

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO. 29 OF 2017

WITH

MISC. CIVIL APPLICATION NO.942 OF 2019.

SHAIKH A. RASHID ALSO KNOWN AS
XEC ABDUL RASHID AND ANR., ...Appellants.
VS
RAVISHEKHAR GOVIND NIPANIKAR
AND ANR., ...Respondents.

Mr. R. Bras Desa and Mr. P. Navati, Advocate for the appellants.

Mr. G. Agni, Advocate for the respondents.

CORAM: G. S. KULKARNI, J.

DATE: 7 DECEMBER, 2022.

P.C.:

1. Heard Mr. R. Bras D'Sa, learned Counsel for the appellants and Mr. G. Agni, learned Counsel for the respondent nos.1 and 2. The order impugned in the present proceedings is an order dated 31 January 2017 passed by the learned Ad-hoc Senior Civil Judge, "B" Court at Panaji, whereby an application for temporary injunction filed by the appellants/plaintiff Exh.D-3 has been dismissed. The appellants/plaintiffs filed suit praying for declaration and permanent injunction against the defendants not to interfere in the suit property.

In such suit the present application for temporary injunction came to be filed praying that respondents/defendants be restrained in any manner interfering with the suit property and the construction which was proposed to be undertaken by the appellants/plaintiffs. The learned trial Judge on hearing the parties and for the reasons more particularly set out in paragraphs 14 and 15 came to the conclusion that there was no immediate threat. It was observed that the averments as made in the application were also not making out any case of the rights of the appellants in any manner being threatened. The said observations as made by the learned trial Judge are required to be noted which read thus:

“14 Going by their own pleadings, it is the case of the plaintiffs that the defendants obstructed and interfered into the construction work of the plaintiffs at site on 06.09.2013 for which a complaint was filed by the labour of the plaintiffs. Admittedly, there are complaints, cross complaints filed by the plaintiffs as well as defendants against each other which are pending before the different authorities. As per the plaintiffs, the cause of action for the plaintiffs to file the present suit as well this application for temporary injunction arose on 26.11.2013. Admittedly, suit has been filed in the year 2015 so also this application, which is being finally heard on merits in the year 2016. Therefore, definitely the application does suffers from delay and laches. The plaintiffs have failed to give as to what exactly is the

present status on site as on today's date. There is nothing placed on record to show that as on today the defendants have placed some obstructions on the road leading to the suit property which causes undue hardship to the plaintiffs to enjoy their property.

- 15 *It is basically the defendants' case that the alleged construction is not legal. Wherein, the contention of the plaintiffs that they are carrying out construction with necessary licence from the concerned authorities which issue needs to be resolved on merits. However, there is nothing placed on record for grant of equitable relief at this stage by the plaintiffs. No such blanket injunction be granted in favour of the plaintiffs restraining the defendants from interfering in the suit property unless it is being specifically shown as to in what manner the defendant is trying to obstruct the construction of the plaintiffs. Filing complaints to the authority does not amount to cause obstruction."*

2. Having heard the learned counsel for the parties, having perused the record, in my opinion, substantial time has lapsed since the impugned order was passed by the learned trial Judge. It is almost a period of five years. In the meantime there are subsequent developments as stated by Mr. De Sa, that the construction license has already been renewed and the appellants/plaintiffs are intending to undertake construction. He states that materials are also lying in the suit property and an immense prejudice would be caused to the appellants/plaintiffs if the construction does not commence. It is his

submission that in these circumstances the appellants/plaintiffs be permitted to move an application before the trial Court for appropriate reliefs in the event there is any threat or obstruction from the respondents/defendants to the rights of the appellants/ plaintiffs to undertake construction.

3. In my opinion, considering the nature of the impugned order it is in the interest of justice that the appellants/plaintiffs be granted an opportunity to make a fresh application in the event there are any threats and/or obstruction/interference by the defendants in the appellants/plaintiffs undertaking construction under a license which is stated to be legally issued in his favour. The appellants/plaintiffs are certainly entitled to approach the Court to seek necessary orders in that regard. Needless to observe that if any such application is made, rights and contentions of the respondents/ defendants are required to be expressly kept open.

4. Thus appeal is disposed of with liberty to the appellants/ plaintiffs to take recourse of such action as noted above.

5. All contentions of the parties on the merits are expressly kept open. Needless to observe that if such an application is made, the

learned trial Judge to decide the same without being influenced by the impugned order.

6. Disposed of. No costs.

G. S. KULKARNI,J.