

Niti

IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL FROM ORDER NO.1764 OF 2022 (F)
AND
CIVIL APPLICATION NO.1765 OF 2022 (F)

Goa University,
Through its Registrar and
Vice Chancellor.Appellant

Versus

Mr Haroon Ibrahim and Ors.Respondents

Mrs Agni, Senior Advocate with Ms Afrin Khan Harihar and Mr Junaid Shaikh, Advocates for the Appellant.
Mr Ashwin D. Bhohe and Ms R. Prazeres, Advocates for Respondent Nos.1.
Mr S.P. Munj, Additional Government Advocate for Respondent Nos.2 & 3.

CORAM: M. S. SONAK, J.

DATE : 4th AUGUST 2023

ORAL ORDER :

1. Heard Mrs A. Agni, learned Senior Advocate, who appears along with Ms Afrin Khan Harihar and Mr Junaid Shaikh for the appellant (Goa University) and Mr A.D. Bhohe with Ms R. Prazeres for respondent no.1. Mr S.P. Munj, learned Additional Government Advocate appears for respondent nos.2 & 3.
2. The challenge in this appeal is to the order dated 07.07.2022, by which the Trial Court dismissed the appellant's application for an

injunction to restrain respondent no.1 from interfering with the work of construction of the compound wall to close the opening and complete the wall and restore it to the same position in which it was from 2009 to 2013 till the respondent no.1 (plaintiff) illegally demolished the portion of the same.

3. The impugned order is made in Civil Suit No.53/2012 instituted by respondent no.1. respondent no.1 had initially sought and obtained an injunction to restrain the appellant (Goa University) from completing the construction of the compound wall and blocking and obstructing the suit access claimed by respondent no.1. However, this Court, by order dated 27.04.2017 vacated this injunction order.

4. The appellant's case is that from 2017 till 09.10.2021, the appellant did not repair the breach in the compound wall. However, when the appellant undertook to repair the breach, respondent No. 1 objected and interfered with this work. Therefore, the appellant, though a defendant in the suit, filed an application (Exhibit 129) seeking an injunction to restrain respondent no.1 from interfering with the construction of the compound wall to close the breach.

5. By the impugned order dated 07.07.2022, the Trial Court dismissed the appellant's application at Exhibit 129. Hence this appeal.

6. This Court, made an order on 21.09.2022 (Coram : G.S. Kulkarni, J.). In the said order, some observations were made about the Trial Court not considering this Court's earlier order dated 27.04.2017 in Appeal From Order No.53/2016, by which respondent

no.1's application for an injunction to restrain the appellant herein was effectively dismissed. This Court reasoned that once the injunction order granted by the Trial Court earlier was vacated by this Court, at least *prima facie*, there was no question of respondent no.1 securing the same relief by *prima facie* obstructing the appellant for completing the closure of the breach.

7. Mr Bhohe, learned Counsel for respondent no.1, submits that the impugned order was made mainly because the appellant failed to produce any permission from the Panchayat for the construction to close the breach in the compound wall. Mr Bhohe accepted that the findings recorded by this Court in its order dated 27.04.2017 in Appeal From Order No.53/2016 could not have been ignored by the Trial Court at the *prima facie* stage. Again, he maintained that the appellant's application at Exhibit 129 was correctly dismissed because the appellant had not produced any licence from the concerned Village Panchayat.

8. Mrs Agni, learned Senior Advocate for the appellant, points out that the appellant has already applied for a licence to the Village Panchayat of ~~Taleigao~~ ^{St. Cruz} way back on 21.08.2018. She pointed out that even a reminder was addressed to the Panchayat on 21.12.2021. Mrs Agni states that the appellant would be satisfied with an order that the appellant can undertake the construction of the breach in the compound wall after the appellant receives the necessary permission from the Village Panchayat of ~~Taleigao~~ ^{St. Cruz}.

Corrections
carried out as
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17.08.2023 in
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No.1821/2023.
Sd/-
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25.08.2023

9. The Trial Court could not have ignored this Court's order dated 27.04.2017 in Appeal From Order No.53/2016 at the prima facie stage. At the same time, the appellant cannot undertake construction without permission from the Panchayat. Therefore, Mrs Agni's suggestion is fair and reasonable. The appellant - Goa University, can proceed with constructing the compound wall to close the breach subject to the appellant – Goa University obtaining construction permission from the Village Panchayat of ~~Taleigao~~ ^{St. Cruz}. An application for this purpose is already filed, and subject to such permission being granted, the injunction prayed for by the appellant in the application at Exhibit 129 can be and is hereby granted.

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10. Thus, it is clarified that respondent No. 1 will not interfere with the appellant constructing the compound wall to close the breach in the wall, provided the appellant obtains permission from the Village Panchayat of ~~Taleigao~~ ^{St. Cruz}. Further, even if the appellant gets consent from the Village Panchayat of ~~Taleigao~~ ^{St. Cruz} and completes the construction, thereby closing the breach, such structure will be subject to the final order in Civil Suit No.53/2012. The appellant – Goa University, will claim no equities. The suit must finally be decided based on the evidence the parties lead, without being influenced by the interim orders granting or refusing interim reliefs.

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11. With the above directions, this appeal is disposed of. The impugned order stands modified accordingly. The appellant's application at Exhibit 129 is disposed of in the above terms.

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- 12.** This Court has not gone into the issue of the appellant being entitled to permission from the Village Panchayat of ~~Taleigao~~^{St. Cruz}. All contentions of all parties in this regard are kept open.
- 13.** The appeal and the Civil Application are disposed of.
- 14.** There shall be no costs order.

M. S. SONAK, J.