IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.21 OF 2011
IN
APPEAL FROM ORDER NO.655 OF 2010
IN
NOTICE OF MOTION NO.940 OF 2010
IN
L.C.SUIT NO.604 OF 2010

Rameshchandra Lalchand Jain Alias Shah .. Petitioner

Vs.

M/s.Universal Builder & Developer & Ors. .. Respondents

Mr.Mehul Shah for the petitioner

Mr.Sanjiv A. Sawant with Mr.Abhishek Deshmukh for the respondent nos.1 to 4

CORAM : K.K.TATED, J.
DATED : 07/04/2015

PC:

1 Heard.

2 By this petition, the petitioner alleges that the respondent has committed contempt of this Court by violating the order dated 12/03/2010 passed by Bombay City Civil Court, Mumbai in Notice of Motion No.940 of 2010 in L.C.Suit No.604 of 2010 and order dated 03/12/2010 passed by this Hon'ble Court in the present Appeal from

Order along with the Civil Application.

Few facts of the matter are as under:

3 The petitioner filed L.C.Suit No.604 of 2010 in Bombay City Civil Court at Bombay for declaration that the respondents have no authority to demolish the suit shop i.e. Shop No.2, Ground Floor, Second Carpenter Street, 28/30, Jaya Building Premises Co-operative Housing Society Limited, Mumbai 400 002 and for declaration. Following are the prayers in the said suit.

> "a) That this Hon'ble court be pleased to declare that purported action and breaking/removal/demolition of ceiling of suit shop premises i.e. Shop No.2, Ground Floor, Second Carpenter Street, 28/30, Jaya Building Premises Co-operative Housing Society Limited, Mumbai 400 002, carrying out by the Defendant No.3 in collusion with the Defendant No.4 and their office bearer and the Officers of the Defendant Nos.1, 2 and 5 be declared as bad in law, illegal and void and that Defendant Nos.3 and 4 and their office bearer be directed to reconstruct the said ceiling in its original condition at their cost;
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> b) That this Hon'ble Court be pleased to declare that the Plaintiff is in use, occupation and possession of the suit premises i.e. Shop No.2, Ground Floor, Second Carpenter Street, 28/30, Jaya Building Premises Co-

operative Housing Society Limited, Mumbai 400 002 and that the Defendants have no right to dispossess the Plaintiff from the suit shop without following due process of law;

c) That this Hon'ble court be pleased to pass an order of injunction restraining the Defendants their servants, agents, representative and/or anybody acting through or under them restraining the Defendants from carrying out further demolition of the suit premises and/or dispossessing the plaintiff from the suit premises and restraining the Defendants from obstructing the Plaintiff from carrying out his business from the suit premises;

d) That this Hon'ble court be pleased to appoint fit and proper person as Court Commissioner to visit the suit premises being Shop No.2, Ground Floor, Second Carpenter Street, 28/30, Jaya Building Premises Co-operative Housing Society Limited, Mumbai 400 002 and carry out actual measurement of the suit premises including suit premises and mezzanine floor and also draw a sketch of the suit premises and take out photograph of the suit premises from outside and inside the suit premises and from front and back side of the suit premises so as to enable this court to find out the actual position of the suit premises;

e) That pending the hearing and final disposal of the suit premises this Hon'ble Court be pleased to pass an order reconstruct the suit shop ceiling in its original condition at the cost of defendant no.3 and 4, being Shop No.2, Ground Floor, Second Carpenter Street, 28/30, Jaya Building Premises Co-operative Housing Society Limited, Mumbai 400 002;

f) That pending the hearing and final disposal of the suit premises this Hon'ble Court be pleased to pass an order of injunction restraining the Defendants their servants, agents, representatives and/or anybody acting through or under them restraining the Defendants from carrying out further demolition of the suit premises and restraining the defendants from obstructing the plaintiff from carrying out his business from the suit premises;

g) That ad-interim and interim reliefs in terms of prayer (d) (e) and (f);

h) That, costs of the Suit be provided for;

i) That, such other and further reliefs, as the nature and circumstances of the case may require."

4 In that proceeding, the petitioner preferred Notice of Motion No.940 of 2010 for an order of injunction restraining respondents defendants from carrying out further demolition of the suit premises

and / or dispossessing the plaintiff from the suit premises and / or restraining them from obstructing the plaintiff from carrying out his business from the suit premises. Following are the prayers in the said Notice of Motion:

> "a) That pending the hearing and final disposal of the suit premises this Hon'ble Court be pleased to pass an order of injunction restraining the Defendants their servants, agents, representative and/or anybody acting through or under them restraining the Defendants from carrying out further demolition of the suit premises and/or dispossesing the Plaintiff from the suit premises and restraining the Defendants from obstructing the Plaintiff from carrying out his business from the suit premises;
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> b) That this Hon'ble Court be pleased to appoint fit and proper person as Court Commissioner to visit the suit premises being Shop No.2, Ground Floor, Second Carpenter Street, 28/30, Jaya Building Premises Co-operative Housing Society Limited, Mumbai 400 002 and carry out actual measurement of the suit premises including suit premises and mezzanine floor and also draw a sketch of the suit premises and take out photograph of the suit premises from outside and inside the suit premises and from front and back side of the suit premises so as to enable this court to find out the actual position of the suit premises;

