

(2010) 12 BOM CK 0035
In the Bombay High Court
Case No : Writ Petition No. 798 of 2010

Smt. Jyotsna Metha and Others

APPELLANT

Vs

Smt. Charu Joshi and Others

RESPONDENT

Date of Decision : 15-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31
Constitution of India, 1950 — Article 227

Citation : (2010) 12 BOM CK 0035

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : N. Sardessai, for the Appellant; A.F. Diniz, for the Respondent

Judgement

A.P. Lavande, J.—Heard learned Counsel Mr. Sardessai for Petitioners and Mr. Diniz for Respondents.

2. Rule. By consent of the learned Counsel heard forthwith.

3. By this petition under Article 227 of the Constitution of India, Petitioners challenge order dated 30-10-2010 passed by District and Sessions Judge-2, South Goa, Margao in Miscellaneous Civil Appeal No. 58/2010, setting aside the order dated 11-05-2010 passed by the Civil Judge Senior Division, Vasco-da-Gama, dismissing the application for interim relief filed by Plaintiff in Regular Civil Suit No. 47/10/A (New) and Special Civil Suit No. 50/09/A (Old).

4. Mr. Sardessai, learned Counsel for the Petitioners submits that the learned trial Court had dismissed the application for injunction, inter-alia, on the grounds that the Plaintiff was guilty of delay and has suppressed relevant facts. However, the lower appellate Court without considering the grounds in the order passed by the trial Court, on totally different grounds has set aside the order passed by the trial Court. Mr. Sardessai further submits that the Appellant Court has not mentioned the relief granted in favour of the Plaintiff as required under Order 41, Rule 31 of CPC Code.

5. Mr. Diniz learned Counsel for the Respondents supported the impugned judgment and order and submitted that no fault can be found with the impugned order.

6. I have considered the rival submissions and perused the record, I am of the considered opinion that lower appellate Court has not exercised jurisdiction in accordance with the settled principles governing disposal of appeal from an order refusing or granting injunction. In the case of Wander Ltd. and Another Vs. Antox India P. Ltd., , the Apex Court has held that an appeal against the order granting or refusing injunction on principle. The appellate Court dealing with such appeal ought to deal with the reasons given by the trial Court for granting or refusing the injunction. On perusal of order it is evident that such exercise has not been undertaken by the lower appellate Court. Moreover, while allowing the appeal, the lower appellate Court has not specifically mentioned the exact nature of relief granted in favour of the Plaintiff which the lower appellate Court was bound to state in view of Order 41, Rule 31 of CPC Code. On these grounds, I am inclined to set aside the impugned order and remand the matter to the lower appellate Court for deciding the appeal afresh.

7. At this stage Mr. Diniz states that construction is been undertaken by the Petitioners inspite of the order passed by the lower appellate Court. He further submits that the lower appellate Court be directed to decide the appeal expeditiously. I find merit in the later submission made by Mr. Diniz and therefore, I am inclined to order that the matter be decided expeditiously.

8. In view of the above, order dated 30th October, 2010 passed by the lower appellate Court is quashed and set aside. The lower appellate Court is directed to decide the appeal afresh in accordance with law after hearing the parties within a period of four weeks from the date of appearance. The parties shall appear before the lower appellate Court on 23-12-2010 at 10.00 a.m. It is made clear that I have not expressed any opinion on rival contentions and all the contentions of the parties are kept open. The lower appellate Court while disposing of the appeal is expected to bear in mind the provision of Order 41, Rule 31 of CPC Code. Needless to mention that any construction undertaken by the Petitioners shall be subject to further orders that may be passed in the appeal and/or the suit.

9. Writ Petition stands disposed of in aforesaid terms with no order as to costs.