Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 316 OF 2015

Sam Bejonji Buhariwala & Anr. ... Petitioners
Vs.
Balmer Lawrie & Company Ltd. & Ors. ... Respondents

Mr. Zal Andhyarjuina with Mr. Kunal Dwardadas i/b. M/s. Rustamji & Ginwala, Advocate for the petitioners.
Mr. Shyam Kapadia i/b. Mr. Kiran Uday Kapadia, Advocate for respondent nos. 1 to 6.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **AUGUST 25, 2015**

P.C.:

This Contempt Petition is filed by the petitioners, who are the original plaintiffs in RAD Suit No. 333 of 2005 in Small Causes Court at Mumbai. The petitioners/original plaintiffs are sub-lessee of the respondents/original defendants. The premises belongs to Mumbai Port Trust, which is taken on lease by the respondents. RAD Suit No. 333 of 2005 was filed for declaration on tenancy rights and perpetual injunction. In the said suit, it was pleaded that the petitioners wanted to carry out interior and repair works in the suit premises for which the learned Judge of the Small Causes Court by the judgment and order dated 28th March, 2013 injuncted the respondents from obstructing plaintiffs, i.e., petitioners to carry out interior and repair works. The suit is decreed and the petitioners are declared as tenants in respect of suit premises. The case of the petitioners that despite of the said order, especially clause 4 of the

operative order, the respondents ought not to have obstructed the interior and repair works which the petitioners intend to carry out.

2. The learned counsel for the petitioners drew my attention to Exhibit B, i.e., a letter dated 17th September, 2014 written by Deputy Municipal Architect (Development Plan) of Municipal Corporation of Greater Mumbai in which the scope of interior and repair works in the suit premises is mentioned in four clauses which are as follows:

(i) Proposed low height wooden/partly glazed partitions for cabins and cubicles.

(ii) Gypsum board false ceiling, provision of split A.C's and ducting.

(iii) Internal tenantable repairs such as polishing of existing floor tiles, plastering, painting, electrification, plumping, etc.

(iv) To demolish the existing loft and provision of gypsum board false ceiling over the entire office.

By the said letter, the petitioners have obtained NOC for the interior and repair works from Heritage Conservation Committee, as it was directed by the learned Judge of the Small Causes Court by the impugned order. The learned counsel for the petitioners submitted that the respondents are not allowing their persons to enter the premises and carry on the work on the ground that the apart from permission of Heritage Conservation Committee, the permission of Municipal Corporation of Greater Mumbai and the permission of Mumbai Port Trust is required. It

is further submitted that the petitioners have applied to Municipal Corporation for permission, however, it is informed by the Corporation that for interior repairs, the permission is not required. In respect of interior work of cabin and wooden cubicles, the learned counsel relied on the circular of Municipal Corporation of Greater Mumbai dated 27th March, 2012 of adopting policy of allowing the light weight partitions upto 5 feet height except brick masonry wall, RCC walls/Siporex wall, for which permission is not required.

3. The learned counsel for the respondents submitted that Mumbai Port Trust is lessor and owner of the premises. He relied on the reply and annexures therewith. He pointed out that the letter dated 15th June, 2015 written by Senior Assistant Estate Manager, Southern Division of Mumbai Port Trust informing the lessee, i.e., respondents regarding unauthorized constructions repair/renovation in the suit premises. He submitted that the Mumbai Port Trust was not a party in the original suit and it being the owner of the property, has written a letter to the respondents pointing out the breaches on the part of actual occupants or the respondents of unauthorized repairs, unauthorized construction of bathroom, toilet block etc. He submitted that in the light of this letter, it is necessary for the petitioners to obtain permission of Mumbai Port Trust and if such permission is obtained, the respondents have no objection without prejudice to their rights, as the respondents have challenged the judgment and order of the small causes Court in Appeal. The learned

counsel for the respondents further expressed apprehension of the stability of building if the loft is removed.

4. In the course of arguments, it is suggested to the learned counsel for both the sides and they have fairly accepted the said suggestion that the interior and repair works as mentioned in clauses (I), (ii) and (iii) on page 57 of the petition, which is reproduced above, can be carried out immediately, however, for the purpose of removal of the loft and provision of gypsum board false ceiling, which is mentioned in clause (iv), the petitioner shall apply to Mumbai Municipal Corporation and approval in respect of structural stability of the building from the Municipal Corporation shall be obtained before demolishing existing loft. Alternatively, the petitioners may apply to Heritage Conservation Committee to permit them to retain the loft for maintenance of the structural stability and other interior works. The respondents shall cooperate the petitioners by writing a letter to the lessor Mumbai Port Trust and other authorities in respect of repair works, as there is a Court order passed in the suit. The respondents to cooperate without prejudice to their rights. With this, the Contempt Petition is disposed of. Liberty to the petitioners to re-approach the Court.

(MRS.MRIDULA BHATKAR, J.)