

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA.
CIVIL APPLICATION REVIEW NO. 1 OF 2022**

IN

WRIT PETITION NO.600 OF 2018

AMAR SUBHA NAIK AND 9 ORS ... Applicants.
VS
DEVU KESHAV NAIK AND 43 ORS ...Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Ms. S Kenny, Advocate
Advocate for the applicants.

Mr. A. D. Bhobe, Advocate for the respondents.

CORAM: G. S. KULKARNI, J.
DATE: 6 OCTOBER 2022.

P.C.:

1. This is an application for review of the order dated 15 March 2021 passed by this Court (Dama Seshadri Naidu, J. as His Lordship then was).
2. The grievance of the applicants/petitioners is that in passing the said order there is error apparent on the face of the record. This more particularly in regard to the Court making observations in paragraphs 25 and 26 of the order, that only defendants nos.6 and 18 have filed a counterclaim and that the other defendants have not filed a counter

claim and hence the applicants could not have maintained a miscellaneous appeal against rejection of prayers for injunction. The observations of this Court as contained in paragraphs 25 and 26 of the order under review are required to be noted which read thus:-

- “25 *From the above discussion, we gather that the defendants, as the plaintiffs in the counterclaim, claim to represent the Trust; they claim to draw their powers from the Deed of Trust; they want the Trust and its properties protected. Despite that, only two of them have filed the counterclaim. The rest are said to have adopted the counterclaim. I am afraid the concept of ‘adopting’ a plea does not apply to seeking a positive relief—that is, filing a suit, for instance. When a plaintiff sues, no other person can ‘adopt’ the relief sought in that suit. He ought to be a co-plaintiff. If he is a defendant, he may support the plaintiff’s cause and sail with him, but the relief the plaintiff gets cannot be treated as relief in that defendant’s favour, too.*
- 26 *So, here, only the defendants 6 and 18 have filed the counterclaim; they are, in effect, the plaintiffs in a parallel suit called a counterclaim. The rest are the defendants. When they have sought an interim injunction, they alone are the petitioners. Then, I fail to understand how all others—defendants 2, 5, 9, 10 to 14—can file the Miscellaneous Appeal. They, however, joined defendants 6 and 18 (the plaintiffs in the counterclaim) and maintained the appeal.”*

(Emphasis supplied)

3. Mr Lotlikar, learned Senior Counsel alongwith Ms. S .Kenny, learned Counsel have made extensive submissions. At the outset, it is pointed out that observations as made in paragraphs 25 and 26 contain an error apparent on the face of the record, as it is not correct that it is only defendant nos.6 and 18 who had filed counterclaims. It is stated that in fact defendant nos.2, 6, 9, 10, 11, 13, 16 and 18 had filed counterclaims and, therefore, they were entitled to maintain an application for temporary injunction. It is submitted that however only defendant nos.6 and 18 had moved an application for temporary injunction and the other defendants although filed a counterclaim did not file an application for temporary injunction although a prayer for injunction both permanent and temporary was made in the counterclaim itself. It is therefore, Mr. Lotlikar's and Ms. Kenny's submission that there was nothing objectionable on the part of the defendant nos.2, 9, 10, 11, 13 and 16 to support the contention of defendants nos. 6 and 18 in the injunction application as filed by said defendants.

4. The contention as urged on behalf of the applicant is to the effect, that in so far as the interim reliefs by way of temporary

injunctive relief to be prayed for by the defendants other than defendant nos. 6 and 18 are straight away hit by the observations as made in paragraphs 25 and 26 of the order under review, which practically non-suits the other defendants on such interim proceedings, and the interim relief which they are entitled to assert in their counter claim.

5. Mr Bhobe, learned counsel for the respondent original plaintiffs would not dispute that in fact apart from defendant nos. 6 and 18 defendant nos. 2, 9, 10, 11, 13 and 16 have also filed a counterclaim and that there is also a prayer for temporary injunction and permanent injunction. He fairly states that no application for temporary injunction was filed by said defendants.

6. Considering the observations made in paragraph 25, in my opinion, there is error apparent on the face of record in so far as other defendants not filing counter claim is concerned. These defendants have filed a counterclaim and they have also prayed for temporary injunction. Thus, they are entitled to canvas their case for such reliefs in appropriate proceedings as would be permissible in law.

7. In the above circumstances, it will be open for the defendants 2, 9, 10, 11, 13 and 16, as may be permissible in law, to file their interim

applications for temporary injunction and if such applications are filed the same shall be decided by the trial Court on its own merits and without being influenced by the orders dated 15 March 2021 passed by this Court in Writ Petition No. 600/2018. The order dated 15 March 2021 subject matter of the present review application be accordingly read.

8. With the above clarification, the review application is disposed of. All contentions of the parties on the proceedings before the trial Court are expressly kept open.

9. In the event, if any interim application praying for temporary injunction is filed by such defendants within one week from the day a copy of this order is made available, the same shall be decided as expeditiously as possible and in any event within a period of two months from the date of filing such application.

10. Disposed of. No costs.

G. S. KULKARNI,J.