

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.41 OF 2015**

Mr. Anthony Xavier D'Costa,
Aged 39 years, son of Diago D'Costa,
Married, baker-man,
r/o H.No.106, Boa Vista,
Bastora, Bardez – Goa.

... **Petitioner**

Versus

Ms. Lia D'Costa,
Ages 66 years, wife of Diago D'Costa,
Housewife,
resident of H. No.106/F, Boa Vista,
Bastora, Bardez, Goa.

... **Respondent**

Mr. Nigel Da Costa Frias, Advocate for the petitioner.

Mr. J. J. Mulgaonkar, Advocate for the respondent.

Coram : C. V. BHADANG, J.

Date : 2nd July, 2015.

ORAL ORDER :

The dispute here is between the mother and the son. The respondent had filed an application under the Domestic Violence Act, 2005 before the learned Magistrate, seeking the order restraining the petitioner from indulging into Acts of Domestic Violence and also not to interfere with the possession of the respondent in the shared household. The learned Magistrate by an order dated 3rd May, 2014, while restraining the petitioner from committing any acts of domestic violence against the respondent, had further directed the petitioner to remove himself along with his wife and family from the shared

household bearing No.106/F, within a period of three months and to reside separately in the independent unit specially built for him by the respondent's husband, which is located in the property bearing Survey No.84/17 of village Bastora.

2] On hearing the learned counsel for the parties for sometime, it appears that the respondent and Mr. Diago Francis Da Costa has executed a Sale Deed dated 2nd August, 2011 in respect of house No.106/F, in favour of her other son Mr. Nazareth Franky Da Costa. There is a sketch of the house No.106/F annexed to the Sale Deed, showing three distinctive portions marked by letters 'A', 'B' and 'C'. It is undisputed that the portion marked as 'A' is said to be the shared household, from where the petitioner has been directed to remove himself along with his family. Portion shown by letter 'B' is the independent unit, built for the petitioner. The middle portion shown by letter 'C' is where there is a bakery, which is presently being run by the petitioner. It has come in the evidence that the petitioner has removed all his belongings to the portion shown by letter 'B' constructed for him. According to the petitioner, he is using one room out of the shared household (shown by letter 'A'), where he sleeps during the night. It is further undisputed that the petitioner has filed Regular Civil Suit No.172/2014/C, which is pending on the file of the

learned Civil Judge, Senior Division at Mapusa, challenging the Sale Deed dated 2nd August, 2011. On the contrary, the respondent has filed Regular Civil Suit No.47/2015/C for the relief of restraining the petitioner or anybody on his behalf, from interfering with the possession of the bakery. Be that as it may, in view of the fact that admittedly, the petitioner has shifted all his belongings to the portion marked as 'B' and that the substantive dispute as to the Sale Deed dated 2nd August, 2011 and pertaining to the bakery is subjudice before the competent Civil Court into aforesaid two civil suits, it was submitted by the learned counsel for the parties that appropriate order may be passed.

3] Having regard to the overall circumstances and the submissions made, I find that the impugned order by which the petitioner has been directed to remove himself along with family from the shared household (which is indisputably the portion marked 'A' in the sketch annexed to the Sale Deed dated 2nd August, 2011), calls for no interference.

4] On hearing the learned counsel for the parties, the petition is being disposed of in the following terms :

a) The petitioner shall remove himself along with his family

form the shared household (shown by letter 'A' in the plan annexed to the Sale Deed dated 2nd August, 2011), within a period of 15 days from today.

- b) The petitioner shall not indulge into Acts of Domestic Violence against the respondent.
- c) All other rival contentions of the parties including as regards the bakery (shown by letter 'B' in the sketch annexed to the Sale Deed dated 2nd August, 2011), are expressly kept open, to be agitated in the civil suits before the competent Court.

5] The writ petition is disposed of in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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