

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
CONTEMPT PETITION NO. 16 OF 2019
IN
WRIT PETITION NO. 838 OF 2018
WITH
MISC. CIVIL APPLICATION NO. 112 OF 2023**

KULSUM MOHAMED AKBAR @
CULCUMBI @ KULSUM BI.,

.... Petitioner.

SHAIKH MOHAMAD AKBAR @ XEC
MOHAMED ACBAR AND 3 ORS.,

....Respondent.

Mr Ketan Morajkar, Advocate for the Petitioner.

CORAM : M. S. SONAK, J.

DATE : 20th APRIL 2023

P.C. :

1. Heard Mr Ketan Morajkar for the Petitioner.
2. This matter was adjourned from time to time to effect service upon the Respondents. Now, Mr Morajkar points out that the Bailiff's report indicates that Respondent No.4 has expired and Respondent No.3 has left for Dubai. Respondents No.1 and 2 have been indicated as proforma parties, meaning thereby that there is no allegation of contempt against them.

3. Mr Morajkar points out that this Court, on 4/9/2018 in Writ Petition No. 838/2018 which was instituted by Respondents No.3 and 4, made the following order :

“The learned Counsel for the petitioners has produced two affidavits, one each signed by the petitioner nos. 1 and 2, in which, the petitioners claim that they have vacated the suit premises.

2. The petitioners are directed to appear before the Executing Court, where they can deliver the vacant possession of the suit premises to the respondents. The petitioners to appear before the Executing Court on 06.09.2018 and to report back by 11.09.2018.”

4. Mr Morajkar also refers to the subsequent order made on 11/9/2018, which reads as follows :

“The affidavit of the petitioner no. 1 is taken on record. The learned Counsel for the petitioners submits that the suit premises have been vacated and the possession is delivered to the decree holder before the Executing Court and the execution case is disposed off on 07.09.2018.

2. In such circumstances, the learned Counsel for the petitioners seeks leave to withdraw the petition. The petition is dismissed as withdrawn, with no order as to costs.”

5. Mr Morajkar points out that possession was indeed restored to the Petitioners, as is evident from the Bailiff's report at page 26 of the paper book. However, after this Court disposed of Writ Petition No. 838/2018 on 11/9/2018, Respondents No.3 and 4

forcibly re-entered into possession of the suit premises in flagrant breach not only of the eviction orders, but the undertakings filed before this Court.

6. Mr Morajkar points out that the Petitioner immediately filed a police complaint. However, the police refused to take any action on the ground that this was a civil dispute.

7. If, what Mr Morajkar states is correct, then, prima facie, this would amount to a contempt. Be that as it may, Respondent No.4 has already expired and Respondent No.3 is reported to be in Dubai. Therefore, interests of justice would be met if Regular Execution Application No. 51/2013/F, which was instituted by the Petitioner, is revived and the Executing Court is directed to take necessary steps in terms of law, to restore the possession of the suit premises to the Petitioner, at the earliest.

8. Accordingly, this contempt petition is disposed of by reviving Regular Execution Application No. 51/2013/F before the Civil Judge, Jr. Division at Margao. The Executing Court to now take such steps as are permissible under law for executing the decree in the Petitioner's favour. This should be regarded as the case of incomplete execution because, at least prima facie, the Judgment debtors, after giving commitments, appear to have gone back upon the same.

9. The contempt petition is disposed of in the above terms, without any order for costs.
10. Misc. Civil Application will not survive the disposal of the contempt petition.
11. All concerned to act on an authenticated copy of this order.

M. S. SONAK, J.

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