

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

**CONTEMPT PETITION NO.23 OF 2019
IN
STAMP NUMBER MAIN NO. 1644 OF 2015**

JOSE ROQUE PINTO. ... Petitioner

Versus

JOSE VIVEK DIAS AND ANR. ... Respondents

Mr. Chaitanya Padgaonkar, Advocate for the Petitioner.

Mr Ryan Menezes, Advocate for the Respondents.

CORAM: M. S. SONAK, J.

DATED : 4th MAY 2023

P.C.:

1. Heard Mr C. Padgaonkar, learned counsel for the Petitioner, and Mr R. Menezes, learned counsel for the Respondents.
2. This is a contempt petition alleging contempt of undertaking in consent terms/minutes of the order dated 17.06.2015 based upon which the Appeal from Order under Stamp Number Main No.1644 of 2015 was disposed of. The order disposing of the Appeal from Order is dated 18.06.2015.
3. The contempt petition is filed based upon the breach of minutes of the order dated 17.06.2015 which read as follows:

“MINUTES OF ORDER

The parties to the Appeal pray that the matter may be disposed of in the above terms.

1) The Defendant No. 1 and 2 (the Respondents No. 1 and 2 herein) shall not carry out any further construction or works of any kind in the disputed portion or part of the structure located therein.

2) The Municipal Council, i.e. Defendant No. 5 (the Respondent No. 5 herein) shall deal with the Application of defendant No.1 for occupancy certificate in accordance with the law and the applicable rules and regulations.”

4. In so far as clause (2) of the minutes is concerned, Mr Padgaonkar admits that the Municipal Council has decided on the issue of the occupancy certificate. Mr Padgaonkar, however, submits that the original Defendant Nos. 1 and 2 have breached clause (1) inasmuch as they have carried out the construction work in the disputed part of the structure.

5. He points out that there were certain openings in the eastern and western walls of the suit house due to which the occupancy certificate was denied. He submits that after this Court's order, these openings were closed facilitating the obtaining of an occupancy certificate. He submits that this clearly amounts to a breach of clause (1) of the minutes of the order and the undertaking recorded therein.

6. Mr Menezes disputes the above position and submits that there is no breach on the part of the Respondents. He submits that it is only

after ascertaining that there was no breach, the Council issued the necessary occupancy certificate.

7. Although the institution of the contempt petition may not be barred in the peculiar facts and circumstances of the present case, it would not be appropriate to entertain this contempt petition. The issue of the breach is itself quite contentious and would involve some adjudication-disputed issues.

8. The order dated 18.06.2015 based upon the minutes of the order was to govern the position during the pendency of the Civil Suit No.10/2013 before the District Judge, South Goa. Thus, the allegation is mainly the breach or disobedience of the interim order. Merely because the Appeal from Order was disposed of by this Court, the interim order does not cease to be one made or deemed to be made by the trial Court. Accordingly, in case of breach, the trial Court can always exercise its powers under Order 39 Rule 2A of the Civil Procedure Code, if the situation so warrants.

9. Therefore, this petition is disposed of by granting liberty to the Petitioner to file an application under Order 39 Rule 2A of the Civil Procedure Code. If such an application is indeed filed within six weeks from today, the trial Court should consider and dispose of the same in accord with law and on its own merits. Nothing in this order is intended to influence or affect the trial Court's decision-making on such an application if filed. All contentions of all parties are expressly left open.

- 10.** This contempt petition is disposed of with liberty as above.
- 11.** All concerned are to act on the authenticated copy of this order.

M. S. SONAK, J.

TARI AMRUT NAGESH Digitally signed by TARI AMRUT NAGESH
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