

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION (MAIN) NO. 17 OF 2016

Shri Shailesh Narayan Vernekar,
Major in age, business,
R/O H. No. Not known,
Chaudi, Canacona,Goa.

... Petitioner

Versus

1. Shri Mohan Vernekar,
S/O late Sheshguiri Vernekar,
66 years of age, business
and his wife

2. Smt. Savitri Mohan Vernekar,
age about 58 years, House wife,
both r/o H. No.484,
Chaudi, Canacona-Goa.

... Respondents

None for the Petitioner.

Mr. Shailesh Redkar, Advocate for Respondent.

Coram:- C. V. BHADANG, J.
Date:- 19th August, 2016.

Oral Order:

This petition is registered on the basis of a reference under section 15(2) of The Contempt of Courts Act, 1971 made by the learned Civil Judge Junior Division

at Canacona.

2. The respondent had filed two suits, namely, Regular Civil Suit no.8/2007 and Regular Civil Suit No.25/2007 in respect of certain property. Regular Civil Suit No.8/2007 was dismissed as withdrawn on 21/10/2009. The subsequent suit i.e. Regular Civil Suit No.25/2007 was rejected under Order 7 Rule 11 of C.P.C. on 12/12/2008. It appears that the respondents persisted further and filed Regular Civil Suit No.24/2014 in which Mr. Shailesh Vernekar (the defendant no.3) filed an application for taking of action under Contempt of Court's Act against the respondents.

3. The learned Trial Court found that repeated filing of the suits, amounts to a willful disobedience of the order passed in the earlier suit and in that view of the matter has sent this reference.

4. A perusal of the order dated 26/6/2015 passed by the learned Trial Court shows that by an order dated 24/3/2015 the earlier suit was allowed to be withdrawn subject to payment of costs of Rs.5000/-.

5. The original defendant no.3, Mr. Sailesh Vernekar who appears in person is absent today. I have heard Mr. Redkar, the learned counsel for the respondents and perused the order dated 26/6/2015. The learned counsel for the respondents submits that the costs of Rs. 5000/- are deposited on 10/8/2016. He has produced a copy of the receipt which is taken on record and marked "X" for identification. Sub section (2) of section 15 of the Contempt of Court's Act 1971 under which the reference is made reads thus:

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made

by the Advocate General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

It can be seen that section 15 pertains to cognizance of criminal contempt. The impugned order does not show that there is any prima facie finding recorded that the act of the respondents amounts to a criminal contempt. Under section 2(b) "civil contempt" means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court, while under section 2 (c) of the Act, contemplates any publication or doing of any other acts which either scandalizes or tends to scandalize, or lowers or tends to lower the authority of any court, or prejudices or interferes or tends to interfere with, the due course of any judicial proceeding or interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice, in any

other manner.

6. On careful consideration of the circumstances and on going through the order dated 26/6/2015, I do not find that the act of filing a suit in the face of the withdrawal of the earlier suit can either amount to a civil or a criminal contempt. In a given case, such an act can be in the nature of an abuse of the process of the Court and/or would amount to indulging in vexatious litigation. Thus in my considered opinion, this is not a case in which a petition for contempt can be entertained. The petitioner has also deposited the amount of costs which was imposed while permitting the withdrawal of the earlier suit. In the result, the petition is disposed of with no order as to costs.

C. V. BHADANG, J.

ap/-