

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

**CONTEMPT PETITION NO.417 OF 2011
WITH
CONTEMPT PETITION NO.116 OF 2013**

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and the Registrar's orders	Court's or Judge's orders
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Mr. S.S. Kanetkar, for the Petitioner in CP. No. 417 of 2011.

Mr. Abhijeet Desai, for the Respondents in CP. No. 417 of 2011 and for the Petitioner in CP. No. 116 of 2013.

CORAM: MRS.MRIDULA BHATKAR, J.

DATED: 21st SEPTEMBER, 2015

. The Petitioner No. 1 in Contempt Petition No. 417 of 2011 is the Defendant No. 59 in Suit No. 912 of 2005. The Petitioner No. 2 who is not the party to the suit No. 912 of 2005 has purchased a land from the Petitioner No. 1. This Petition is filed as the interim order dated 24th September, 2005 passed by the learned Civil Judge, Senior Division, Pune in R.C.S. No. 912 of 2005 is violated.

2. As per the submissions of learned counsel for the Petitioner, by an order dated 24th

September, 2005 the Court has directed the Defendant Nos. 1 and 2 to maintain status-quo till next date. However, the Defendants i.e. the present Respondents though were aware of this order that it runs only against the Defendants Nos. 1 and 2 gave a public notice on 2nd October, 2011 through his learned counsel in the newspaper for the stay to the injunction of the operation against the Defendants and the Court has directed to maintain status-quo to the parties. He submitted that the incorrect statement is made in respect of the suit property in absence of injunction. He submitted that it is a contempt of Court. It falls under the clause 2(c)(iii) of the Contempt of Courts Act. It is a criminal contempt.

3. The learned counsel for the Respondent submits that if it is a criminal contempt falling under the clause 2(c)(iii) of the Contempt of Court Act, then this Court could not take cognizance of the contempt because the criminal case is already filed by the Petitioner against the present contemner and it is pending before the learned J.M.F.C., Pune. He submits that the said learned Magistrate has taken cognizance of the offence and has issued process under Section 499 of the Indian Penal Code in a Criminal Case Nos. 39304 of 2011 and 39382 of 2011.

4. It is true that the order of injunction runs qua Defendants No. 1 and 2 and not against all the parties. The statement made by the Plaintiff in Suit No. 912 of 2005 and in a public notice dated 2nd October, 2011 appears *ex-facie* incorrect. However, it is not a case of willful disobedience and will not fall under section 2(b) of the Contempt of Courts Act. However, the learned counsel for the Petitioner brought the act of the Plaintiff under section 2(c) (ii) or (iii) of the Contempt of Court Act. The criminal case is filed by the Petitioner against the Plaintiff and the learned Magistrate has issued process for the offence of defamation punishable under Section 499 of the Indian Penal Code.

5. Under the proviso Section 10 of the Contempt of Court Act, this Court can not take cognizance of contempt which is committed in respect of Court subordinate to it where such contempt is an offence punishable under Indian Penal Code. Hence, this Petition can not be entertained.

6. In view of the above, the Petition stands 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.