

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.248 OF 2023.
WITH
CIVIL APPLICATION NO. 50 OF 2023.**

AUGUSTINHO LOBO ... Petitioner.
VS
DARREN BUILDERS THR. PROP.
VINCENT ROMEO DCOSTA ... Respondent.

Mr F. Andharade, Advocate for the Petitioner.
Mr N. D'Cruz, Advocate for the respondent.

**CORAM: B. P. DESHPANDE, J
DATED: 10th January 2024.**

P.C.

1. Heard Mr F. Andharade, learned counsel for the petitioner and Mr N. D'Cruz, learned counsel for the respondent.
2. Order challenged in the present petition is dated 8.2.2019 by which learned trial Court refused to exhibit purported agreement of sale dated 1.1.2006.
3. Learned counsel for the petitioner submits that copy of the agreement placed on record shows that document was executed between the parties. However, learned trial Court failed to consider it. He submits that said agreement is the only document between the parties to prove the case of the petitioner. He submits that the

petitioner was indisposed and therefore was unable to approach this Court. He therefore submits that the impugned order be quashed and set aside and the document be permitted to be exhibited in evidence.

4. Learned Counsel for the respondent would submit that petition is filed after much delay and laches and in between the petitioner filed another application before the trial Court for recalling PW1 which was also rejected by the trial Court vide order dated 24.2.2022. The petitioner challenged the said order before this Court by filing Writ Petition No. 62 of 2022. Said petition was dismissed.

5. Rival contentions fall for determination :-

First of all, in entire petition, there is absolutely no averments as to why the impugned order dated 8.2.2019 was not challenged earlier. Similarly, there are no averments that the petitioner was indisposed. Learned counsel for the petitioner submits that while deciding Writ Petition No.162 of 2022 vide order dated 15.2.2023, this Court observed that the petitioner failed to challenge the order dated 8.2.2019 and therefore, the petitioner has filed present petition.

6. Order dated 15.2.2023 while disposing of Writ Petition No.162/2022 reads thus:-

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.

7. Delay and laches on the part of the petitioner are not at all explained. Similarly only because there are observations by this Court in the earlier petition that the order was not challenged, petition after a period of four years cannot be entertained. Petition, therefore, deserves to be rejected on delay and laches itself.

8. Order dated 15.2.2023 as quoted above also discloses the reasons as to why the present petition could be disposed of. Petitioner during the cross examination clearly admitted that no such agreement was executed by him with the defendant. Thus, there is no illegalities and perversity in the impugned impugned order. Petition stands rejected. Civil Application stands disposed of accordingly.

B. P. DESHPANDE, J

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