

IN THE HIGH COURT OF BOMBAY AT GOA**CONTEMPT PETITION (MAIN) NO. 13 OF 2012**

Smt. Kunda Madhukar Shetye, of major age, Indian National, resident of "Ramakant Niwas", Altinho, Panaji, Goa.

.... Petitioner

Versus

1. Smt. Shaila Subrao Shetye, wife of late Subrao Shetye, major in age, landlady, resident of "Shriram Smruti", Bordem, Bicholim-Goa.
2. Shri Shriram Gajanan Shetye, son of late Gajanan Shriram Shetye, major in age, married, Indian National, resident of "Shriram Smruti", Bordem, Bicholim-Goa.
3. Shri Pandurang Gajanan Shetye, son of late Gajanan Shriram Shetye, major in age, married, Indian National, resident of "Shriram Smruti", Bordem, Bicholim-Goa.
4. Shri Vijay Gajanan Shetye, son of late Gajanan Shriram Shetye, major in age, married, Indian National, resident of "Shriram Smruti", Bordem, Bicholim-Goa.
5. Shri Ramakant Subrao Shetye, son of late Shri Subrao S. Shetye, major in age, Indian National, resident of "Shriram Smruti", Bordem, Bicholim-Goa.
6. Shri Sandeep Vaman Morazkar, son of Shri Vaman Morazkar, of major age, Indian National, resident of House No. 1734, Paj-Wada, Bicholim-Goa.

*Petition stands
disposed off as
against
Respondent Nos. 5
to 12 in terms of
Order dated
09.05.2012*

7. Shri V. Narayan Prasad, son of Shri Narayan Prasad, of major age, Indian National, resident of House No. C2/3, Sapana Village, Mapusa, Bardez-Goa.
8. Shri Chandrakant Patil, son of Shri Patil, of major age, Indian National, resident of Plot No. 24, Adarsh Colony, Vikasnagar, Carambolim, Tiswadi-Goa.
9. Shri Suhasrao Damodar Govekar, son of Shri Damodar Govekar, of major age, Indian National, resident of House No. 7-T2, Models Legacy, Taleigao, Panaji-Goa.
10. Shri Varghese Mathew, of major age, Indian National, resident of House No. 1097, near Verlekar Hospital, Vasanth Nagar, Sanquelim-Goa.
11. Shri Sandeep Sakharam Divkar, son of Shri Sakharam Divkar, of major age, Indian National, resident of Plot No. A-9, Housing Board Colony, Ganeshpuri, Mapusa, Bardez-Goa.
12. Shri Srish Pal, of major age, Indian National, resident of House No. B-173-B, near Football Ground, Alto Betim, Porvorim, Bardez-Goa.

*Petition stands
disposed off as
against
Respondent Nos. 5
to 12 in terms of
Order dated
09.05.2012*

.... Respondents

Mr. Shivan Desai, Advocate for the Petitioner.

Mr. S.S. Kantak, Senior Advocate with Mr. Preetam Talaulikar, Advocate for Respondent Nos. 1 to 4.

CORAM : C.V. BHADANG, J.

DATE : 23rd AUGUST, 2019

ORAL JUDGMENT:

The present action for contempt was initiated at the instance of the petitioner/plaintiff, in which, a notice in Form No. I was directed to be issued against the respondent nos. 1 to 4 on 09.05.2012. The petition is already disposed off as against respondent nos. 5 to 12 in terms of the order dated 09.05.2012.

2. The petitioner has filed Special Civil Suit No. 02/2012, before the learned Senior Civil Judge, Bicholim, against respondent nos. 1 to 4 and others, for a declaration that the petitioner/plaintiff is and continues to be a partner of M/s R.S. Shetye & Brothers and the communication dated 21.12.2011 and the purported reconstitution of the partnership on 22.12.2011 is null and void and has no legal effect whatsoever and that the original defendant no. 5 has no authority to pose himself as a partner of M/s R.S. Shetye & Brothers and other reliefs. It appears that the petitioner had sought temporary injunction before the Trial Court. The respondent nos. 1 to 4 had filed two applications (i) under Section 8 of the Arbitration and Conciliation Act, 1996 (Arbitration Act, for short), for referral of the dispute to a Arbitrator and (ii) an application for deletion of parties.

