

(2016) 06 BOM CK 0179

BOMBAY HIGH COURT (GOA BENCH)

Case No: Writ Petition No. 108 of 2016.

Gurudas Alavani, son of late
Vinayak Alavani, major of age,
Priest of the Temple of Shree
Santhari, one of the Affiliated
Temples of Shree Ramnath
Devasthan, Ramnathi, Bandora,
Ponda-Goa, presently resident of
House near Ramnathi Parking,
Ramnathi, Bandor

APPELLANT

Vs

RESPONDENT

Date of Decision: June 23, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 2-A, Order 39 Rule 3-A

Citation: (2016) 6 BCR 146

Hon'ble Judges: C.V. Bhadang, J.

Bench: Single Bench

Advocate: Mr. Devidas J. Pangam and Mr. S.P. Munj, Advocates, for the Petitioner; Mr. Prasheen Lotlikar, Advocate, for the Respondent

Final Decision: Allowed

Judgement

C.V. Bhadang, J.(Oral) - Rule. Rule, made returnable forthwith. The learned Counsel for the respondent waives service. Heard finally by consent of the parties.

2. The petitioner is the original defendant, who is challenging the order dated 15/01/2016 passed by the learned Civil Judge, Junior Division at Ponda in Regular Civil Suit No.10/2015/C. By the impugned order, application Exh.18 filed by the respondent/plaintiff has been granted. The net result is that the Trial Court has decided to take up application for breach of injunction under Order 39, Rule 2A of the Code of Civil Procedure, for hearing before hearing the application for

Temporary Injunction. It appears that while doing so, the learned Trial Court has placed reliance on the decision of this Court in **Civil Revision Application No. 183/1991 (Francisco Xavier Fernandes and another v. Anthony Fernandes) dated 30/09/1991.**

3. The learned Counsel for the petitioner places reliance on the decision of the Hon"ble Apex Court in the case of **Quantum Securities Pvt. Ltd and others v. New Delhi Television Ltd., reported in (2015) 10 SCC 602**, in order to submit that in such a case, it is not appropriate that the main application is kept pending and application for contempt/breach of injunction, is taken up in precedence.

4. The learned Counsel for the respondent, in all fairness, does not dispute this position.

5. The Hon"ble Apex Court in Quantum Securities Pvt. Ltd. (supra), has, inter alia, held that it would not be appropriate that in such cases, the Temporary Injunction application is kept pending, particularly when there is a statutory mandate to decide such an application within a period of 30 days under Order 39, Rule 3A of C.P.C.

6. In such circumstances and in view of the concession on behalf of the respondent, the petition is allowed. The impugned order is hereby set aside. The application Exh.18 is hereby dismissed. The learned Trial Court shall decide the application for Temporary Injunction as expeditiously as possible, in accordance with law.

7. Rule is made absolute in the aforesaid terms, with no order as to costs.

8. Parties to act on the authenticated copy of the order.