

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

CONTEMPT PETITION NO. 165 OF 2015

Mr. Arun C. Upadhyay	... Petitioner
V/s.	
Shri. Sitaram Kunte, The Municipal Commissioner of Mumbai & Ors.	... Respondents

Mr. Vimlesh Singh for the Petitioner.

Mr. A. Y. Sakhare, Senior Counsel I/b J.J. Carlous for the
Respondents/Corporation.

**CORAM : K. K. TATED, J.
DATED : 24/10/2016**

P.C.:

. Heard learned Counsel for the parties.

2 The learned Senior Counsel appearing on behalf of Respondents filed additional Affidavit-in-Reply of Mr. Prashant Laxman Sapkale, working as Assistant Commissioner dated 24.10.2016. Same is taken on record.

3 By this Contempt Petition, the petitioner is alleging that Respondent Corporation has failed and neglected to comply the judgment and decree dated 06.09.2013 passed by Bombay City Civil Court, Mumbai in L.C. Suit No. 3091 of 2008. By that decree the Trial Court directed the Corporation to remove unauthorised stall. The operative part of the decree, reads thus:

“ORDER

1. *Suit is decreed.*
2. *The Defendant No.3 M.C.G.M. is hereby directed to remove the unauthorised stall of 'Sheetal pan bidi' stall admeasuring 5 ft. X 3 ft. attached to the window of Sheetal Tea and Cold Drinks House situated at Navpada, L.B.S. Marg, Kurla (W), Opp. Mankhurd Company Gate No.1, Mumbai-70.*
3. *Parties to bear their own cost.”*

4 It is the contention of the petitioner that though the Petitioner by his several letters called upon the Corporation to comply the order dated 06.09.2013, they failed and neglected to take steps. Thereafter, the petitioner filed application on 06.01.2016 under Right to Information Act, 2005 calling upon the Corporation the steps and action taken by them to comply the order passed by the Bombay City Civil Court, Mumbai. It is the contention of the petitioner that as the Respondent failed to comply the said order, he preferred the present Contempt Petition on 07.08.2014.

5 The learned counsel for the petitioner submits that though the impugned order and decree was passed by the Trial Court on 06.09.2013, Respondent Corporation complied the same after filing of present Contempt Petition on 01.08.2016. He submits that the Corporation has not disclosed any reason for delay in complying the said order. Hence, it is the fit case to take action against the Corporation.

6 On the other hand, the learned Senior Counsel for Corporation submits that as they already complied the order.

Hence, there is no need to take any action against them. For delay, the corporation has filed additional affidavit dated 24.10.2016. In paragraph 4, 5 and 7 the Corporation explained the delay on their part to comply the said order. The Concerned Officer also tendered his unconditional apology in paragraph 4 of the additional affidavit.

7 The learned Senior counsel for the Corporation submits that apart from delay, the petitioner has alternate efficacious remedy to take appropriate steps for compliance of impugned judgment and decree passed by the Trial Court. He submits that if alternate remedy is available, the Court should not take action under Contempt of Court Act. Hence, there is no substance in the present petition and same is required to be dismissed with costs.

8 I heard both the sides at length. It is to be noted that though there is delay on the part of the Corporation to comply the order dated 06.09.2013, the Corporation by their additional affidavit dated 10.10.2016 explained the delay. It is to be noted that petitioner had alternate efficacious remedy i.e. execution of decree that he has not done. In any case, the provision of Contempt of Court Act cannot be enforced against the Respondent just to bring pressure on them when alternate efficacious remedy is available.

9 Considering this fact and as the order already complied by the Corporation, I do not find any reason to take action against the Respondent.

10 Hence, Contempt Petition stands rejected.

(K.K.TATED, J.)