c) That pending the hearing and final disposal of the suit premises this Hon'ble Court be pleased to pass an order reconstruct the suit shop ceiling in its original condition at the cost of defendant No.3 and 4, being Shop No.2, Ground Floor, Second Carpenter Street, 28/30, Jaya Building Premises Co-operative Housing Society Limited, Mumbai 400 002;

d) That pending the hearing and final disposal of the suit premises this Hon'ble Court be pleased to pass an order of injunction restraining the Defendants their servants, agents, representative and/or anybody acting through or under them restraining the Defendants from carrying out further demolition of the suit premises and/or dispossessing the Plaintiff from the suit premises and restraining the Defendants from obstructing the Plaintiff from carrying out his business from the suit premises;

e) That ad-interim and interim reliefs in terms of prayer (a), (b) and (c) and (d);

f) That, costs of the Suit be provided for;

g) That, such other and further reliefs, as the nature and circumstances of the case may require."

5 That Notice of Motion was rejected by the Trial Court by oral order dated 10.06.2010. Being aggrieved by the order passed by Trial Court in Notice of Motion the plaintiff preferred present Appeal from Order. In the Appeal from Order, the plaintiff failed to remove office objections. Hence, this court (Coram: D.G.Karnik, J.) by order dated 23.11.2010 granted 48 hours to remove office objection failing which matter to stand dismissed. Thereafter the present Appeal from Order stand admitted by this court on 3.12.2010. On 12.6.2012 no one appeared on behalf of the plaintiff in Appeal from Order. Hence, same was dismissed for default. Thereafter, plaintiff preferred Civil Application No.767 of 2012 for restoration of Appeal from Order. That application was allowed by this court on 18.6.2012. This court directed to add Appeal from Order in the weekly board i.e. from 25.6.2012 for final hearing. Thereafter the plaintiff preferred Civil Application No.769 of 2012 for various reliefs against the respondent defendant. In that Civil Application, this court (Coram: B.P.Dharmadhikari, J.) directed respondent to keep the portion of 143 sq.ft. area facing to the street where suit shop stood until further orders of this court. Thereafter this court (Coram: S.C.Dharmadhikari, J.) by order dated 14.1.2013 by consent of both the parties disposed of Appeal from Order No.655 of 2010 continuing the order dated 5.11.2012 in Civil Application No.155 of 2012.

6 The learned counsel for the petitioner submits that inspite of orders passed by this court directing respondents to keep the portion of 143 sq.ft. till the hearing and final disposal of L.C.Suit No.604 of 2010,

they failed and neglected to do so. He submits that in this way the respondent committed contempt of this court.

7 On the other hand, the learned counsel for respondent nos.1 to 4 vehemently opposed the present Contempt Petition. He submits that they have not violated any order passed by this court. He submits that the Appeal from Order was disposed of by consent of both the parties on 14.1.2013 with understanding that order dated 5.11.2012 in Civil Application No.155 of 2012 will remain in force till the hearing and final disposal of the suit filed by the petitioner plaintiff. He submits that the Architect Shaikh and Associates issued a certificate dated 3.4.2015 stating that the Shop No.1 at Ground Floor admeasuring carpet area 174 sq. ft is kept intact. He placed the said certificate on record which is marked as Exhibit 'A' for identification. He submits that now the trial has started in Trial Court. He submits that the petitioner instead of proceeding with the trial in Trial Court filed the present Contempt Petition as well as one more Contempt Petition against the respondent. He further submits that the petitioner in Trial Court took time on the ground of pendency of Contempt Petitions before this court. The petitioner is not proceeding with the trial of the suit on one or the other reason. He submits that it is crystal clear from the certificate issued by their Architect dated 3.4.2015 that Shop No.1 admeasuring Carpet Area of 174 sq.ft. on the Ground Floor is kept intact. Hence, there is no question of taking any action against the respondents under the Contempt of Court Act.

8 I have heard both the sides at length. I have gone through the earlier orders passed by this court in Appeal from Order, Civil

Application and other documents. Appeal from Order was disposed of by this court on 14.1.2013 by consent of both the parties with continuation of interim relief as per order dated 5.11.2012 in Civil Application no.155 of 2012. This itself shows that they have knowledge of order that this court directed respondent to keep intact shop no.1 admeasuring carptet area 174 sq.ft. and same is in existence as on today. The petitioner filed the present Contempt Petition for bringing pressure on the respondent. It is to be noted that the Apex Court in the matter of *R.N.Reddy and Others vs. Bhagyabati Pramanik and Others reported in (2000) 4 SCC 400* held that the weapon of contempt cannot be used for the purposes of executing a decree or implementing an order for which law provides appropriate procedure.

9 In the present proceeding, the respondent has placed on record certificate issued by Architect dated 3.4.2015 to show that the Shop No.1 is kept intact. Inspite of these facts, the petitioner has filed the present Contempt Petition to bring the pressure on respondent. In any case the trial in L.C.Suit No.604 of 2010 has started. Considering these facts, I do not find any substance in the present Contempt Petition. Hence, Contempt Petition stands dismissed with costs.

10 Petitioner to pay cost of Rs.10,000/- to the respondent Jaya Building Premises Co-operative Society Limited within four weeks from today.

(K.K.TATED, J.)