3. On 03.04.2012, the learned Trial Court had directed the parties to maintain status quo as regards the suit mine as on 31.03.2012, until the application under Section 8 of the Arbitration Act and the application for deletion of the parties, are decided.

4. The respondents preferred A.O. No. 25/2012 against the order dated 31.03.2012. On 10.04.2012, a statement was made on behalf of respondent nos. 1 to 4 in A.O. No. 25/2012 that they shall maintain status quo as on 31.03.2012 with regards to the mining operations of the suit mine and this was without prejudice to the rights and contentions of these respondents. According to the petitioner, on 13.04.2012, the respondent nos. 1 to 4 recommenced the mining operations at the suit mine, which was in breach of order dated 10.04.2012. The present petition was filed for taking action against the respondent nos. 1 to 4 for committing breach of the said order.

5. I have heard Mr. Desai, the learned Counsel for the petitioner and Mr. Kantak, the learned Senior Counsel for the respondent nos. 1 to 4. Perused record.

6. It is submitted by Mr. Desai, the learned Counsel for the petitioner that there is clear breach of order dated 10.04.2012, when the respondent nos. 1 to 4 commenced the mining operations at the mine on 13.04.2012. He, therefore, submits that appropriate action may be taken against these respondents.

7. Mr. Kantak, the learned Senior Counsel for the respondent nos. 1 to 4 has pointed out the affidavit in reply filed by the respondent nos. 1 to 4, in order to submit that only maintenance activity was carried out at the mine, which the respondent nos. 1 to 4 were required to carry out, as per the statutory obligation, particularly, in view of the ensuing monsoon season. He, thus, submits that there were no mining operations as such, carried out at the suit mine. He submits that the A.O. No. 25/2012, in which, the statement was made, has also been disposed off and at present, there is a ban on the mining operations in the State. He, therefore, submits that notice dated 09.05.2012 may be discharged.

8. I have carefully considered the rival circumstances and the submissions made. An action for contempt is

essentially between the contemnor and the Court. The only allegation is that the respondent nos. 1 to 4 had commenced mining operations at the suit mine on 13.04.2012, which was in breach of the order of status quo, which was passed on 10.04.2012 in A.O. No. 25/2012. On the contrary, it is the case of the respondent nos. 1 to 4 that only essential maintenance activity was carried out in view of the ensuing monsoon to ensure safety and security at the suit mine and no mining operations as such, were carried out. It is submitted that this was in compliance of the statutory obligations of these respondents. It is also pointed out that since after the issuance of the notice of the present petition, A.O. No. 25/2012 is also disposed off and presently, there is complete ban on the mining operation in the State.

9. Notwithstanding the disposal of A.O. No. 25/2012, the action for contempt can proceed, if it is found that there was intentional breach of the order dated 10.04.2012 by the respondent nos. 1 to 4. However, after carefully going through the record and the reply filed by the respondent nos. 1 to 4, it is not possible to accept that there were any mining operations as such, carried out at the suit mine.

10. An action for contempt is a serious matter and the Court would expect clear and acceptable evidence of such breach before taking action for contempt. In the present case, there is no evidence to show that the respondent nos. 1 to 4 had raised ore from the suit mine. The case of the respondent nos. 1 to 4 that they have only carried out maintenance operations in view of the statutory obligations and ensuing monsoon season appears to be plausible and probable. In that view of the matter, in my considered view, no case for taking action for contempt is made out. The Petition is accordingly dismissed. The notice dated 09.05.2012 is hereby discharged.

C. V. BHADANG, J.

EV