

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.243 OF 2015

Mrs.Rashmi Ashok Joshi .. Petitioner

Versus

Vikas Baburao Rane and ors .. Respondents

Mr.Dilip Bodke, Advocate for the petitioner.

Mr.S.D.Tigade, Advocate for respondent nos.1 to 3.

Mr.Ravindra Pachundkar, Advocate for respondent no.4.

CORAM : K.K. TATED, J

DATED : 1st JULY 2016

P.C. :

1 Heard learned counsel for the parties.

2 By this Contempt Petition, petitioner plaintiff alleged that the respondent violated the order dated 22nd June 2010 passed by Civil Judge, Sr. Division, Thane in Special Civil Suit No.387/10 directing parties to maintain status quo in respect of the suit property till the filing of the say on Exhibit-5.

3 In the present proceedings, petitioner plaintiff filed Special Civil Suit No.387/10 in the Court of Civil Judge, Sr. Division Thane under Section 6 of the Specific Relief Act, 1963. In that suit, the plaintiff made the following prayers.

- “a. The defendant Nos.1 and 2 be directed to handover vacant and peaceful possession of the Suit Flat i.e. Flat no.203, measuring 857 sq.ft of carpet, situate on 2nd floor of the new Building of Mohan Mahal Co-op. Housing Society, situated at Panchpakhadi, Near Vandana Talkies, L.B.S. Marg, Thane (W), to the plaintiff;
- b. the Defendant Nos.1 and 2 be restrained by a Decree and Order of a perpetual injunction from creating any type of third party interest in the suit flat or transferring the same to the Third Party in manner whatsoever;
- c. Ad interim injunction in terms of prayer clause (b) be granted in favour of plaintiff;
- d. any other relief that this Hon'ble Court deems fit and proper, be granted to the Plaintiff, in the facts and circumstances of this case.”

4 Petitioner preferred application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure for restraining the respondent defendants by an order of injunction by creating third party interest in the suit flat or transferring the same to the third party in the manner whatever till the disposal of the suit. Thereafter, the petitioner preferred application below Exhibit-14 on 22nd June 2010, directing the defendants to maintain status quo in respect of the suit premises till the written statement is filed. On Exhibit-14, the trial Court passed the

impugned order dated 22nd June 2010 directing parties to maintain status quo. Thereafter, the respondent defendants entered into development agreement dated 12th December 2011 for carrying out necessary repairs and remaining construction. Hence, the petitioner has filed the present Contempt Petition alleging that by entering into development agreement dated 12th December 2011, the respondent violated the status quo order dated 22nd June 2010 passed by the trial Court below Exhibit-14 and hence, they should be punished as per the provisions of Contempt of Courts Act.

5 Mr.Dilip Bodke, learned counsel for the petitioner submits that having full knowledge about the status quo order dated 22nd June 2010, the respondent Society entered into development agreement dated 12th December 2011 with M/s. Jijau Constructions – a partnership firm for carrying out development activities. He submits that executing the development agreement itself amounts to violation of status quo order passed by the trial Court dated 22nd June 2010. He submits that in spite of status quo order, respondent Society entered into a development agreement dated 12th December 2011, and hence, they are liable to be punished as per the provisions of Contempt of Courts Act. He submits that in another proceedings, respondents in respect of flat no.403 in Regular Civil Suit No. 383/10 made a statement that they are not going to transfer that flat to third person in future.

6 On the other hand, learned counsel appearing on behalf of the respondent nos.1 and 2 vehemently opposed the present petition. They filed their affidavit in reply dated 26th

February 2016. Learned Advocate for the respondent submits that the alternate remedies available to the petitioner as per Order 39 Rule 2A of Code of Civil Procedure, and hence Contempt Petition is not maintainable. He further submits that even the application for interim relief filed by the petitioner plaintiff below Exhibit-5 is pending for hearing and final disposal on its own merits. Therefore, the present Contempt Petition is required to be dismissed only on the ground that alternate efficacious remedy is available to the petitioner.

