

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

CONTEMPT PETITION NO. 3 OF 2015

Shila Mohanlal Dingra & Ors.	... Petitioners
V/s.	
Mrs. Renu Mohan Malkani & Ors.	... Respondents

Petitioner no.2 Mr. Chandrabhan Mohanlal Dingra party in person.
Mr. R. R. Mishra with Ajay Mishra for the respondents.

CORAM : K. K. TATED, J.
DATED : 03/08/2015.

P.C.:

. Heard Petitioner no.2 party in person and learned Counsel for the respondents.

2 By this Contempt Petition, the petitioner no.2 party in person submits that the respondents violated the order dated 03.12.2004 passed by this Court in Notice of Motion no. 696 of 2004 in suit no. 659 of 2004 and subsequent order dated 15.10.2013 passed by the Small Causes Court at Bombay below Exh. 10 in L.E. & C Suit no. 14/18/2013 by not paying the compensation @ of Rs. 3,000/- on or before 10th of every calendar month from 01.01.2013 to October, 2013 and also creating third party rights, title and interest in respect of suit premises by forming a Company known as 'Scads Marketing & Distribution Pvt. Ltd."

3 The petitioner party in person in support of this contention about the creation of third party rights, title and interest in respect of suit

premises relies on extract provided by the Registrar of the Companies showing the registered address of the said Company of suit premises i.e. B-20/8, Sanman Co. Op. Hsg. Soc. BEST Nagar, Goregaon (W), Mumbai – 400104. He submits that in this way the respondents committed the contempt of Court and therefore, they should be punished according to law under the Contempt of Court Act.

4 On the other hand, the learned Counsel for the respondents vehemently opposed the present Contempt Petition. He submits that in respect of payment of compensation @ of Rs.3000/- per month as per order dated 03.12.2004 passed by this Court and subsequent order dated 15.10.2013 passed by the Small Causes Court, Bombay the contemnors/ respondents and petitioner preferred Writ Petition no. 659 of 2015 and Writ Petition no. 2242 of 2015 in this Court. He submits that both the Writ Petitions were disposed of by this Court (Coram : M.S. Sonak, J) by order dated 24.07.2015 directing respondents herein above to deposit compensation in respect of suit premises in the Small Causes Court @ of Rs. 15000/- per month instead of Rs.3000/- from 01.11.2013. He further submits that this Court granted six weeks' time to comply the said order and six weeks time is not over till today. Hence, there is no question of committed contempt of this Court.

5 The learned Counsel for the respondents further submits that though this Court by order dated 03.12.2004 in Notice of Motion no. 696 of 2004 restrained respondents from alienating, parting with possession or creating third party rights, title and interest in respect of suit premises. That order was not continued subsequently. He submits

that subsequently, the Bombay City Civil Court at Bombay passed order dated 22.01.2013 on preliminary issue holding that City Civil Court has no jurisdiction and plaint was returned to the petitioner plaintiff for presentation to the proper Court i.e. Small Causes Court, Mumbai under Order 7 Rule 10 of C.P.C. He submits that on presentation of the plaint in the Small Causes Court, the Small Causes Court passed the order dated 15.10.2013 directed respondents to deposit an amount of Rs.3000/- per month on or before 10th of each calendar month as per High Court order dated 03.12.2004 in Notice of Motion no. 696 of 2004. He further submits that Small Causes Court has not extended the order passed by the High court in respect of creation of third party rights, title and interest in respect of suit premises. He submits that bare reading of the operative part of the order dated 15.12.2013, Small Cause Court directed respondents to deposit per month sum of Rs.3,000/- in Small Causes Court. Hence, there is no substance in the present Contempt Petition preferred by the petitioner and same is liable to be dismissed with costs.

6 I heard both the sides at length. Bare reading of order dated 15.10.2013 passed by the Small Causes Court below Exh.10 in L.E. & C. Suit No. 14/18/2013 clearly shows that Small Causes Court directed respondent to deposit sum of Rs.3,000/- per month on or before 10th of each calendar month in the court as per earlier order passed by this Court dated 03.12.2004 in Notice of Motion no. 696 of 2004.

7 Subsequently, the petitioner as well as the respondents preferred Writ Petition no. 659 of 2015 and Writ Petition no. 2249 of 2015 in this

Court. This Court by order dated 24.07.2015 (Coram : M.S. Sonak, J) held that the respondents to deposit sum of Rs.15,000/- per month by way of compensation in respect of suit premises. This Court directed respondents to pay Rs.15,000/- per month from 01.11.2013 and granted six weeks' time to clear the arrears of compensation. This itself shows that as on today the earlier orders passed by this Court dated 03.12.2004 in Notice of Motion no. 696 of 2004 and order passed by the Small Causes Court, Mumbai dated 15.10.2013 below Exh.10 stands modified. Hence, in view of subsequent order passed by this Court dated 24.07.2015 and six weeks' time granted to the respondent to clear the arrears of compensation show that the respondent have not committed any contempt as on today.

8 The second issue in respect of creation of third party rights, title and interest in respect of suit premises also not tenable. It is to be noted that this Court by order dated 03.12.2004 directed the respondent not to create third party rights, title and interest in respect of suit premises. That order was passed as ad-interim order. Subsequently, due to change of pecuniary jurisdiction of this Court, the matter was transferred to the Bombay City Civil Court at Bombay. The Bombay City Civil Court at Bombay framed the preliminary issue about the maintainability of suit itself. That preliminary issue was decided and held that Small Causes Court, Mumbai has jurisdiction to entertain the suit.

9 The Bombay City Civil Court by order dated 22.01.2013 returned the plaint to the petitioner under Order 7 Rule 10 of the C.P.C. On presentation of plaint to the Small Causes Court, the Small Causes

Court passed interim order dated 15.10.2013 below Exh.10 in L.E. & C. suit no. 14/18/2013. By that order the Small Causes Court has not continued the order about restraining the respondents defendants from creating any third party rights, title and interest in respect of suit premises. Hence, it cannot be held that the respondents defendants committed contempt of any order, by forming new company and providing registered address of the suit premises.

10 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. 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.”

11 In view of the above mentioned facts and submissions made by the parties, I am of the opinion that petitioner has not made any case for taking action against the respondents under Contempt of Court Act.

12 Hence, Contempt Petition is rejected.

(K.K.TATED, J.)