

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 435 OF 2018

GISELA MARCHON AND 2 ORS., ... Petitioners

Versus

INACIO LAWRENCE., ... Respondent

Shri Gaurish N. Agni with Shri Raunak A. Kantak, Advocates
for the Petitioners.

Shri Nigel Da Costa Frias with Ms. Maria Correia, Advocates for
the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 29th June 2018

ORAL ORDER:

The challenge in this petition, at the instance of the petitioners, is to the order dated 12.02.2016 and 30.07.2016, passed by the learned Civil Judge Junior Division at Panaji in Rent Case No. 2/2013/D. By the order dated 12.02.2016, an application filed by the petitioners to re-open the evidence of the petitioners, has been dismissed and by order dated 30.07.2016, the application for production of additional documents, has met with dismissal.

2. The petitioners have filed proceedings for eviction of the respondent, on the ground that the respondent has carried out illegal construction/addition to the tenanted premises. The evidence of the petitioners is over and the matter is fixed for the

evidence of the respondent. The petitioners want to produce documents, namely, the transgression report, show cause notice and the order of demolition, issued by the Corporation City of Panaji, in order to demonstrate that there was action taken by the Corporation against the respondent for carrying out illegal construction/addition.

3. The petitioners had earlier filed an application on 24.09.2010, for production of secondary evidence i.e. for production of the copies of the aforesaid three documents, which was rejected by the learned Rent Controller on 29.09.2010, on the ground that the petitioners had not complied with the requirements of Section 65 of the Indian Evidence Act. Subsequently, the evidence of the petitioners was recorded upto the year 2012, when the matter was transferred to the learned Civil Judge Junior Division at Panaji, on account of the fact that the jurisdiction to entertain the application was conferred on the Civil Judge Junior Division.

4. It was contended before the learned Trial Court that in pursuance to a query under the Right to Information Act (RTI), the Corporation had informed that the file pertaining to the illegal construction/addition by the respondent, is not traceable and therefore, the Corporation is not in a position to furnish the copies of the same. This prompted the petitioners to file two

applications (i) for reopening of the evidence and (ii) for production of the aforesaid three documents.

5. It appears that the petitioners intended to file an application for secondary evidence i.e. for production of the aforesaid three documents, in as much as, the Corporation had informed that the original file is not traceable. The learned Civil Judge has found that the petitioners have not explained as to why, the documents of the year 2011 were not produced for five years and have also failed to show that the documents are relevant. In that view of the matter, both the applications came to be rejected.

6. On hearing the learned Counsel for the parties and on perusal of the record, it appears that there is gross delay and laches on the part of the petitioners in challenging the impugned orders, which are passed way back in February 2016 and July 2016. That apart, the earlier application for production of secondary evidence was rejected in the year 2010, after which, the evidence on behalf of the petitioners was recorded. The matter was transferred to the Civil Court in the year 2013. However, the two applications came to be made only in the year 2016.

7. I have gone through the impugned orders and considering the delay, I decline to entertain the petition, which is accordingly dismissed. However, the petitioners would be at liberty to challenge the impugned orders in appeal, in the event, the order in the rent control proceedings, is adverse to the petitioners.

8. At this stage, Shri Agni, the learned Counsel for the petitioners states that the order passed by the Rent Controller may not come in the way of the petitioners in using the documents, namely, the transgression report, the show cause notice and the order of demolition, for the purposes of cross examination of the respondent. He points out that such a course is permissible under Order XIII, Rule 1(3) of CPC and the principles akin thereto, would apply to the proceedings before the learned Trial Court.

9. In my considered view, this aspect can be left open to be considered and decided by the learned Rent Controller, in the event, the documents are used for the purposes of cross examination of the respondent.

Ordered accordingly.

C. V. BHADANG, J.