

2023 SCC OnLine Bom 1643

In the High Court of Bombay at Goa  
(BEFORE M.S. SONAK, J.)

Shripad Shriram Naik ... Petitioner;

*Versus*

Kusaji Chandrakant Naik ... Respondent.

Writ Petition No. 1051 of 2022(F)

Decided on August 3, 2023

Advocates who appeared in this case:

Mr. Deepak Gaonkar and Mr. Amey Salgaonkar, Advocates for the Petitioner.

Mr. Ashwin D. Bhohe and Ms. Annelise Fernandes, Advocates for the Respondent.

The Judgment of the Court was delivered by

M.S. SONAK, J.:— Heard Mr. Deepak Gaonkar for the petitioner and Mr. Ashwin D. Bhohe for the respondent.

2. Rule. The rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.

3. The challenge in this petition is to the order dated 29.04.2022 made by the appeal Court allowing the respondent to temporarily cover the roof of the disputed structure with asbestos sheets.

4. The impugned order dated 29.04.2022, as recorded in the roznama, reads as follows:

*“Applt rep. by adv, Shri M. Harmalkar*

*Rep. rep. by adv. Shri A. Salgaonkar and undertakes to file Vakalatnama. He also prays for time.*

*On the last date of hearing adv. for resp. had undertaken to file Vakalatnama.*

*Today adv. for resp. has sought time and has also not filed Vakalatnama*

*D-6 Appl filed by applt. u/s 151 CPC to permit applt. to put temporary roof to the suit house OP File*

*It is seen from the photographs produced that the walls of the 1<sup>st</sup> floor have been constructed and only the roof is remaining to be put.*

*Adv. for applt. has made a grievance that as it has already started raining, it is causing tremendous hardship to the applt. It is reported that there has been heavy rains yesterday. Considering the fact that the resp. has sought time today and there have incidents of heavy rains hitting the state. the applt. is permitted to temporarily over the*

*roof with asbestos sheets*

*Matter is fixed at 10.00 am on 18.06.2022.*

*Case Adjourn for : ARGUMENTS"*

5. The Appeal Court made the above order in an appeal against an order dated 29.01.2022 by which the Trial Court had restrained the respondent from undertaking any further construction to the suit house.

6. The record shows that the appeal Court made the above order on an application under Section 151 of the CPC filed on 29.04.2022.

7. The respondent's application dated 29.04.2022 on which the impugned order was made, reads as follows:

*"IN THE COURT OF DISTRICT AND SESSIONS  
JUDGE NORTH-GOJA AT PANAJI*

*Case No. MCA/14/2022*

*Mr. Kusaji Chandrakant Naik ... Appellant*

*v.*

*Mr. Shripad Naik ...Respondent*

*Application under Section 151 of CPC to Permit appellant to Put  
Temporary roof to the Suit house.*

*MAY IT PLEASE YOUR HONOUR*

*Adv. For the appellant states & submits as under -*

- 1) That suit house walls are complete in all aspects and the defendants/respondents who is living in the House which is touching the house of the appellant.*
- 2) That there is a Interim order of stay passed by Civil Judge Junior Division Pernem-Goa, directing appellant his agent, servants, family members or any person acting on the behalf of the appellant are restrain Temporarily from carrying further Construction to the Suit House.*
- 3) That it has been raining heavily presently in the area where the suit house is located, as such a lot of water comes inside the Suit house as a result of lack of roofing and as such great hardship is being caused to the appellant.*

*In view of above it is prayed that appellant may be permitted to cover the roofing with the Asbestos Sheet as a Temporary arrangement and undertakes to remove the same if any adverse order is passed against the appellant.*

*Place : Mapusa*

*Date : 29/4/2022*

*Sd/-*

*Adv. Tor appellant"*

8. The record shows that the appeal Court made the impugned order

without giving any opportunity to the petitioner to give his say or to argue the matter. This was not proper. Such an order should not have been made without complying with the principles of natural justice.

9. The application and the impugned order were made on 29.04.2022. The order is like a temporary mandatory injunction. The Appeal Court should have given at least a short notice. This is more so since the trial Court had already enjoined the respondent from undertaking any further construction to the suit house.

10. The learned vacation Judge of this Court (G.A. Sanap, J.) issued notice for the final disposal of this petition. The status quo was also ordered by clarifying that the status quo should be maintained if the temporary asbestos roof has not been put in. Liberty was also granted to the petitioner to take out an appropriate application before the appeal Court where the appeal was pending.

11. Mr. Bhohe, on instructions, states that the respondent had already put the asbestos roof in place. Mr. Gaonkar says that the portion above the slab and below the asbestos roof is not occupied. Accordingly, it is clarified that the status quo would extend not to occupy this portion.

12. Though the appeal Court's order is wrong and warrants interference, it would not be appropriate at this stage to require the respondent to remove the asbestos sheets already provided. Instead, the ends of justice would be met if the appeal Court is directed to dispose of Misc. Civil Appeal No. 14/2022 as expeditiously as possible and, in any case, within three months from the parties filing an authenticated copy of this order. Further, as was undertaken by the respondent in his application dated 29.04.2022, the respondent will have to remove the asbestos roofing should the appeal be ultimately decided against the respondent. This undertaking is accepted as an undertaking given to the appeal Court.

13. The petition is disposed of by holding that the impugned order dated 29.04.2022 was incorrect. Still, for the above reasons, and by issuing the above directions, the same is not interfered with. The status quo, as clarified above, continues until the disposal of the Appeal before the Appeal Court. The Respondent must abide by his undertaking if the appeal is dismissed. The appeal must be disposed of within three months as directed above. No costs.

14. The rule is disposed of in the above terms. There shall be no order for costs.