

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 162 OF 2022
WITH
CIVIL APPLICATION NO. 14 OF 2022
IN
WRIT PETITION NO. 162 OF 2022

Augustinho Lobo	... Petitioner
<i>Versus</i>	
Darren Builders Thr. Proprietors Vincent Romeo D'Costa	...Respondent

Mr. Feriol Andrada, Advocate for the Petitioner.
Mr. Noel Parras D'Cruz, Advocate for the Respondent.

CORAM: B. P. COLABAWALLA, J
DATED: 15th FEBRUARY 2023

ORAL ORDER

1. The above Writ Petition is filed to set aside the Order dated 24.02.2022 below Exhibit D-30, passed by the Civil Judge, Junior Division, 'F' Court, Margao. By the impugned Order, the Trial Court dismissed the Application filed by the Plaintiff to recall the witness [Pw.1]. The reason why Pw.1 was sought to be recalled by the Plaintiff was so that he could enter into evidence the original Agreement for Sale dated 01.01.2006. The impugned Order rejected the Application filed by the Plaintiff, *inter alia* on the ground that the original Agreement was produced at the time when the Plaintiff led the evidence of Pw.1 and the same was not registered and neither

was it executed between the parties. This Order was passed by the Trial Court on 08.02.2019. The relevant portion reads thus :

"Upon perusing the document I gather that the Agreement for sale was indeed never executed. The parties have not even signed each page of the Agreement. The parties have not also affixed their photographs on the document. The parties have also not affixed the finger prints on the said document. Since the Agreement was never executed the said document cannot be admitted in evidence. This being my conclusion I will not waste valuable Court time in discussing the other objections raised by Advocate for the Defendants".

2. It is in the light of this earlier Order that the Trial Court rejected the Application filed by the Plaintiff for recalling Pw.1 to prove the Original Agreement for Sale dated 01.01.2006.

3. I have heard the learned Counsel appearing on behalf of the Petitioner as well as the learned Advocate appearing on behalf of the Respondent. I have also carefully gone through the impugned Order. After carefully perusing the impugned Order, I do not find that the same suffers from any perversity or error apparent on the face of the record that would require interference under Article 227 of the Constitution of India. It is not in dispute that on 08.02.2019, whilst the evidence of Pw.1 was being led on behalf of the Plaintiff,

the Trial Court opined that the document cannot be admitted into evidence as the same was not even signed by the parties and was not registered. In fact, in the cross examination, Pw.1 has admitted that the purported Agreement for Sale dated 01.01.2006 was never signed and/or executed by and between the Plaintiff and M/s. Darren Builders (Defendant No.1). This being the factual position, I do not find anything wrong in the Order dated 24.02.2022 passed by the Trial Court and which is impugned in the present Writ Petition.

4. In these circumstances, I am of the opinion that the Writ Petition is devoid of merit. It is accordingly dismissed. However, there shall be no order as to costs.

5. In view of the disposal of the Writ Petition, nothing survives in the above Civil Application and the same is disposed of accordingly.

6. This Order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

B. P. COLABAWALLA, J

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA
Date: 2023.02.20 18:41:59 +05'30'