

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.746 OF 2023

Sebastiana Fernandes

... Petitioner

Versus

Francisco @ Francis Fernandes
and Anr.

... Respondents.

Mr Agha Iftikhar, Advocate with Ms Valencia Fernandes, Advocate for the Petitioner.

Mr J. J. Mulgaonkar, Advocate for Respondents

**CORAM:
DATED:**

**PRAKASH D. NAIK, J
7th NOVEMBER 2023**

ORDER:

1. The petitioner has challenged the order dated 12.07.2023 passed by the District Judge-1, North Goa, Mapusa in Miscellaneous Civil Appeal No.34/2022 whereby order passed by learned Civil Judge, Junior Division, Pernem directing that defendants, their agents, servants, labourers or any other persons acting on their behalf were temporarily restrained from interfering or carrying out further construction in the suit property or till the final disposal of the suit.
2. The Learned District Judge, directed restoration of application for temporary injunction with direction to decide the said application afresh.

3. Vide order dated 10th August 2023, this Court issued notice to respondents and granted ad-interim relief in terms of prayer clause (b)(i) of this petition till next date of hearing.

4. Prayer clause (b) (i) of this petition reads as follows: -

'b) (i) The Respondents their agents servants family members of any other person acting on behalf of the Respondents be restrained from in any manner carrying out or continuing with the work of illegal construction of the suit property and changing the nature of the suit property till the disposal of the present Writ Petition.'

5. Learned advocate for the petitioner submitted that the trial Court may decide the application for injunction afresh. However, the interim protection granted by this Court vide order dated 10.08.2023 may be continued till the disposal of the injunction application by the trial Court.

6. Learned advocate Mr Mulgaonkar appearing for the respondent submitted that the appellate Court had rightly remanded the matter back to the trial Court by setting aside the order of injunction. The construction was already in progress and there was no question of granting any injunction.

7. Considering the fact that the appellate Court has remanded the matter back to the trial Court and the issues involved in this matter, the interim relief granted by this Court can be directed to be continued till the disposal of the injunction application by

the trial Court. Directions can be given to the trial Court to dispose of the injunction application within stipulated time.

ORDER

(i). Writ Petition No.746/2023 is disposed of with directions that the Civil Judge Senior Division shall decide the injunction application in accordance with law without being influenced by the orders passed by both the Courts, within a period of two months from today.

(ii) The interim relief granted by this Court vide order dated 10.08.2023 shall continue till the final disposal of the injunction application preferred before the trial Court.

(iii). All contentions of both the parties are kept open.

(iv). Petition stands disposed of.

(PRAKASH D. NAIK, J.)

MARIA SUZANA REBELLO Digitally signed by MARIA SUZANA REBELLO
Date: 2023.11.08 19:01:08 +05'30'