

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 405 OF 2017

MR. ANUPAM MARTINS THR. POA MRS. SVETA FACHO AND ANR.,	... Petitioners
Versus	
M/S ACRON DEVELOPERS PVT. LTD., THR. ITS DIRECTORS.,	... Respondents

Mr. Menezes Myron D'souza, Advocate for the petitioners.

Coram:- M. S. SONAK, J.

Date:- 4th May, 2017

P.C.

Mr. D'Souza, learned Counsel for the petitioners submits that this is gross case where he had defied the orders made by the learned Trial Judge on at least three occasions and despite, the learned Trial Judge recording the same indulgence has been extended to the respondent. Mr. D'Souza, states that the respondent had even furnished an undertaking the the documents in question would be provided, however, this undertakings were breached with impunity. In facts and circumstances, Mr. D'Souza states that this is clear case where Counter Claim of the respondent ought to have been excluded and their defence in the suit to be struck off. Mr. D'souza, submits that undue indulgence has been extended to the respondent and such extension is liable to be interfered with by this Court under exercise of supervisory jurisdiction under Article 227 of the

Constitution of India.

2. Having heard Mr. D'souza, in the facts and circumstances of the present case, it will not be appropriate to interfere with the impugned order in exercise of the supervisory jurisdiction. It is true that there has been lapse on the part of the respondent. However, the learned Trial Judge has condoned the lapse by imposing costs. Amount of costs appears to be on the lower side, however, plea that the counter claim was required to be excluded or that the defence itself was liable to be struck off also appears to be disproportionate plea. In the matter of this nature some indulgence could have been shown to the respondent, however looking to the facts and circumstances of the case, the amount of costs could have been atleast Rs.10,000/- and not just Rs.1500/-

3. At this stage, rather than issue any notice only for the purposes of enhancement of costs amount, it would be appropriate if, matter is left to the judgment of the respondent and the respondent volunteers to pay additional costs of Rs.8,500/- within a period two weeks from the date of service.

4. If however, respondent, does not deem it appropriate to voluntarily pay further costs of Rs.8500/-, the petitioner, will have liberty to seek a review restricted to quantum of costs in the peculiar circumstances of the present case. In case there is an occasion to institute a review, the learned Trial Judge shall consider the matter afresh and determine the costs which are

realistic, taking into consideration almost a year was spent on account of respondent not complying with the order for production of documents.

5. With aforesaid observations and liberty, this petition is disposed of.

6. Parties to act on the duly authenticated copy of this order.

M. S. SONAK, J.

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