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IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION (MAIN) NO.30 OF 2018

ANITA SILVA

... Petitioner

Versus

PURIFICACAO VAZ E SOUZA
(SIN DEC.) AND 2 ORS.

... Respondents

Ms S. Kakodkar, Advocate *for the Petitioner.*

Mr R.G. Rivankar, Advocate *for Respondent No.3.*

Mr Prayash Shirodkar – Court Commissioner.

Coram: M.S. SONAK, J.

Date: 25th January 2024.

ORAL ORDER:

1. Heard Ms S. Kakodkar for the Applicant and Mr Rama Rivonkar for the Respondents.
2. This petition was registered on the reference from the Trial Court for initiation of action under the Contempt of Courts Act for the alleged non-compliance or only partial compliance with the Trial Court's order dated 17.08.2017.
3. On 22.12.2023, this Court made the following order:-

“This Contempt Petition alleges non-compliance or only partial compliance with the trial Court's Order dated 17.08.2017.

Accordingly, the trial Court had made reference to this Court for initiation of action under the Contempt of Courts Act.

*2. After this reference was received, Mrs. Maria Ida D'Souza e D'Melo has filed an affidavit stating that in compliance with the undertaking dated 13.06.2019 given to this Hon'ble Court, she has demolished the extended/re-constructed portion/structure to the suit house on 11.07.2019. To this affidavit, are also annexed photographs which, *prima facie*, show certain demolitions have indeed been carried out.*

3. However, Anita D'Silva has filed an affidavit on 26.08.2019 stating that the Respondents have demolished part of the illegal structures and not all the structures as undertaken by them or as directed by this Court. To this affidavit also some photoghraps have been annexed.

4. Learned Counsel for the parties suggest that Prayash Shirodkar, an Advocate practicing in this Court, be appointed as a Commissioner to verify the position at the site. Mr. Shirodkar, who is present in the Court, has consented to execute this commission.

5. The learned Counsel for the parties state that they will provide Mr. Shirodkar with the complete set of the Orders or undertakings which they allege have been breached. They state that they will also provide Mr. Shirodkar with copies of this Contempt Petition and the affidavits filed therein.

6. Mr. Shirodkar states that he will inspect the site in the presence of the parties/their Advocates on 03.01.2024 at 5.00 p.m. No separate notices will be necessary to the parties or their Counsel because this Order is made in their presence.

7. The necessary case papers, Orders, undertakings, etc., must be furnished to Mr. Shirodkar, latest by 26.12.2023.

8. The parties must deposit in this Court or pay directly to the Court Commissioner Rs.5,000/- each as provisional fees before the date of the inspection and the visit. The Court Commissioner is requested to furnish his report by 19.01.2024 after providing copies of the same to the learned Counsel for the parties.

9. The matter is now posted on 25.01.2024.

10. The Commissioner to also indicate the expenses incurred by him for executing this commission. The issue of final fees payable to the Commissioner will also be decided on 25.01.2024. Depending on the report, this Court will decide whether the expenses/fees payable to the Court Commissioner should be borne by the Petitioner or the Respondents.

11. All concerned to act based on an authenticated copy of this order.”

4. Pursuant to the above, Mr Prayash Shirodkar, learned Advocate appearing before this Court who was appointed as a Commissioner, has filed his report dated 22.01.2024. The report is taken on record.

5. The conclusions recorded by the learned Commissioner are styled as "Final Report" comprising paragraphs 25 to 28, and the same are transcribed below for convenience of reference.

“25. The undersigned submits before this hon’ble court that the structure identified ‘Structure 1’ in the above report at the descriptions ‘Photo 11, 13, 16, 17, 18, 19, 20, 21, 22’, is disputed by the appellant as being a reconstruction and the respondent as being an old structure part of the suit house. Photo 19 identifying ‘Structure 1’ is reproduced for ease as below:



26. The appellants confirm that 'Structure 2' as identified in 'photo 11 and 13' above has been removed and 'Structure 3' as identified in 'photo 2, 3, 4, 5' above has been removed by the Respondent.

27. The undersigned has received the fees of the commissioner from both the parties in terms of order dated 22/12/2023. Transportation to the location on 04.01.2024 and 18.01.2024 was provided for by Mr. Vaz, counsel for the appellants.

28. The undersigned profusely and humbly apologises to this Hon'ble Court and the parties for the delay in supplying the report. The delay is profoundly regretted."

6. On perusing the report and the other material on record, it is clear that there is compliance insofar as structures No.2 and 3 are concerned; Ms Kakodkar accepts this position for the Petitioner.

7. However, Ms Kakodkar states that there is no compliance with regard to structure No.1. She submits that there was material in the

form of photographs on record showing the extent of the original structure. She submits that it is apparent that structure No.1 is an extension and made in defiance of the Trial Court's Decree and Order. Mr Rivonkar contests this position.

8. The original decree dated 28.04.2005 made by the Trial Court in Regular Civil Suit No.114/98/B, amongst other reliefs, directs as follows:-

“... Defendants their agents, servants are restrained from doing any construction in the property which are constructed to demolish the illegal extension/structure of the suit house as shown on the plan of Surveyor Prazares Gonsalves and bring the suit house to its original position. ...”

9. To the Court's query concerning the plan of Surveyor Prazares Gonsalves, the learned Counsel for the parties, as well as the Court Commissioner, submitted that such a plan was not traceable and, therefore, none of the parties could produce it before the Court Commissioner. The Court Commissioner specifically records this in paragraph 4 of his report dated 22.01.2024.

10. Therefore, the issue as to whether structure No.1 was an addition subsequently made or not will involve detailed evidence. Based on the material on record, it cannot be said with clarity that the Respondents have committed any contempt of Court. This is more so because, admittedly, structures No.2 and 3 have already been demolished. The contempt proceedings are, therefore, liable to be

disposed of by granting the Petitioner/Decree Holder liberty to take out fresh execution proceedings for enforcement or re-enforcement of the Decree dated 28.04.2005. The expression “re-enforcement” is used because Ms Kakodkar states that initially, the Decree was executed, but later on, structures No.1, 2 and 3 were added in defiance of the Decree of the permanent injunction. She, however, admits that structures No.2 and 3 have now been removed.

11. Accordingly, it is only appropriate that the Petitioner is granted liberty to institute fresh execution proceedings for enforcement or re-enforcement of the Decree. Ms Kakodkar states that such execution proceedings will be instituted within a maximum of two months from today. If such execution proceedings are indeed executed, the Executing Court to dispose of such proceedings as expeditiously as possible and preferably within six months from the date of its institution. All contentions of all parties in the context of structure No.1 are kept open.

12. Mr Rivankar learned Counsel for the Respondent, states that the Respondent will not do anything in defiance of the Decree dated 28.04.2005. He also adds that the Respondent did nothing in defiance of this Decree.

13. The learned Counsel for the parties state that the Commissioner's fees have been paid. The Court Commissioner confirms this position. Some printing, stationery and other incidental

charges remain to be paid. Mr Rivonkar states that the same will be paid within 15 days from today upon the Court Commissioner indicating the same. This Court thanks Mr Shirodkar, the Court Commissioner, for assisting the Court by visiting the site and preparing his report.

14. This Contempt Petition is disposed of in the above terms and with the above liberty.

M.S. SONAK, J.

JOSE
FRANCISCO
DSOUZA

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FRANCISCO DSOUZA
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