

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL SIDE JURISDICTION

CONTEMPT PETITION NO.10 OF 2014
IN
SUIT NO.3938 OF 2001

M/s. J M C & Meghani Builders	...	Petitioner
Vs.		
Jamuna Darshan CHS Ltd. & Ors.	...	Respondents

Ajay Panicker, Adv. a/w. Ms. Amreen Mansuri, Adv. i/b. Ajay Law Associates for petitioner.

Ms. Sukeshi Bhandari, Adv. for respondent No.1.

M B Barai, Adv. for respondent No.2.

CORAM : MRS. ROSHAN DALVI, J.

DATE : 8th June, 2015.

P.C. :

1. This contempt petition is taken out by the petitioner who are the developers of the suit property. Respondent No.1 is the society. Respondent No.2 is the Chairman of the society who is purchaser of the suit flat. Respondent Nos.3, 4 and 5 are the original owners of the suit plot of land.

2. Under an agreement between the petitioner and respondent Nos.3, 4 and 5 a flat of 750 sq.ft. was to be kept for respondent Nos.3, 4 and 5 in the building to be developed by the petitioner by way of consideration payable for development of the suit plot of land.

3. The petitioner kept two flats of 650 sq.ft. each for and on behalf of owners, respondent Nos.3, 4 and 5. These were kept instead

of keeping one flat of 750 sq.ft area.

4. Maintenance charges were payable to the society in respect of the suit plot. The developers would require to pay society charges and thereafter upon transfer of the suit flat to the owners the owners would be required to pay the society charges.

5. The society charges were not paid and hence the society sued for recovery of the charges. The Court is informed that these were for recovery of charges of 20 years in the suit filed by the society being suit No.3938 of 2001. The society took out the Notice of Motion No.2220 of 2007. In that Notice of Motion the consent order came to be passed that the petitioner herein will hand over one set of keys of the two flats to the owners to enable them to paint the flat and to find out buyers. They were not to part with possession of the flat but only show the flats to the buyers. The petitioner was thereafter to transfer the flats in the name of the buyers upon realising the sale proceeds thereof and depositing the society charges. The plaintiff society was to issue no objection to transfer the flats. The charges of the society of course, had to be paid prior to the transfer and the owners were allowed to find buyers.

6. The petitioner acted upon the order and handed over one set of keys of both the flats to the owners. The owners did not obtain buyers or sell the flat.

7. Court Receiver came to be appointed by the consent of the parties for the sale of the flat. The sale was not effected. A modification application was taken out by owners for modifying the

aforesaid order allowing them to sell the flat and accept the purchasers as members. That modification application was not prosecuted by the owners and no order has been passed thereon.

8. There was, therefore, a stalemate. The plaintiff society withdrew the suit on 30th January, 2013.

9. On 15th February, 2013, a fortnight after the withdrawal of the suit the two flats have been sold to respondent No.2 who is the chairman of the society.

10. The petitioner would contend that under the order dated 2nd July, 2008 sale could not be effected and because the sale has been effected there has been contempt of that order. That order would remain in force pending the suit. The disposal of the suit either by withdrawal, dismissal or decree would bring to an end all interim orders including the order dated 2nd July, 2008. Hence upon the suit being withdrawn the interim order passed in the suit on 2nd July, 2008 in Notice of Motion No.2220 of 2007 came to an end. There cannot be a breach of the order which comes to an end. Hence a contempt petition is not maintainable for the alleged breach of any such orders passed pending the suit after the withdrawal of the suit.

11. Indeed the sale of the flat may be wrongful. The price recovered from the purchaser for a part of the second flat would be payable to the petitioner herein as the developer. It would be for the developer to sue to recover that amount. The developer has already filed such suit and interim order of injunction restraining further transfer of the flat has also been passed in that suit.

12. No contempt upon breach of an order which was in force on the date of the contempt is seen.

13. Hence Contempt Petition is dismissed.

(ROSHAN DALVI, J.)