

IN THE HIGH COURT OF BOMBAY AT GOA
CONTEMPT PETITION NO. 27 OF 2011
IN
WRIT PETITION NO. 332 OF 2010

RAMESH S. KERKAR

... Petitioner

Versus

RAJESH R. KERKAR

... Respondent

Mr. C.A. Ferreira, Advocate for the petitioner.

Mr. Mahesh Amonkar, Counsel for the respondent / contemnor.

**Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.**

Date:- 25th September, 2019

ORAL ORDER:(per M.S. Sonak,J.)

Heard Mr. C.A. Ferreira, learned Counsel for the petitioner and Mr. Mahesh Amonkar, learned Counsel for the respondent / contemnor.

2. By this petition, the petitioner alleges that the respondent has willfully disobeyed the undertaking given by him to this Court, in the matter of further construction of the suit premises.

3. The order dated 27/04/2010 by which, Writ Petition No.322 of 2010 was disposed of records the undertaking of the respondent in paragraph 3, in the following terms :

“3. The learned Counsel appearing on behalf of respondent No.8 has filed an affidavit stating, inter alia, that in view of the notice under Section 66(6) of the Act, respondent No.8 has stopped further construction. He further undertakes on behalf of respondent No.8 to this Court also not to carry on any further construction till the proceedings adopted by respondent No.8 before the Deputy Director of Panchayats in case No. DDPN/Saligao/Bar/38/2010 are finally disposed off. In view thereof, the petitioner's grievance in the writ petition, at this stage at least, stands redressed.”

4. The aforesaid undertaking, according to us, is required to be read and construed in conjunction with the affidavit in reply filed by the respondent/contemnor on 26/04/2010. In paragraphs 18 and 19 of this affidavit in reply this is what the respondent had stated :

“18. I say that, the rains are fast approaching and in case the slab is not cased and concreted then I will be without roof over my head and great prejudice will be caused to me. I say that, this is the only house I have within the State of Goa.

19. I say that, on account injunction order passed by this Hon'ble Court I am unable to complete the repairs and therefore prays that, the injunction granted by this Hon'ble Court be vacated."

5. Apart from the undertaking recorded in paragraph 3 of our order dated 27/04/2010, we note that in paragraph 4 of the same order, this is the direction which was issued by us:

"4. The writ petition is, accordingly, disposed off with a further direction that in the event of the decision of the Deputy Director of Panchayats being in favour of respondent No.8, respondent No.8 shall not commence the construction for a period of 4 weeks from the date of a copy of the order being served on the petitioner's Advocate. All the rights and contentions of the parties, including as against the order that may be passed by the Deputy Director of Panchayats, are kept open."

6. From the material placed before us by the parties, mainly in the form of photographs, we find that when the order dated 27/04/2010 was made, there was no roofing over the suit premises. However, despite the undertaking and the order, the respondent/contemnor proceeded to provide for roofing over the suit premises. This is despite the fact that no such leave was granted to the respondent/contemnor, though the respondent contemnor had

impliedly sought for such leave through the averments in paragraph 18 and 19 of the affidavit dated 26/04/2010.

7. Mr. Amonkar, learned Counsel for the respondent/ contemnor however points out that the construction in question has already been regularized. In support of this he places on record a communication dated 11/12/2017 addressed to the respondent by the Deputy Collector SDO, Mapusa, Goa.

8. Mr. C.A. Ferreira, learned Counsel for the petitioner disputes the position that the construction has already been regularized. From the perusal of the communication dated 11/10/2017, we cannot say that the construction has already been regularized. The communication at the highest indicates that the respondent's application is for regularization is being processed and nothing further. However, that is not really an issue before us and therefore, we do not propose to deal with this issue any further.

9. As noted earlier we are satisfied that there is a breach committed by the respondent of the undertaking furnished by him as well as disobedience of the directions issued by us in our order dated 27/04/2010.

10. Mr. Amonkar, learned Counsel for the respondent/ contemnor on the basis of instructions from the respondent/ contemnor, who is present in the Court tenders an unconditional apology to this Court. Mr. Amonkar, learned Counsel submits that looking to the nature of the construction and the circumstances in which it may probably have been made, the apology may be accepted. Mr. Amonkar, learned Counsel, again, on the basis of the instructions of the respondent /contemnor, who is present in the Court offers to pay an amount of ₹5,000/- (Rupees Five Thousand Only) by way of costs to the petitioner present in the Court.

11. According to us, though this is a case of breach, looking to the nature of the construction i.e. putting up of a roof over the suit premises, which are themselves quite a small; the unconditional apology now tendered by the respondent /contemnor to this court and the offer of the respondent to pay an amount of ₹5,000/- (Rupees Five Thousand Only) to the petitioner, we feel that the present contempt proceedings should be closed, by accepting the unconditional apology.

12. Taking into consideration the aforesaid circumstances cumulatively, we feel that there is no necessity to convict the respondent for having committed contempt of our orders.

13. Accordingly, we accept the apology tendered by the respondent. Further, we direct the respondent to pay to the petitioner an amount of ₹5000/- (Rupees Five Thousand only) within a period of two weeks from today.

14. At this stage, Mr. Ferreira, learned Counsel for the petitioner, on the basis of the instructions of the petitioner, states that this amount be paid to the State Legal Services Authority. Accordingly, the respondent to pay this amount to the State Legal Services Authority within four weeks from today.

15. The Contempt Petition is disposed of in the aforesaid terms.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

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