

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CONTEMPT PETITION NO.241 OF 2011
WITH
FIRST APPEAL NO.203 OF 2010
WITH
FIRST APPEAL NO.207 OF 2010**

High Court on its own Motion	...	Petitioner.
VS		
Navin Yashodanandan Arora	...	Respondent.

.....

Mr. P. C. Kansara a/w Mrs. Manjula Rao and Ms. Namrata Agashe, Adv.
for Petitioner.

Mr. Clive D'Souza, Adv. for Respondent.

.....

CORAM : MRS.MRIDULA BHATKAR, J.

DATED : SEPTEMBER 08, 2015

P.C. :

This Contempt Petition is taken out suo motu by the High Court for breach of order dated 03/12/2010 passed by this Court in Civil Application No.4443 of 2010 in First Appeal No.203 of 2010. The contemnor has filed Civil Suit Nos.4517 of 2002 and 4783 of 2003 for perpetual injunction against his mother-appellant restraining her and other persons claiming through her from dispossessing him from suit Flat No.91, "A" Building, 9th Floor, Grand Paradi Apartment, August Kranti Marg, Kemps Corner, Mumbai. The flat consists of four bed rooms, one hall, kitchen and servant room. The contemnor has family

i.e. his mother, one married brother and unmarried sister and one brother's daughter who are residing in the suit flat. The contemnor claimed that it is a property purchased by his father and thereafter, she being Legal Representative of his father has 1/6th joint share in the property. The defendant / appellant - mother contested the suit on the ground that she is the sole owner of the suit flat and the contemnor has no right in the flat. However, the Trial Court decreed both the suits. In both the suits, permanent injunction was granted against the mother and persons residing in the suit flat and also, defendants were enjoined from creating any third party interest in the suit flat. The said Judgment and decree was challenged in the first appeals. Counter claim filed by the mother was also dismissed. So, three First Appeals bearing Nos. 203, 207, 208 of 2010 were filed by the original defendants against the contemnor. In the said suit, Civil Application No.4443 of 2010 was filed by the appellant in which it was prayed that the contemnor-the original plaintiff be directed to pay applicant-appellant mother 5/6th share amounting to Rs.11,40,41,666/- within two months. But, this application was made considering that the contemnor is having 1/6th undivided share in the suit property and the appellant being old woman, wanted money as early as possible to meet her requirements and financial liabilities. This Court while hearing the said application directed contemnor i.e. Respondent No.1 in his application to deposit at least 1/6th cost of flat, valued by the valuer to show his bona fides within a

period of two months from today. The said order was passed on 3rd December, 2010 and the Respondent No.1 could not pay 1/6th of the cost of the flat, till today. The suit flat was valued at the market rate in the year 2010 at Rs.13,68,49,334/- and hence, 1/6th of it i.e. his share comes to Rs.2,28,08,334/-. He did not deposit the said amount and therefore, this Court by order dated 07/06/2011 observed that the respondent No.1 has failed to comply with the condition and prima facie, the Court held that 1st Respondent has committed wilful breach of the order of this Court dated 3rd December, 2010 and issued notice in accordance with Order 8 r/w Rule 9 of Contempt of Courts (Bombay High Court) Rules, 1994.

2. Pursuant to this notice, contemnor appeared in this Contempt Petition and filed reply on 2nd May, 2012. In his reply, he gave history of the suits and order passed therein and expressed his inability to deposit amount of Rs.2,28,08,334/- in the Court. He submitted that he has paid Rs.11,00,000/- towards the maintenance amount.

3. Learned counsel for the applicant-appellant argued that this Court has passed order that unless 1/6th share is deposited by the contemnor, his civil application cannot be heard and this being an obstacle, his Civil Application and appeals are pending since long.

4. It is further submitted that the appellant is an old lady of 84 years. She has purchased the suit flat out of her own income and she wants to enjoy her property and the appeals along with applications be decided expeditiously. It is further pointed out that she has no money. Though earlier, she had paid maintenance of the society regularly, now it is not possible for her to pay and as of today, an amount of Rs.34,00,000/- is due as outstanding to the society, as notice was issued for the same.

5. Learned counsel for the contemnor submitted that his two suits for injunction were decreed and the Trial Court has held that he is having undivided share in the suit flat. Under such circumstances, this order of directing payment of 1/6th share of the suit property, ought not to have been passed.

6. Perused applications, plaint, the orders passed by the Trial Court and the orders in the proceedings passed by this court. Undoubtedly, contemnor has breached the order passed by this Court dated 3rd December, 2010. However, he has mentioned in his affidavit-in-reply that amount of Rs.2,28,08,334/- is a big amount and therefore, he cannot raise that amount to deposit in the Court. On query, it is found that the appellant is working as Life Insurance Agent and is residing in the suit flat. He has wife, two married daughters and one

son, who is gainfully employed. Nothing is brought on record or shown to the Court that he can raise funds upto Rs.2,28,00,000/- and therefore, I am of the view that the contemnor though has breached the order of this Court which he should have obeyed, it is not a wilful disobedience and under such circumstances, therefore, I do not find that it is necessary to punish him under Section 12 of the Contempt of Courts Act. This cannot be said as substantial interference with due course of justice by the contemnor. However, he is directed to pay 50 % of the amount of the outstanding amount of maintenance to the society. He is directed to pay Rs.70,00,000/- to the society by Cheque and the society is directed to accept the amount and that is to be adjusted towards the outstanding amount and thus, out of this, the contemnor to pay Rs.10,00,000/- within four weeks and Rs.7,00,000/- thereafter within six weeks.

7. With this order, this contempt petition is disposed of.

(MRS.MRIDULA BHATKAR, J.)

C E R T I F I C A T E

Certified to be true and correct copy of the original signed Order.