

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 28 OF 2016

Mr. Dattatraya K. Patil

... Appellant

Versus

M/s. Costa Pinto and Associates, Thr. Its
Partners & 2 Ors.

... Respondents

Mr. A. D. Bhobe, Advocate with *Mr. A. D'Souza and Ms. S. Shaikh,*
Advocates for the Appellant.

Mr. Pavithran AV, Advocate for the Respondents.

CORAM: G. S. KULKARNI, J.

DATED: 6 December, 2022

P.C.

1. Heard learned Counsel for the parties.
2. This appeal is directed against the order dated 18 April, 2016, passed by the learned 1st Additional Senior Civil Judge, Margao, whereby an application filed on behalf of the defendants under order 39 Rule 2(a) and Rule 11 of the Code of Civil Procedure (CPC), whereby the appellant Mr. Datta Patil, Director of the plaintiff Company, was ordered to undergo civil imprisonment for a period of 15 days.
3. This appeal was heard by a coordinate Bench of this Court on 16 June, 2016 and an interim stay to the impugned order came to be granted. The stay has continued to operate till date. In the meantime, it is informed

that the temporary injunction as granted in favour of the respondent-defendant, by an order dated 23 August, 2007 itself came to be vacated on 26 June, 2008.

4. The grievance of the defendant, before the trial Court in the application as filed by them in asserting a breach of the temporary injunction order dated 23 August, 2007, was to the effect that some tiling on the platform in the suit property and some excavation was being undertaken. The learned Trial Judge had come to a conclusion that such work as undertaken by the appellant amounted to breach of the injunction as granted by the Court on 23 August, 2007.

5. Mr. Bhobe, learned Counsel for the appellant, has submitted that if at all what was being undertaken by the plaintiff-company (and not by the appellant personally) was only a maintenance work. Mr. Bhobe would submit that the temporary injunction in question was granted against the Company and the order was purported to be served on the Director of the Company. His contention is that there was no material, that it was the appellant only, who could be held to be responsible for any such alleged contempt. In these circumstances, it is his contention that without verifying these basic facts as also the material in regard to the service of the injunction order, as also without verifying as to who would be the actual persons who would be required to comply the orders, the learned Trial Judge proceeded to pass such drastic order.

6. I have perused the impugned order, as also the record. In my opinion, there is much substance in the contentions as urged by Mr. Bhobe. It appears that this vital aspects as pointed out by Mr. Bhobe have not been considered by the learned trial Judge when an order as serious as holding the appellant guilty of contempt and sentencing him was being passed. The suit has now progressed and the recording of the evidence would now commence. In my considered opinion, taking an overall view of the matter, the impugned order cannot be sustained and it would be required to be quashed and set aside.

7. Ordered accordingly.

8. All contentions of the parties on the pending suit are expressly kept open.

9. Appeal is disposed of. No costs.

G. S. KULKARNI, J

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