Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 421 OF 2022

Vishram @ Prasad Govekar & 2 Ors. … Petitioners

Versus

Sudesh Govekar & 4 Ors. …Respondents

Mr. S. S. Kantak, Senior Advocate *with Mr. A. Kamat, and Mr. Ceazar John Simoes, Advocate for the Petitioners.*

Mr. S. D. Lotlikar, Senior Advocate *with Mr. T. Sequeira and Mr. J. Karn, Advocates for the Respondents.*

CORAM: G. S. KULKARNI, J.

DATED: 22nd November, 2022

P.C.

1. This petition assails an order dated 5 August, 2022, passed by the learned Civil Judge, Junior Division, 'E' Court, Mapusa, in Regular Execution Application No. 5/2014/E.

2. By the impugned order, objections as raised on behalf of the petitioners to the valuation report as invited by the Court from the Executive Engineer WDV (BN), PWD, Panaji, Goa, have been rejected.

3. The petitioners are original defendants in the proceedings of Regular Civil Suit No. 226/2006/E, which was filed before the Court of Civil Judge, Junior Division 'E' Court, Mapusa. The suit was decreed, there were further proceedings before this Court and the matter was ultimately taken by the defendants before the Supreme Court. The Supreme Court by its judgment and order dated 14 December, 2016, passed in Civil Appeal Nos. 12068-12070 of 2016, dismissed the said appeals as filed by the defendant which attained finality to the Decree as granted by the trial Court in favour of the respondents-plaintiffs. However, while dismissing the appeal filed by the petitioners-defendants, insofar as the execution proceedings were concerned, the Supreme Court made the following observations as contained in paragraph 22 of its order :

> *"22. However, before we part with, we have to take into consideration one more development. As noted above, the defendants have made new construction on the property of the plaintiffs. Demolition of the said construction is not going to help any party. It would result in wastage of the expenditure incurred on the construction. No doubt, the structure is constructed illegally by the defendants. Nevertheless, plaintiffs can made use thereof. Therefore, equities can be balanced if the plaintiffs take possession of the house in question without its demolition, but, at the same time, compensate the defendants by paying the cost of construction. In these circumstances, in the execution petition which is filed, or ought to be filed by the plaintiffs, the executing court shall*

> *appoint a Surveyor/Valuer who would fix the cost of construction that would be reimbursed by the plaintiffs to the defendants."*

4. In consequence of such orders, the Executing Court was required to appoint a Surveyor/valuer who would fix the "*cost of construction*" that would be reimbursed by the respondents-plaintiffs to the petitioners-defendants. The Executing Court undertook such exercise of inviting valuation. Accordingly, a valuation report from S. R. Desai & Company was called for, who submitted a report dated 1 July, 2017, thereby valuing the total estimated cost incurred in the construction of the project at Rs.43,48,000/-. The respondents-plaintiffs had objected to the valuation as made by S. R. Desai & Company, and for such reason, another valuation was invited, this time by directing the Executive Engineer WDV (BN), PWD, Panaji, Goa, to make a report on the valuation. The Executive Engineer WDV (BN), PWD, submitted his valuation report dated 12 May, 2022, thereby valuing the cost of construction at Rs.14,20,000/-. The report of the valuer dated 12 May 2022, as attached to the valuation report, is annexed at Exhibit 'G'. (page 147 to 150). This time, the petitioners-defendants submitted their objections to such valuation report of the Executive Engineer, before the Executing Court, *inter alia,* contending that the valuation report had recorded that insofar as valuation of the building is concerned, the rates as provided for in the year 1997 under the Circular being Circular No. 85/1/97/SSW-PWD/309 dated 08/08/1997 were taken into consideration, and only insofar as the valuation of the "*entrance steps*" are concerned, the same had been valued in the report as per the GSR 2007.

5. The contention of the petitioners-defendants was to the effect that the construction itself was undertaken in the year 2007 and it is the 2008 rates which were required to be applied for the entire construction. It was contended that the Trial Court could not have accepted the valuation which was at the rates prevailing in the year 1997. By the impugned Order, these contentions/objections as urged on behalf of the petitioners-defendants have been rejected, thereby accepting valuation of Rs.14,20,000/-. It is stated that the said amount has been already deposited by respondents-plaintiffs before the Executing Court.

