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IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 178 OF 2025****GURUDAS MADHUKAR KERKAR****... Petitioner*****Versus*****PONDA MUNICIPAL COUNCIL****THR. ITS CHIEF OFFICER****...Respondent**

Mr. S. D. Padiyar, Senior Advocate with Mr. Krishna M. N. Dessai & Mr. Prayash Shirodkar, Advocates for the Petitioner.

Mr. Manish Salkar, Government Advocate for the Respondent.

CORAM**: VALMIKI MENEZES, J.****DATED****: 23RD APRIL, 2025.****ORAL ORDER:**

1. The Judgment challenged in this petition dated 27.02.2025 of the District Judge-2, Panaji, sitting at Ponda in Misc. Civil Appeal No. 18/2025, dismisses the Petitioner's appeal under Order 43 Rule 1 of the Civil Procedure Code(CPC). The Appeal before the District Court impugns the order allowing the Respondent's Appeal, dismissing an application for Temporary Injunction filed by the Petitioner. The order impugned in the Appeal was one dated 22.01.2025,

passed by the Civil Judge Junior Division 'B' Court at Ponda passed on an Exhibit 56 in Regular Civil Suit No. 11/2013/B/C, read with Section 151 of CPC by which the Civil Court directed the Respondent, Ponda Municipal Council (PMC) to de-seal/remove the seals on the suit premises, which is a shop allotted to the Petitioner on lease basis by the Respondent.

2. The application for Temporary Injunction at Exhibit 65 on the file of the Civil Court in Regular Civil Suit No. 11/2013/B/C, essentially challenges a notice/warrant dated 06.01.2025 issued by the Respondent to the Petitioner under Section 147 of the Goa Municipalities Act, 1968.

3. Section 147 of the said Act reads thus:

***“147. When warrant may issue.—** If the person on whom a notice of demand has been served under the last preceding section, does not, within fifteen days from the service of such notice, pay the sum demanded in the notice, such sum with all costs of the recovery may be levied under a warrant signed by the Chief Officer in the form of Schedule V or to the like effect, by distress and sale of the movable or immovable property of the defaulter:*

Provided that, where any measures precautionary or otherwise, have been taken in respect of any such property for the recovery of any sum claimed by the Government, any proceedings under this Chapter in respect of such property shall abate.”

4. As a prerequisite to invoking the powers under Section 147 of the said Act, the Council is required to raise a bill on the party concerned in terms of Section 145 and Section 146 of Act, and on the refusal of the party to pay the same, a Show Cause notice is required to be served, as to why the amount should not be recovered. The Council has powers to issue a warrant in terms of Section 146 for recovering the amount either by sale of movable or immovable property of the person whom notice is issued.

5. It is submitted by the learned Senior Counsel Mr. S. D. Padiyar for the Petitioner that in the present case no notice under Section 145 was issued as a precursor to the notice under Section 146 and the Council has proceeded to seal the premises exercising power under Section 147 of the Act. He further submits that Section 147 of the Act does not empower sealing of a premises and only empowers attachment and sale of movable and immovable property belonging to the person to whom the notice is issued. He further submits that the Petitioner filed an application in the pending suit, wherein a Decree was sought to restrain the Council from evicting the Petitioner without following due procedure of law. The application was to grant temporary relief of de-sealing the premises. The Civil Court has rightly granted the Temporary Injunction of a mandatory nature directing de-sealing of the suit premises. He

further submits that the Appellate Court, allowing the Appeal of the Council has committed an error of law by holding that the Council was within its powers to issue such a notice, which is contrary to the scheme of Section 145 to 147 of the Act.

6. After considering the rival submissions and considering the powers vested in the Council under Section 146 of the Act, it is apparent that the Petitioner had two options open to him in laying a challenge to the notice under Section 146 issued to the Respondent. Section 146 contemplates the Petitioner filing a reply to the Show Cause notice or throwing a challenge to the order, by filing an Appeal before the Judicial Magistrate. The Petitioner has taken recourse to neither of these two remedies, having a clear alternate remedy of laying a challenge to the order before the Judicial Magistrate. Based upon the submissions made by the learned Senior Counsel that the notice itself was beyond the powers vested with the Council under Section 146 or Section 147 of the Act or on grounds that prior to issuance of the notice under Section 146, no notice under Section 145 was issued to the party, the other remedy perhaps open to the Petitioner was to challenge the notice invoking this Court's extraordinary jurisdiction.

7. Clearly, however, the remedy would not lie before the Civil Court by filing a Miscellaneous application for Temporary Injunction, that too when no final reliefs were

sought in the suit in terms of the Temporary Injunction. Considering the entire scheme under Section 145 to 147, the Civil Court would otherwise have no jurisdiction to take a decision on the legality of the notice on the application at the interim stage. The order of the District Court therefore would have to be upheld, however for different reasons which are stated above.

8. Consequently, the petition would have to be rejected. At this stage, learned Senior Counsel Mr. Padiyar for the Petitioner, on instructions, submits that the Petitioner desire to challenge the order dated 27.02.2025 passed under Section 146 of the Act by filing a Writ Petition invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India. He further submits that several observations made in the order of the District Court impugned herein would perhaps come in his way in invoking the extraordinary jurisdiction. Having gone through the order of the District Court, in my opinion none of the observations made therein should come in the way of the Petitioner to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India. As observed in the preceding paragraphs, the order of the District Court is upheld for the reasons stated herein i.e. that the Civil Court would have no jurisdiction. Any observations made by the District Court

therefore, would not come in the way of the Petitioner throwing the challenge to the order in a writ petition.

9. In that view of the reasons stated above, the petition is dismissed. All contentions of the parties with regard to the notice dated 06.01.2025, under Section 147, are left open.

10. The petition stands disposed of.

VALMIKI MENEZES, J.