

Aura

IN THE HIGH COURT OF BOMBAY AT GOA

Appeal From order No.14 of 2020

Smt. Helen Fernandes,
Wife of late Joseph Fernandes,
Major, widow, Indian National,
Resident of Flat No.1, Mary Apartments, Appellant
Jaycee Nagar, Ponda.

Versus

1. Mr. Leeroux Fernandes,
Son of Joseph Fernandes,
Major, Married,
Resident of Dattagad, Bethora, Respondents
Ponda-Goa and 2 others.

Mr. C. Padgaonkar, Advocate *for the Appellant.*
Mr. Gaurish Agni, Advocate *for the Respondent nos.1 and 2.*

CORAM: MANISH PITALE, J
DATED: 11th October, 2021

Oral Order:

1. By this appeal, the original defendant is before this Court challenging the order dated 21/6/2017 passed by the Court of Civil Judge Senior Division, Ponda, wherein a temporary injunction application filed in the counter claim preferred by the appellant has been dismissed.

2. The respondent nos.1 and 2 have filed a suit for declaration

and injunction against the appellant and respondent no.3 apprehending disconnection of electricity connection concerning the suit premises. The appellant is the mother of the respondent no.1 and the dispute concerns the suit premises. A counter claim has been preferred by the appellant claiming that the defendants are entitled to restoration of possession of the suit premises. It is also claimed that the defendants are entitled to payment of sum of Rs.1000/- per day towards compensation for the net income of the business of bar and restaurant being run in the suit shop by the respondent nos.1 and 2. In the said counter claim, an application was filed for grant of temporary injunction, wherein the appellant claimed for a direction to restore possession.

3. The Court below has considered the contentions raised on behalf of the rival parties. It has been noted that although a partnership was created for the business of bar and restaurant between the original plaintiffs and the defendants, it appears that the firm itself is not registered. On this basis, it has been stated in the impugned order that since the firm is not registered the counter claim itself may not be maintainable. Apart from this, it is reasoned in the impugned order that granting the prayer for possession as claimed by the appellant, at this stage would amount to granting the final relief and further, that the excise license on the basis of which the business of bar and restaurant is

being conducted in the suit shop, is in the name of the respondent no.1 (original plaintiff no.1). On this basis, it has been held that the prayer for granting of temporary injunction in the counter claim cannot be granted.

4. This Court has perused the material on record with the assistance of the learned counsel appearing for the rival parties. A perusal of the prayer given in the counter claim clearly indicates that the appellant concedes to the facts that the respondent no.1 and 2 are in possession of the suit shop. It is an admitted position that the excise licence is in the name of the respondent no.1 (original plaintiff no.1). In the face of this admitted fact, it cannot be said that the Court below has committed any error in holding that if the prayers made in the application for temporary injunction are granted, it would amount to granting final relief at the interim stage to the appellant. This Court finds no reason to interfere with the impugned order. Hence, the appeal deserves to be dismissed.

5. At this stage, the learned counsel appearing for the appellant submits that the appellant is a senior citizen and she has sufficient material to demonstrate that she is the owner of the suit shop and, therefore, the suit proceedings at least need to be expedited. In view of the above, the appeal is dismissed with a direction to the Court below to expeditiously dispose of the suit

and the counter claim.

MANISH PITALE, J.