7 The learned counsel for the Respondent Nos.1 and 2 further submits that, respondent in paragraph no.8 of the reply stated that they have not created any third party right in respect of the suit flat i.e. Flat no.203. He submits that flat no.203 is intact as on today also. He submits that the Society has entered into development agreement dated 12th December 2011 to complete the incomplete work. That would not amount to violation of status quo order dated 12th December 2011. Hence, there is no substance in the present Contempt Petition and the same is to be dismissed with costs.

8 I have heard the parties at length in the present proceedings. Learned Advocate for the plaintiff filed a suit for Specific Performance in respect of flat no.203 admeasuring 857 sq.ft of carpet area situated on 2nd floor of the new building of Mohan Mahal Co-operative Housing Society situate at Panchpakhadi, near Vandana Talkies, LBS Marg, Thane (West). In that, the petitioner preferred application under Order 39 Rule 1 and 2 of Code of Civil Procedure on 29th April 2010 for an order

of injunction restraining the respondents from creating any third party right and interest in respect of the suit premises. As an application below Exhibit-5 was not decided immediately, the petitioner preferred application dated 22nd June 2010 below Exhibit-14 for directing parties to maintain status quo. In that application below Exhibit-14, trial Court passed impugned order dated 22nd June 2010.

9 It is to be noted that the respondent Society executed development agreement 12th December 2011. Following clauses are important to consider the present Contempt Petition.

“1a. On execution hereof the developer is ready to pay to the society an amount of Rs.5 lacs (Rupees Five lacs only) as a earnest money deposit which will be refunded only after obtaining occupation certificate from TMC and handing over possession to all members.

1b. The rent due by previous developer of the said property will be paid by present developer as and when the entire remaining work of the said property is completed.

1c. The remaining work of upper floors i.e. from 6th floor (part) and 7th to 9th floors the said liability towards rent is created by previous developer will be paid by the present Developer. The list of members entitled for rent is annexed herewith as Annexure “A”.

1d. It is agreed by an between the parties that some members occupying flats from 2nd to 4th floor they have completed incomplete work in their respective flats at their own cost and expenses. The amount spend by these members will be reimbursed by the developers on completion of remaining work. The list of members entitled for reimbursement is annexed herewith as Annexure "B".

4. The developer agrees to start remaining in-complete construction work up to 6th floor within a period of two months from the date of execution hereof, if the work is stayed by the Court or contempt authority or by act of God the period of time restriction of two months will not be applicable. On failure of this, the agreement will come to an end along with Power of Attorney granted to him and the society shall have a right to get it developed through any other developers as it deem fit and proper. In such an event, the developer hereby undertakes that he shall not raise any dispute for claim on that behalf."

10 The above referred clauses of the development agreement clearly shows that the Society appointed the developer to complete the incomplete work from 6th floor to 9th floor and some work on 2nd to 4th floor also. No where, it is stated in the redevelopment agreement that the Society handed over a

complete building including flat no.203 to the developer. Development agreement shows that respondent Society has not violated the impugned status quo order dated 22nd June 2010.

11 Apart from above mentioned facts, it is to be noted that there is alternate efficacious remedy available to the petitioner under Order 39 Rule 2A of the Code of Civil Procedure. When the alternate efficacious remedy is available, normally Court should not entertain the Contempt Petitions. On this ground also, Contempt Petition is required to be dismissed.

12 Apart from that, in the entire petition, nowhere the petitioner has made any averment to show that the Society has created third party right and interest in respect of the suit flat i.e. flat no.203 and/or the same was demolished by the developer as per development agreement dated 12th December 2011. On this ground also, the Contempt Petition requires to be dismissed. Hence, following order.

13 Contempt Petition stands dismissed.

14 Petitioner to pay costs of Rs.7,500/- to the respondent no.1 Society within four weeks from today.

(K.K. TATED, J)