

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

CONTEMPT PETITION NO.469 OF 2013

Mr. Madanmohan Chandrabhan
Gupta

..Petitioner

Vs

Shreemati Nathibai Damodhar
Thackersey Women's University,
and Ors

.. Respondents

Mr.Girish B. Kedia , Advocate, for the Petitioner.

Mr. Vishwajeet P. Sawant, Advocate for Respondents No.1 and 3.

CORAM : R.G.KETKAR,J.

DATE : 25/03/2015

PC:

1. This Contempt Petition is filed alleging breach of the order dated 26.2.2013 passed by the learned Judge, City Civil Court, Dindoshi, Mumbai in Notice of Motion No.2562 of 2010 in S.C.Suit No.638 of 2010. As the regular Court presided over by Honourable Mr. Justice K.K.Tated passed order "not before me", as per administrative order passed by the Honourable Chief Justice, Office has placed this Contempt Petition before me.

2. Heard Mr. Girish Kedia, learned counsel for the petitioner and Mr. Vishwajeet Sawant, learned counsel for respondents no.1 and 3 at length.

3. In support of this Petition, Mr Kedia submitted that the

petitioner has instituted S.C.Suit No.638 of 2010 in the City Civil Court at Dindoshi, Mumbai. During the pendency of that suit, the petitioner took out Notice of Motion No.2562 of 2010. On 22.3.2010, ad-interim relief in terms of prayer clause (b) of the Motion was granted till next date or till defendants filing their reply, whichever is earlier, subject to the condition that the petitioner-plaintiff deposits Rs.5,00,000/- within one week from the date of the order.

4. He submitted that by order dated 26.2.2013, Motion was allowed in terms of prayer clauses (a) and (b) subject to condition that the petitioner deposits Rs.40,00,000/- in the Court within one week from the date of order subject to the outcome of the suit and continue to deposit monthly charges of Rs.1,25,000/- in the court till the hearing and final disposal of the suit. Mr Kedia invited my attention to prayers clause (a) and (b) of the Motion. He submitted that immediately after the order was passed on 26.2.2013, the petitioner addressed a letter dated 20.3.2013. In particular, he invited my attention to paragraphs 9 and 11 of that letter and submitted that respondent no.4 herein had caused obstruction and prevented the petitioner and their associates for maintenance and repairs of the existing structure. Respondent no.4 refused to follow and obey orders passed by the City Civil Court stating that the respondents are not bound by court

orders. He submitted that by virtue of granting reliefs in terms of prayer clause (b), the petitioner is entitled to carry out repairs and maintenance of the hoarding structures and installation of new VINYL. He further submitted that on 16.9.2013, letter was addressed to respondent no.4 informing him that the petitioner would like to change of VINYL of hoarding situated in the compound of the University and sought permission for execution of the said work. He invited my attention to paragraph 3 of letter dated 4.10.2013 in response to e-mail dated 4.10.2013. He submitted that the respondents have willfully disobeyed the order dated 26.2.2013 passed by the City Civil Court, Dindoshi, thereby, rendering themselves liable for initiating action under the Contempt of Courts Act, 1971. During the course of hearing, he stated that in August 2014 the petitioners have discontinued displaying hoardings and have removed hoarding structures in 2014.

5. On the other hand, Mr Sawant submitted that the petitioner has not permitted the University to withdraw the amount deposited by the petitioner in terms of prayer clause (a) of the Motion. Prayer clause (b) was granted to the petitioner on the premise that as per the prayer clause (a), the petitioner will deposit monthly compensation and permit respondents-defendants to withdraw the same. He submitted that the

petitioner, however, objected to withdrawal of the amount by the respondents which was allowed in terms of prayer clause (a) of the motion. He further submitted that perusal of paragraph 12 of the letter dated 23.4.2013 shows that the petitioner wanted to carry out vertical extension of hoarding structure from 40'x20' to 40'x40' for display of their advertisements. He also invited my attention to paragraph 1 and 2 of the letter dated 6.9.2013 addressed on behalf of the petitioner and submitted that the petitioner desired to change the size of the hoarding structure as per the policy of the Municipal Corporation of Greater Mumbai in respect of the existing structure. He submitted that after receipt of the letters from the petitioner, e-mail was sent on 4.10.2013 to them calling upon them to inform exactly what work the petitioner intends to carry out and request was made to confirm exact work the petitioner intends to carry out. He submitted that in any case since the petitioner has stopped displaying advertisements on hoarding in August 2014 and has removed the hoarding in December 2014, no action is made out for initiating action under the Contempt of Courts Act, 1971.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, by order dated 26.2.2013, the Motion was allowed in terms of prayers clause (a)

and (b) subject to the petitioner depositing Rs.40,00,000/- in the Court within a period of one week from the date of the order subject to the outcome of the suit and continue to deposit monthly charges of Rs.1,25,000/- in the Court till the hearing and final disposal of the suit. Perusal of the prayer clause (a) shows that the petitioner sought permission to deposit monthly compensation with a liberty to the respondents to withdraw the same. The grievance of the respondent is that they were not permitted to withdraw the amount deposited by the petitioner. At the same time, the petitioner was insisting for carrying out repairs and maintenance work. That apart, as noted earlier, since August 2014 the petitioner has stopped displaying advertisements on the hoarding and has also removed the hoarding in December, 2014.

7. In view thereof, it cannot be said that the respondents have willfully committed breach of the order dated 26.2.2013.

8. In view thereof, no case is made out for initiating action under the Contempt of Courts Act, 1971. Hence, Contempt Petition fails and the same is dismissed.

(R.G.KETKAR, J.)