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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CONTEMPT PETITION NO.672 OF 2015
IN
SECOND APPEAL NO. 229 OF 2014

1. Dr. Sanjay Ganpati Birla PETITIONERS
Age – 48 years, Occ – Agriculturist and Doctor
R/o Main Road, Shahada,
Taluka – Shahada, District – Nandurbar
2. Sau. Vidya Sanjay Birla
Age – 47 years, Occ – Agriculturist and doctor
R/o Main Road, Shahada,
Taluka – Shahada, District - Nandurbar

VERSUS

Narendrasing Pralhad Girase RESPONDENT
Age – 31 years, Occ – Agriculturist
R/o Village Osarlil,
Taluka and District - Nandurbar

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Mr. V. P. Raje h/f Mr. C. R. Deshpande, Advocate for petitioners,
Mr. R. R. Mantri, Advocate for the respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 23rd AUGUST, 2016

Oral judgment :

1. Heard learned advocates for the parties.
2. The contempt petition has been moved by the respondents

in second appeal No.229 of 2014 with civil application No.3389 of 2014 in which following order had been passed by this court on 10th April, 2014:

“1. Heard both sides. Application is filed by the appellant for interim relief. There is dispute over use of some space situated on one side of the land of the plaintiff and the defendant wants to use that portion as cart way. Court Commissioner was appointed and the Court Commissioner's report is considered by both Courts below. Both Courts below have refused to presume the easementary right and relief of injunction is granted in favour of the plaintiff.

2. Attention of this Court was drawn to the order of this Court in Appeal from Order No.26 of 2014 (Karbhari V. Devidas). This Court has considered the provisions of the Maharashtra Land Revenue Code and the rules made in 1969 under the said Code. In view of the provision of law on easementary rights, this Court holds that stay to the decree of injunction can be granted only to the extent mentioned by this Court in Appeal from Order No.26 of 2014. So following order:-

3. The defendant in the suit, appellant, will be entitled to use only bandh situated between Gut Nos.103 and 104 . It needs to be kept in existence as per Rule 4 of Maharashtra Land Revenue (Boundary and Boundary Mark) Rules, 1969 as 'foot path'. Both the sides not to cause damage to his bandh which is in existence and which is also noted by the Court Commissioner in the report. The

width of the bandh is presumed to be 1.22 meters. This interim relief is until disposal of the appeal. The civil application is disposed of in the aforesaid terms. Second Appeal No.229/2014 will be heard for admission purpose on 12-6-2014.

4. *Call for record and proceedings.”*

3. Learned advocate for contempt petitioners purports to contend that width of *bandh*, which is required to be 1.22 meter has been breached and for the same the original appellant - respondent is guilty. For said purpose, he purports to rely on two purported police complaints and certain photographs.

4. Learned advocate for original appellant - present respondent contends that as far as the appellant is concerned, he is abiding by the stipulation given under the order passed by this court in civil application No.3389 of 2014 in second appeal No.229 of 2014. He states that the appellant-respondent is aware that breach at his instance would be adverse to the interest of the interim relief secured by the appellant. Learned advocate further states that as far as allegations with regard to breach of width of *bandh* is concerned, police complaints filed by the petitioners have no relevance, nor those depict any particular imputation against the appellant - respondent in the contempt petition, save some alleged verbal abuses. He submits that these

are got up contentions and there is no veracity in the same. He submits that the photographs cannot be relied on and it cannot be said with certainty that if at all there is breach of width of 1.22 meter, the same can be specifically attributed to the appellant-respondent, for, he points out that the two maps annexed to the affidavit in reply filed by the appellant-respondent show that there are several land holders, who are using said *bandh* as access to their fields. He further states that his client is abiding by the stipulation under the order of this court.

5. Having regard to aforesaid, it does not appear to be a case wherein an imputation of contempt of court can be maintained against the appellant - respondent. The documents, *viz.*, two complaints before the police authorities do not specifically allege breach of width of *bandh* by the appellant - respondent. The photographs, which are relied upon, in the face of situation as is claimed to be depicted by the maps are not seriously disputed by the present petitioners. Breach of the order, if any, cannot be straightway attributed to the appellant. It is not a case wherein it can be said that the appellant - respondent can be considered having committed contempt of court.

6. In addition to the above, in the affidavit in reply it has specifically stated that the appellant - respondent has highest regard for the court and its procedure and that if any mistake is committed, he tenders unconditional apology and further it has been stated in the affidavit that the appellant - respondent is following the order of this court denying that damage, if any, is caused by the appellant - respondent.

7. In view of aforesaid, it does not appear to be gross and clear case of contempt of court. Contempt petition, as such, stands dismissed and is disposed of.

[SUNIL P. DESHMUKH, J.]