
(2012) 12 BOM CK 0025
In the Bombay High Court
Case No : Writ Petition No. 765 of 2012

Brissa Owners Association and Others	APPELLANT
Vs	
Egdar Daniel Monteiro and Others	RESPONDENT

Date of Decision : 17-12-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2013) 2 BomCR 878

Hon'ble Judges : Reiz F.M., J

Bench : Single Bench

Advocate : J. Godinho, for the Appellant; A. Naik, for the Respondent

Judgement

Reiz F.M., J.—Heard Shri J. Godinho, learned Counsel appearing for the petitioners and Shri A. Naik, learned Counsel appearing for the respondents. Rule. Heard forthwith with the consent of the learned Counsel Learned Counsel appearing for the respondents waives service.

2. The above petition challenges an order passed by the learned Additional District Judge, North Goa, Panaji in Civil Suit No. 55/2010 u/s 151 of the CPC whereby the petitioners inter alia have been restrained from disrupting or disconnecting or in any way interfering with the water connection to the suit flat occupied by the respondents.

3. Upon hearing the learned Counsel, the records reveal that a suit came to be filed by the respondents before the learned Ad hoc District Judge at Panaji being Civil Suit No. 55/2010 inter alia for declaration, permanent injunction and recovery of money and consequential reliefs along with an application for temporary injunction. It is not in dispute that the relief sought in the application for temporary injunction pending before the learned Judge was inter alia to restrain the petitioners from interrupting/disconnecting the water supply as well as the electric supply to the suit flat Until the disposal of the temporary injunction application the respondents filed the aforesaid application u/s 151 of

the CPC inter alia seeking for a restrained order against the petitioners from interrupting/disconnecting the water supply to the suit flat.

4. Shri J. Godinho, learned Counsel appearing for the petitioners has pointed out that the respondents are availing of such services at the instance of the petitioners without paying any maintenance charges or water charges which otherwise are being paid by all other occupants of the suit building.

5. On the other hand, Shri A. Naik, learned Counsel appearing for the respondents has disputed his obligation to pay the said amount or any other amount on that count to the petitioners.

6. The learned Judge after hearing the parties passed the impugned order directing the petitioners not to disrupt/disconnect the water supply to the suit flat.

7. It is not in dispute that the application for temporary injunction is still under consideration before the learned Judge. The impugned order passed by the teamed Judge is an ad interim order until the disposal of the temporary injunction application. In such circumstances, taking note of the fact that the import of the impugned order would result in relief in the nature of mandatory injunction, I find that the teamed Judge was not justified to pass the impugned order without imposing some conditions on the respondents for availing of such water supply. It is not in dispute that no such amounts were being paid to the petitioners nor that such water supply is being supplied by the respondents to the suit flat. The contentions of the respondents is that the amount towards such water supply has already been paid to the builder. This aspect would have to be considered on merits after hearing the parties in accordance with law. Be that as it may, I find it appropriate and in the interest of justice and taking note of the fact that the import of the impugned order would be to supply water to the suit flat being occupied by the respondents without paying any water charges. The respondents do not dispute that no amounts on that count have been paid to the petitioners. As such, the impugned order passed by the learned Judge would have to be modified whereby the said order would continue to be in operation subject to the respondents paying to the petitioners a sum of Rs. 6,000/- which is stated to be the arrears on such count and further paying a sum of Rs. 600/- every six months to the petitioners until further orders. The said amounts would be paid within two weeks from today. It is made clear that the amounts directed to be paid are without prejudice to the rights and contentions of both the parties and the petitioners are liable to refund the said amount in case the Court comes to the conclusion that the respondents were not liable to pay the said amount. The said order shall be in operation until the disposal of the temporary injunction application filed by the respondents which the learned Judge shall decide on its own merits. Subject to the above, rule stands disposed of. The petition stands disposed of accordingly.