

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CONTEMPT PETITION NO.433 OF 2014

IN

REGULAR CIVIL SUIT NO.1786 OF 2012

Shaikh Nawab s/o. Shaikh Bashir
1 Qurehi, age 45 years, occ. : ..Petitioner
Business, r/o. Shillekhana, Tq.
and Dist.Aurangabad

V E R S U S

G.D.Kolekar, Police Inspector,
1 Kranti Chowk Police Station,
Aurangabad

Niraman Bharti Land Mark Pvt.
Ltd., through it's Director –
2 Ranjeet s/o. Ashok Darakh, age
40 years, occ.Business, r/o.
Above Ashok Restaurant, Nirala
Bazar, Aurangabad

Nasher Khan s/o. Abddul Rahim
Khan, age 54 years, occ.
3 Business, r/o. In front of Moon : Respondents
Light Hotel, Nutan Colony,
Aurangabad

Mr.R.D.Biradar, advocate for petitioner

CORAM : M.T. JOSHI, J.

ORDER RESERVED ON : JANUARY 28, 2015

ORDER PRONOUNCED ON : FEBRUARY 11, 2015

PER COURT :

Heard.

2] Perused the written notes of arguments.

3] The present petitioner filed a suit for perpetual injunction for restraining the respondent nos.2 and 3 from disturbing the peaceful possession of the petitioner in the suit property and further not to make any construction over the same.

4] Learned 15th Joint Civil Judge Junior Division, Aurangabad granted ex-parte temporary injunction in the application for interim relief on the same lines. It appears that said application could not be heard on merit and present petitioner has filed an application for continuation of the "status-quo" until further orders and that was granted by the learned Judge.

5] In the present petition for taking action

against the respondents under the Contempt of Court's Act, it is alleged that as respondent nos.2 and 3 were going to make construction on the said property, son of the present petitioner had filed a complaint before the police authority on 10th June, 2014. Despite this, respondent no.1 – G.D.Kolekar, Police Inspector, has issued notice under Section 149 of the Code of Criminal Procedure on 7th July, 2014 to the petitioner and his son. In the circumstance, it is submitted that the respondents be punished for contempt of the Court's order.

6] When this Court has raised an issue as to how, this petition would be maintainable in view of the specific provisions of the Order XXXIX Rule 2-A of the Code of Civil Procedure, whereunder, an application for taking action for breach of the injunction order can be filed, learned counsel submits that in view of the provisions of Section

10 of the Contempt of Court's Act, present petition is maintainable. He relied upon the ratio in the cases of ***Kalyaneshwari Vs. Union of India and ors., (2012) 12 SCC 599*** and ***N. Venkata Swamy Naidu Vs. M/s. Sri Sri Surya Teja Constructions Pvt. Ltd. and ors, 2008 Cri. L.J. 227.***

7] Reading of the ratio of these authorities would show that present issue was not involved in those cases. When an independent machinery for dealing with the grievance is already provided for by the Code of Civil Procedure and when there is no special circumstance to take any *suo-motu* action in the matter, present petition would not be maintainable.

8] The Contempt Petition is, therefore, rejected.

[M.T. JOSHI, J.]

kbp