

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

CONTEMPT PETITION NO.209/2014

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. J. S. Kini for the petitioner
Mr. Atul Damle, Senior Advocate i/b. Rupesh Lanjekar for the Respondent Nos.2 and 3.

CORAM : K. K. TATED, J.

DATE : FEBRUARY 15, 2016

P.C.:

1. Heard. By this petition, the Petitioner alleges that the Respondent failed and neglected to comply with consent terms dated 05/09/2006 filed by them before the III Cooperative Court, Mumbai in Dispute No.CC/III/1454/2004 which was accepted by the Court by order dated 19/12/2008.

2. It is the case of the Petitioner that as per lease deed dated 08/11/2001, the Respondent is in possession of the suit premises i.e. ground floor and basement containing total carpet area of 6000 sq.ft. in the building known as "Gitanjali" West Dadar Cooperative Housing Society Ltd., Ranade Road, Dadar (W), Mumbai – 400 028. He submits that by consent terms dated 05/09/2006, the

Respondent agreed to pay lease rent of Rs.6,00,000/- per month on the total carpet area of 6000 sq.ft. to the 17 members of the society in equal proportion on or before 10th day of each calendar month after deducting amount of Rs.60,000/- or actual amount towards contribution of taxes by the members. He submits that it was agreed between the parties by the consent terms that the Respondent bank was liable to pay outgoing and taxes as agreed in the agreement signed earlier i.e. lease deed dated 08/11/2001. In support of this contention, the learned counsel for the Petitioner relies on paragraph 2 of the consent terms reads thus :

“2. It has been agreed in between the apties that the opponent No.3 shall pay the lease rent of Rs.6,00,000/- (Rupees Six Lakhs only) per month payable to the opponent No.2 towards the lease of ground and basement floor containing total carpet area of 6000 sq.ft. in the building known as Gitanjali West Dadar chamber summons Ltd., Ranade Road, Dadar West, Mumbai – 400 028 situate at Land bearing C.S.No.311 and 1/311 plot No.695, TPS IV Mahim Division, Mumbai City directly and exclusively to the 17 members of the opponent No.1 society in equal proportion before the 10th day of each calendar month after deducting an amount of Rs.60,000/- or at actuals per month which is the contribution of the members for maintenance and taxes which shall be paid to the opponent No.1 society by the opponent No.3. It has been further agreed that the amounts lying with the

opponent NO.2 in respect of the lease rents payable till date shall be disbursed to the 17 members of the opponent No.1 society in equal proportion on or before one week from the execution hereof. it is further agreed that the said amount would be minus the deducting of amount of Rs.60,000/- per month or actuals in respect of the part dues payable, which will be given Interim relief, if any, granted earlier to continue till next date. he name of the opponent No.1 society, which is the contribution of the members for maintenance and taxes, after the execution of all relevant documents in regard to the dissolution of the opponent No.2 trust and the way of functioning of the successor thereof. It has been agreed that the opponent No.3 Bank shall be bound and liable to pay the outgoings and taxes as agreed in the agreement signed earlier.”

Paragraph 1d of the lease deed reads thus;

“1(d) That the LESSEES will during the said term pay all the existing and future rates, charges, assessments, impositions and outgoings whatsoever payable in respect of the Demised Premises. The present Municipal Taxes and other outgoings in relation to the Demised Premises amounts to Rs.5,54,794/- per annum.”

3. The learned counsel for the petitioner further submits that it is crystal clear from the consent terms as well as lease deed that the service tax liability was to be paid by the Respondent bank. He further submits that even the Respondent bank, by their letters dated

21/12/2013 and 19/03/2014 accepted their liability to pay service tax. He submits that as the Respondent failed and neglected to pay service tax, the Additional Commissioner, Service Tax – III, Mumbai passed order dated 30/11/2015 in Original Application No.ADC/RPK/15/2015-2016 imposing penalty and liability on the Petitioner. He further submits that as the Respondent bank failed and neglected to comply with the terms and conditions dated 05/09/2006 and lease deed dated 08/09/2001, they may be dealt with as per the provisions of the Contempt of Courts Act.

4. On the other hand, the learned senior counsel for the Respondent bank vehemently opposed the Contempt Petition. They filed Affidavit-in-Reply . He submits that bare reading of the consent terms dated 05/09/2006 and order dated 19/12/2008 passed by the Cooperative Court, it is crystal clear that the Respondent bank never accepted the liability to pay the service tax. He further submits that in fact the service tax was introduced in the year 2007. Hence, there is no question of accepting the liability to pay the service tax on behalf of the Petitioner. He further submits that there is no specific provision in the consent terms to that effect. Hence, there is no question of

entertaining the Contempt Petition.

5. Heard the learned counsel for the parties. It is to be noted that, admittedly, there is no dispute that the service tax was introduced in the year 2007 and the consent terms were signed by the parties on 05/09/2006 and the order was passed thereafter on 19/12/2008. Nowhere it is stated in the consent terms as well as the order that the service tax liability is to be paid by the Respondent bank.

6. This being Contempt Petition, it is not possible for this court to go beyond consent terms and order passed by the Cooperative Court.

7. There is no substance in the Contempt Petition. Hence, the Contempt Petition stands dismissed.

JUDGE