6. Mr. Kantak, learned Senior Counsel for the petitioners-defendants in assailing the impugned order, has drawn the Court's attention in paragraph 19 of the said order, being the observations as made by the Executing Court on the report of the Executive Engineer, which reads thus :

> "At the outset it is pertinent to note that the valuer was not given any specific direction and manner of carrying out the valuation. Besides for all Court valuation GSR are considered unless the market value is to be determined. These are base rates. 'The Judgment Debtors have not stated the cost of construction incurred by them which fact is within their knowledge. Nevertheless, during the course of arguments Ld. Sr. Advocate Shri. Lotlikar took me through the documents filed at the time of deciding the objections to the previous valuation report. One of the documents is issued by the PWD Technical Officer dated 03.01.2007 with respect to the suit house wherein the estimated cost of construction is shown as Rs. 10,87,100/- (Rupees ten lakhs eighty seven thousand one hundred only). There is a completion certificate dated 10.03.2007 which states that the construction is complete in all respect and the structure is ready for occupation. Permission for issuance of occupancy certificate was given by Secretary, V.P Anjuna Caisua on 23.03.2007. This document is obtained under the Right to Information. The estimated cost of construction is given on 03.01.2007 and the structure was said to be completed in all respects on 10.03.2007. There cannot be drastic price escalation within a span of two months. Therefore, from the documents of the Judgment Debtors itself it is clear that the present valuation is over and above the cost of construction incurred by the Judgment Debtors. Therefore, the objections that measurement of the overhead tank was not taken, the compound wall was not valued, the GSR is considered, are not tenable."

7. Considering the above observations, it is urged by Mr. Kantak, that there was no question of the petitioners providing the construction rates, as observed of the Executing Court, which according to Mr. Kantak, is in the teeth of the orders passed by the

Supreme Court. He submits that the Supreme Court has clearly recorded that the Executing Court would be required to call upon the valuation from an expert valuer. It is submitted that even otherwise the Court could not have accepted a valuation of the 1997 rates, as the construction itself was undertaken in 2007 hence it had to be valued at the rates of 2007. It is hence his submission that the impugned order as passed by the Executing Court is without application of mind and in fact it is per se contrary to the orders passed by the Supreme Court.

8. On the other hand, Shri Lotlikar, learned Senior Counsel, appearing for the respondents would support the impugned order. He would submit that the petitioners have in fact not bothered to examine the PWD valuer and this was the reason, according to him, that the impugned order ought not to be disturbed, as an appropriate exercise of valuation has been undertaken by the concerned Officer of the PWD in making his report. It is submitted that the respondents-plaintiffs dispute that the construction is of the year 2007. He has accordingly prayed that the petition be dismissed.

9. I have heard learned Senior Counsel for the parties. At the outset, it needs to be noted that the structure in question was demolished some time in September, 2022 as the possession itself was handed over by the petitioners/defendants on 28 September 2007. Therefore, the measurements which were taken at that point of time and which forms part of the valuation report which is already on record of the Executing Court, necessarily are required to be taken into consideration.

10. Having perused the impugned orders passed by the Executing Court, in my opinion, there is substance in the contentions as urged on behalf of the petitioner. This is for two reasons, **firstly,** the orders of the Supreme Court clearly directed that the valuation be invited by the Executing Court. It appears from the observations as made in the impugned order that the Executing Court has not considered a vital aspect, namely that the valuation report as submitted by the PWD in respect of the main construction (except the entrance steps), has proceeded on the 1997 rates as provided for in the 1997 circular No.85/1/97/SSW-PWD/309 dated 08/08/1997. Insofar as the entrance steps are concerned, it is in accordance with the GSR 2007. Thus the petitioners-defendants would be correct in their contention that if the construction itself is of the year 2007, the valuation could not have related back to the year 1997 as there is certainly an imminent likelihood of change in the rates from 1997 to 2007 as it a long span of about ten years. This more particularly, as it is stated, that the rates are revised every four years. Thus, the objections as urged on behalf of the petitioners-defendants are not appropriately considered in accepting the valuation of the construction at Rs.14,20,000/-. In these circumstances, in my opinion, there needs to be a de-novo adjudication of these issues by the Executing Court so that both the parties are permitted to raise their respective contentions on an appropriate valuation report to be considered by the Executing Court strictly in accordance to what has been observed by the Supreme Court in its order dated 14 December, 2016.

11. The petition is accordingly required to be disposed of by the following order :

ORDER

(i) The impugned order dated 5 August,2022, passed by the Civil Judge, Junior Division, 'E' Court, Mapusa, is quashed and set aside.

(ii) The parties are directed to remain present before the Court on 12 December 2022.

(iii) The Executing Court shall take appropriate course of action by inviting a fresh valuation

considering that the construction is completed in the year 2007 and after giving an opportunity to the parties to raise their respective contentions and/or submit any evidence in that regard, pass appropriate orders in accordance with the directions of the Supreme Court and as permissible in law.

(iv) The amount of Rs.14,20,000/- as deposited by the respondents-plaintiffs, shall be subject to the further orders which shall be passed by the Executing Court in the proceedings.

(v) The proceedings on remand should be decided by the Executing Court as expeditiously as possible and within a period of three months.

(vi) All contentions of the parties on the issues which could be now decided afresh are expressly kept open.

G. S. KULKARNI, J

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA Date: 2022.12.08 13:53:37 +05'30'