filed by the plaintiff and (ii) the application for temporary mandatory injunction filed in the counter claim by the petitioner-defendant. He also brings to my notice that an order of *status quo* in the plaintiff's favour has been operating since 16/8/2019. So, he wants this Court to direct the trial Court to consider those applications expeditiously. The learned counsel for the respondent submits that the Writ Petition under Article 227 is misconceived. According to him, this Court cannot direct the trial Court to conclude those interlocutory applications because “they are at the preliminary stage.”

2. Heard Shri Y. Nadkarni, the learned counsel for the respondent in WP/830/2021 (Filing No) and for the petitioner in W. P. No. 40 of 2021; Shri Ganesh Naik, the learned counsel the petitioner in WP/830/2021 (Filing No) and the respondent in W. P. No. 40 of 2021.

3. Indeed, the statutory mandate under Order 39, Rule 3A CPC is unmistakable: Court to dispose of application for injunction within thirty days. And on more than one occasion, the Supreme Court has ruled that the injunctions or stays granted ought not to last beyond six months. Exceeding that period, they should stand vacated.

4. Having taken a procedural advantage, the respondent/plaintiff should be the last person to complain that the court should not decide an interlocutory application on merits because it is at a “preliminary stage”, whatever that preliminary stage meant.

5. I, therefore, dispose of this Writ Petition with a direction to the trial Court to consider both the applications mentioned above on the merits expeditiously in 30 days from the date this order is uploaded.

DAMA SESHADRI NAIDU, J.

AP/-

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