

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 582 OF 2014

Nanak Shatishchandra Ghatalia	...	Petitioner
Vs.		
Swati Shatishchandra Ghatalia	...	Respondent

Mr. Pranesh J. Gada i/b. Dhanuka R. Partners, Advocate for the petitioner.
Ms. Sapana Rachura, Advocate for the respondent.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE : 20th October, 2015

P.C.:

This Petition is filed for civil contempt under section 2(b) read with Section 10 of the Contempt of Courts Act, 1971.

2. As per the petitioner, the respondent is guilty for willful breach of the undertaking dated 21st April, 2012 given to the learned Judge of the City Civil Court, Mumbai in Small Causes Suit No. 1980 of 2011 which is part of the consent decree dated 26th April, 2012. The petitioner has filed the Short Cause Suit No. 1980 of 2011 against the respondent/contemnor for perpetual injunction, i.e., contemnor shall not create third party rights in the suit premises which is occupied by her. The petitioner and contemnor are the real brother and sister. Along with this contemnor, there is one more brother who is residing in the suit flat. Before the Court, in Notice of Motion no. 2117 of 2011 in Short Cause Suit No. 1980

of 2011 an undertaking was given by both the parties and other brother on 21st April, 2012 and it is the case of the petitioner that the said undertaking is violated by the respondent.

3. The learned counsel for the petitioner contended that it was agreed between the parties that the respondent shall not create any third party right in the suit residential premises till the sale of residential premises which all the parties unconditionally agreed to sell. He submitted that the suit premises is Flat Nos. 21 and 22, however, the respondent is residing there along with other brother and she is not ready for the unconditional sale of flat and therefore till now the flats are not sold since April 2012 despite having prospective buyers. In support of his submissions, the learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of **Rama Narang vs. Ramesh Narang & Anr., reported in AIR 2006 SC 1883.**

4. Perused the undertaking given by the parties especially the respondent before the Court. The undertaking given is that the respondent shall not create any third party interest till the sale of the flat which the parties have agreed to. On query, it is informed that the respondent has not created any third party interest in the suit flat. The respondent herself along with her brother is staying in the flat. Thus,

there is no breach of the undertaking given before this Court. Moreover, there is a statement that the respondent will not create third party interest till the sale of the said flat and the parties have agreed to sell the said flats. Till today, the flats are not sold, however, it is not a breach of the undertaking given before this Court and therefore, it is not a contempt of the Court. There is no time frame mentioned in the undertaking as to when she will vacate the premises or she will effect the sale of the flat. In the case of **Rama Narang** (*supra*), there was willful disobedience of the undertaking given by the Court. However, in the present case, there is nothing to show that there is willful disobedience of the undertaking given to this Court. Under such circumstances, when the undertaking is only in respect of not to create third party right and the respondent has not created third party right, I do not find any merit in this Petition. Hence, the Contempt Petition is dismissed.

(MRS.MRIDULA BHATKAR, J.)