

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 303 OF 2012

Mangalprabhat Gumanmal Lodha ... Petitioner
Vs.
Hemant Yeshwant Nadgaonkar & Ors. ... Respondents

Mr. Cyrus Ardeshir a/w. Ms. Prachi Dhanani i/b. Veritas Legal, Advocate
for the petitioner.

Mr. Shivraj R. Patil, Advocate for respondent nos. 1 to 6.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE : 13th October, 2015

P.C.:

Pursuant to the order dated 13th July, 2015 read with 4th August, 2015, the contemnors are present before the Court.

2. This Contempt Petition is directed against the contemnors, as they have breached the Minutes of Order dated 6th July, 2012 which was agreed by the petitioner and the contemnors and pursuant to which the order dated 6th July, 2012 was passed by this Court.

3. The petitioner and the respondents have filed two appeals against each other directing against the order dated 21st March, 2012 passed by the Joint Civil Judge Senior Division, Thane below Exhibit 5 in Special Civil Suit No. 355 of 2011. The present contemnors have filed a suit for declaration and injunction against the petitioner and in the said suit, the

learned trial Judge has granted injunction against the petitioner. The respondents claim that they have undivided share in the land which is inherited to them from their predecessor. However, the predecessor has sold the property to H.N. Enterprises, from which the petitioner claimed to have purchased the said property. The learned Civil Judge Senior Division restrained the petitioner/defendant no. 3 from granting any third party rights or interest by executing registered documents in respect of part of the suit property. The petitioner and respondents/contemnors settled their issues in respect of interim order by way of interim workable arrangement. They filed the minutes of order through their respective counsel. The minutes of order signed by the advocates of the petitioner and respondents/contemnors were taken on record and the appeals were disposed of on 6th July, 2012 in terms of consent minutes of order.

4. This Petition is filed alleging that the respondents have breached the terms mentioned in the minutes of order. One Hemant Yeshwant Nadgaonkar and others have filed a Special Civil Suit No. 355 of 2011 in the Court of Civil Judge Senior Division, Thane and as per the minutes of order, the petitioner shall display a board on the suit property informing about the pendency of the said suit and sale of unsold flats/units shall be subject to the outcome of the aforesaid suit. So also, the petitioner shall make reference of the pendency of the said suit in the sales brochures in

respect of the suit property and shall also intimate to the proposed purchaser of the unsold flat and obtain acknowledgment of the proposed purchaser on the same. It is the contention of the petitioner that the respondents though agreed to the minutes of order and agreed that these all acts were done by the petitioner, they themselves put up big board under the caption of public notice on the suit property informing about the litigation so also thereafter from 8th July onwards respondents/contemnors sent letters to the proposed or prospective flat purchasers through their advocate and informed about the pendency of the Civil Suit No. 355 of 2011 in those letters. Hence, this Contempt Petition.

5. The learned counsel for the petitioner submitted that these acts were not to be done by the respondents/contemnors, but respondents have agreed in the minutes that the petitioner was supposed to put up board so also to intimate about the pendency of the suit and order of the Court to the proposed flat owners. He submitted that it was never agreed that these all acts would be done by the contemnors/respondents. He submitted that the respondents were fully aware of the impugned order in its letter and spirit that they were not supposed to act upon this order. However, by putting board and communicating to the prospective purchaser through their advocate, the contemnors have committed breach of the order dated 6th July, 2012. He argued that these minutes

were accepted by the Court and the Court has acted upon these minutes and disposed of those appeals. Such act of the respondents is definitely a contempt of the Court which they have tried to commit indirectly by such acts. He relied on Exhibit C of the Petition, i.e., letter dated 8th July, 2013 written by the Advocate of the contemnors to a proposed flat owner. He pointed out that in the said letter, the contemnors have put a questionnaire in respect of knowledge of proposed flat owners about the pendency of the Special Civil Suit No. 355 of 2011 before the Civil Court, Thane. He pointed out after the signature of the advocate, a special note is mentioned where Santosh Balkrishna Nadgaonkar/respondent no. 5 have signed as a constituted attorney of the respondents. He submitted that the advocate was aware that generally below the notice sent by the advocate, no such declaration about the knowledge and information of the client is taken, however, it shows that the learned advocate was fully aware that this act will amount to contempt and therefore, such note is mentioned and signature of respondent no. 5 was obtained. He submitted that in view of this, this Contempt Petition is to be allowed.

6. The learned counsel for respondents/contemnors submitted that in paragraph 12 of the Petition, it is mentioned by the petitioner that the contents of the hoarding were intended to mislead the general public at large and it was displayed with the sole intention of causing loss and

damage to the petitioner and otherwise to defame the petitioner. He submitted that no contempt is committed by the respondents but this might have caused business loss to the petitioner. He further relied on affidavit-in-reply filed by Mukesh Balkrishna Thomare, Constituted Power of Attorney Holder of respondent nos. 1 to 6 and has denied the contempt.

7. Perused the order passed by this Court, minutes of order and also the present petition. The act of putting hoarding and the act of sending letters to the proposed flat purchasers about the pendency of Special Civil Suit No. 355 of 2011 and intimating the terms of minutes of order to the proposed flat purchaser was agreed to be done by the petitioner as per the minutes of order. However, the contemnors have done these acts. This is not a contempt. There was no expressed or implied bar on the respondents that they shall not display board or hoarding on the location intimating the terms of the minutes and also writing some additional things. Also, there was no prohibition on the respondents that they shall not write any letters to the proposed flat owners informing about the pendency of the suit and the consequence of purchasing the property which is in litigation. There is no breach of the order of this Court. At the most, it may amount to defamation as contented by the petitioner himself in his Petition. While dealing with the contempt petition, the Court has to

be careful to verify whether the petitioner has any interest in getting the order of contempt from the Court and he is trying to settle his score through the Court. Because of these letters or displaying the board, there may be a business loss to the petitioner about which the Court is not concerned. Thus, the Contempt Petition fails and is dismissed.

(MRS.MRIDULA BHATKAR, J.)