

Shri Manubhai Hargovandas Patel}	Petitioner
versus	
The Deputy Registrar, Co-op. Soc. Act and Ors.	}
Respondents	}

Mr. Milind More - Addl. Government
Pleader for Respondent Nos. 1 to 10.

DATED :- DECEMBER 5, 2015

The Petitioner in-person states that he owns flat No.2201 from January, 2003 jointly, which is in a building belonging to Kingston Palace Co-operative Housing Society Limited, Chincholi Bunder Road, Malad (W), Mumbai 400 064. The first Respondent is the Deputy Registrar of Co-operative Societies and Respondent Nos. 2 to 9 to this Writ Petition claim to be the managing committee members. Respondent No. 10 is the State.

2) The Petitioner complains that a Writ Petition being Writ Petition No. 868 of 2012 was filed against these Respondents by him and on 7th March, 2012, it was disposed of by this Court with the observations that the Petitioner has no difficulty in paying the outstanding dues of the Society as demanded, without prejudice to his rights and contentions to challenge the legality thereof in appropriate proceedings, but it was argued by him before the previous Bench that the attitude of the Registrar of not examining his grievance about legality of the continuation of the existing managing committee in disregard to the settled legal position cannot be countenanced. The Division Bench, according to the Petitioner, recorded his willingness to deposit the entire amount demanded by the Co-operative Housing Society. That is how the Writ Petition was disposed of with a direction at page 13, internal page 2 of the order. The direction in para 3 of this order is said to be disregarded and willfully disobeyed by Respondent No. 1. That is how a case of civil contempt is made out, according to the Petitioner.

3) It is alleged by him that the first Respondent cannot seek to support the managing committee members against whom the Petitioner has serious grievances and complaints. The first Respondent has failed in his duty to abide by the order and

directions of this Court and hence, he should be proceeded in contempt.

4) On the earlier occasion, Respondent No. 1 and Respondent No. 10 were represented by Mr. More, learned AGP. Mr. More had sought time to file affidavit. Mr. More states that there is no representation on record made pursuant to the Division Bench order. Mr. More emphasises that the Division Bench order requires the Petitioner to make a representation afresh and after the Division Bench order. However, there is no such representation on the file of Respondent No. 1

5) It is in this regard Mr. More had sought time to file an affidavit and which is filed by him on 2nd December, 2015 with advance copy to the Petitioner appearing in-person.

6) Upon the above material, we have heard both sides. The Division Bench order is regarding the Petitioner's assurance and willingness to forthwith deposit the entire amount demanded by the Society as per notice dated 9th December, 2011. Those dues, as per Respondent No. 3 Society are around Rs.8,53,869/-. That is without prejudice to the rights and contentions of the Petitioner to challenge the legality and validity of the demand by way of appropriate proceedings. It is after payment of

outstanding amount that the Petitioner would be free to make a representation to the Deputy Registrar with regard to his grievance about the wrongful continuation of the managing committee. The order of the Division Bench, read as a whole, shows indulgence to the Petitioner because of his willingness and assurance that he would pay the sum demanded by the Society. The Petitioner has complaints about certain acts committed by the managing committee members. The Petitioner was free to resort to such remedies or redressal of his grievances.

7) In the memo of the Contempt Petition, the Petitioner states that by his letter dated 10th December, 2012, he deposited fixed deposit receipts of Rs.4,00,000/- and Rs.4,50,000/- with the Deputy Registrar and requested him to handover these to the managing committee members. These were returned by the Deputy Registrar and while returning them, the Deputy Registrar informed the Petitioner that the payment was to be made to the Society and such an act does not amount to making payment to the Society and producing proof of such payment.

8) Therefore, the Petitioner forwarded these fixed deposit receipts to the Secretary of the Society and under cover of letter dated 3rd January, 2013. He then informed the Deputy Registrar on 7th January, 2013 that he has forwarded the fixed

deposit receipts and that is how the Petitioner demanded compliance of this Court's order and directions. It appears that the Advocate of the Society, by his letter dated 9th January, 2013 informed the Petitioner by a letter, copy of which is at Annexure 'F' and in which he has stated that this Court's order has been misinterpreted. The amount has to be paid and handing over of such fixed deposit receipts to the Society is not compliance with the assurance given by the Petitioner to this Court.

9) It is in these circumstances that though the Petitioner claims that he has approached the Deputy Registrar by letter dated 28th January, 2013 that the Deputy Registrar has not taken any cognizance of such letters.

10) From a reading of the Contempt Petition and all Annexures thereto so also the affidavit, we have found that the Petitioner has some grievance against the Society and for which he has been advised to adopt legal proceedings. This Court only expected the Petitioner to comply with this assurance given to the Court and thereafter approach the statutory authorities. By no stretch of imagination, the statutory authority was involved in the dispute between the Petitioner and the Co-operative Housing Society. There is a serious doubt as to whether handing over the fixed deposit receipts by the Petitioner to the Society will mean

compliance with the Petitioner's assurance given to this Court. In these circumstances and in view of the explanation given in the affidavit in reply, we do not find that this is a case of civil contempt. The Contempt Petition is entirely misconceived. It is accordingly dismissed.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)