

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-OCW-153-2020****IN****SA-32-2018**

Shaikh Idresh & Anr.

... Applicants

Versus

Shaikh Ibrahim @ Xec Ibraimo

... Respondent

Ms A. Agni, Senior Advocate with Ms Jay Sawaikar, Advocate for the Applicant.

Shri A.D. Bhobe, Advocate for the Respondent.

Coram:- DAMA SESHADRI NAIDU, J.**Date:- 11 DECEMBER 2020****P.C. :**

Ms A. Agni, the learned Senior Counsel for the applicants, submits that last year this Court admitted the Second Appeal on a substantial question of law. In the meanwhile, on 11.08.2020, a wall of the house collapsed, and it has made the building inhabitable. Therefore, she wants the Court's leave for the appellants to reconstruct the wall so that their family could reside in the demised property subject to the outcome of the second appeal.

2. On the other hand, Shri A.D. Bhobe, the learned counsel for the respondent, submits that the respondent is willing to have the matter heard on the merits and disposed of finally, instead of having a piecemeal adjudication. Then, he has drawn my attention to the relief the appellants have sought in this application; he has pointed out that in the name of repairing the wall, the appellants want to reconstruct the whole building. At any rate, he has denied that any wall collapsed, in the first place.

3. As the issue concerns a disputed question of fact—that is, whether any wall collapsed and whether because of that the entire

building has become inhabitable—the Court has proposed to appoint an Advocate Commissioner. That Commissioner will inspect the property and report to the Court. Both the learned counsel on that count have agreed.

4. I, therefore, appoint Advocate Shri Sameer Taleigaonkar to be the Advocate Commissioner to whom the Registry will issue the warrant of commission. After notifying both the parties or their respective counsel, the learned Advocate Commissioner will inspect the property and file a report along with photographs, specifying whether there is any collapsed wall rendering the house inhabitable. Both the parties are free to file their work memos before the Advocate Commissioner. The learned Senior Counsel for the appellants agrees to pay ₹10,000.00 as the remuneration to the learned Advocate Commissioner.

5. The learned Advocate Commissioner may execute the warrant during vacation and file the report in the first week after vacation.

Post the matter on 15.01.2021.

DAMA SESHADRI NAIDU, J.

NH