

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

CONTEMPT PETITION NO.12/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Sidhesh Pilankar i/b. Uday P. Warunjikar for the Petitioner

Mr. A. R. Metkari, AGP for the Respondent No.1.

CORAM : K. K. TATED, J.

DATE : JULY 28, 2015

P.C.:

1. Heard. By this petition, the Petitioner Plaintiff alleges that the Respondent Defendant violated the order dated 25/03/2013 passed by the 4th Jt. Civil Judge, Senior Division below Exhibit-305 in Special Civil Suit No. 420/2012 by carrying out an unauthorised construction. He further submits that even the Manmad Municipal Corporation issued notice dated 12/11/2014 to the Respondent in respect of the unauthorised construction. He further submits that as the Respondent violated the order passed by the Trial Court dated 25/03/2013, this Hon'ble Court be pleased to take action against the Respondent under Contempt of Courts Act.

2. It is to be noted that, the Special Civil Suit No. 420/2012 in which the Petitioner preferred Application below Exhibit- 305 where the impugned order is passed, is pending for final disposal on its own merits.

3. Order XXXIX Rule 2A takes care of situations in case, a party against whom an order of injunction was issued violates the said order. Rule 2A (2) provides for attachment and sale of the property belonging to the contemner, in case disobedience or breach continues even after a period of more than one year. Similarly Order XXI Rule 32(2) provides for enforcing the decree for specific performance, restitution of conjugal rights or for injunction. Therefore, the Code of Civil Procedure itself takes care of situations arising on account of violations of the order of injunction or disobedience of order or decrees passed by the Civil Court.

4. Order XXXIX Rule 2A and Order XXI Rule 32(2) are intended for enforcing the order or decree of injunction and as such those provisions are adequate remedies. In the event of initiating proceedings for violation of decree or order of injunction, it is open to the parties to collect

evidence to prove their respective contentions, and it would enable them to demonstrate before the Trial Court the circumstances under which the order of injunction was granted and the alleged act of disobedience at the instance of the opposite party. It would also enable the contemner to produce materials to show that he has not committed any act of contempt as alleged. The orders passed by the trial Court under these provisions are appealable orders. Therefore, the Code of Civil Procedure itself contains an inbuilt provision to safeguard the interest of parties.

5. The contempt is essentially a matter between the Court and the contemner. The Petitioner in a contempt jurisdiction could only appraise the Court of the contempt committed by a party to the list. It is for the Court to take cognizance of the contempt and proceed further. Therefore, the issue is whether this Court is bound to proceed under the Contempt of Courts Act in spite of an alternate remedy to the Petitioner to appraise the Concerned Trial Court about the acts of disobedience of the order.

6. The Apex Court in the matter of *R. N.Dey and Others vs. Bhagyabati Pramanik and others*

reported in (2000) 4 SCC 400 held that Contempt is a matter between the court and the contemnor – Aggrieved has no right to insist that court should exercise its jurisdiction. The weapon of contempt is not to be used in abundance or misused. Paragraph 7 of that authority reads thus:

“7. We may reiterate that weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the Court is to be exercised for maintenance of Court's dignity and majesty of law. Further, an aggrieved party has no right to insist that Court should exercise such jurisdiction as contempt is between a contemnor and the Court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the First Appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceedings, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is nullity. In such a situation, as there was no willful or

deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified.”

7. Essentially, Contempt of Court is a matter which concerns the administration of justice, and the dignity and authority of judicial tribunals; a party can bring to the notice of Court, facts constituting what may appear to amount to contempt of Court, for such action as the Court deems it expedient to adopt. But, essentially, jurisdiction in contempt is not a right of a party, to be invoked for the redressal of his grievances; nor is it a mode by which the rights of a party, adjudicated upon by a tribunal, can be enforced against another party.

8. I do not find any substance in the Contempt Petition. Hence, same stands dismissed with liberty to the Petitioner to prefer an appropriate Application under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908, if they so desire.

JUDGE