

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.418 OF 2014
IN
APPEAL FROM ORDER NO.568 OF 2013

Anushka Arvind Nikam and Another ... Petitioners

vs.

Arvind Anandrao Nikam and Another ... Respondents

Mr. Pradeep Davli, for the Petitioners.

Mr. V.S. Gokhale, for the Respondents.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **18th JANUARY, 2016**

P.C.:

. The Petition is filed against the Respondents for committing breach of the order dated 19th August, 2013 passed in Appeal from Order No. 568 of 2013. Petitioner No. 1 is a minor daughter and Petitioner No. 2 is the mother.

2. The Petitioners have filed Special Civil Suit No. 177 of 2012 before the 2nd Joint Civil Judge Senior Division, Kolhapur for partition and separate possession of the suit premises i.e. Gat No. 169 and 172/1/B the R.C.C. structure land admeasuring 343.43 sq.mtrs (built up 115.12 sq.mtrs.) situated at village Pachgaon, Tal. Karveer,

Dist. Kolhapur, against Defendant No. 1 Arvind Anandrao Nikam who is the husband of Petitioner No. 2 and Defendant No. 2 Reema Sudhir Lagoo i.e. the present Contemnors. The suit property is owned by the father in law of Plaintiff No. 2. It is the contention of Petitioner No. 1 being a minor daughter, she has right in the said property. However, her father Arvind Nikam executed an agreement of sale in favour of Defendant No. 2 as there was dispute between the husband and wife. The sale deed was executed in favour of Defendant No. 2 with an intention to deprive-of Plaintiffs of their legal proprietary right in the suit property. An application (Exhibit 5) was taken up for hearing. At that time Defendant Nos. 1 and 2 i.e. the Contemnors filed a written statement. At the relevant time, the actual possession of the suit premises was with the Plaintiffs. However, the trial Court held that Defendant No. 2 has purchased the suit premises on the basis of a registered sale deed dated 9th February, 2012 for consideration of Rs. 20 lacs which was paid by Defendant No. 2. Thereafter, the application for injunction was rejected on 6th May, 2013. The said order was challenged in Appeal from Order No. 568 of 2013 by the Petitioners and while disposing of that Appeal from Order, this Court by its order dated 19th August, 2013 held as under:

“The suit property is family house in which they reside. Defendant No. 2 who is the purchaser of the property from the Defendant No. 1, through her advocate makes a statement that she shall not dispossess the Plaintiffs in the suit (applicants herein) without following due legal process. On this statement Appeal as well as application Exh- 5 stand disposed off.”

3. Thereafter, the Defendant filed an application under Section 24 of the Maharashtra Rent Act before the Competent Authority, Pune for possession of the suit premises against the Arvind Anandrao Nikam which was allowed and the opponent Arvind was directed to deliver vacant and peaceful possession of the disputed premises to the applicant by its order dated 31st August, 2013. Subsequent to that order, the execution proceeding was taken out vide order dated 16th April, 2014. The possession warrant was issued against the opponent husband and the vacant possession was handed over to Respondent No. 2. Thus, the Petitioners mother and the daughter were dispossessed from the suit premises. Hence, this contempt petition.

4. The learned counsel Mr. Dalvi for the Petitioners

submitted that the Contemnor has made statement before this Court that she would not dispossessed the Plaintiffs/Petitioners without following due legal process of law and the said statement was accepted by the Court and the matter was disposed of. He submitted that the Contemnor therefore filed an application under Section 24 of the Maharashtra Rent Act. At that time, the present Petitioners were not made party to the suit proceeding and therefore they could not point out anything in their defence. He submitted *prima facie* it is a breach committed by the Contemnor and hence the action should be taken under the Contempt of Court Act.

5. The learned counsel Mr. Gokhale for the Contemnor defended the Petition and submitted that the Contemnor has taken out a legal proceeding against the husband of the Petitioner No. 2 who was a licensee of the said premises. The Petitioners were dispossessed from the suit premises only after due process of law and hence this contempt.

6. Perused the application and the suit proceeding under Section 24 of the Maharashtra Rent Act, so also the impugned order.

7. The statement was made by the Contemnor before this Court that she shall not dispossess the Plaintiffs/Petitioners without following due legal process. The Contemnor has purchased the suit property under the registered sale deed. As per the submission of learned counsel for the Contemnor and perusal of the record, it appears that the husband has requested the Contemnor to allow him to stay in the said premises for some time and therefore she entered into the leave and licence agreement with the husband. Therefore, she has rightly taken out the proceeding under Section 24 of the Maharashtra Rent Act before the Competent Authority and it was allowed in her favour. Therefore the Contemnor took the possession warrant and under police protection vacate the possession of the suit premises. Thus, it shows that she has followed due process of law. I do not find any willful disobedience of the order committed by the Contemnor.

8. Hence, the Contempt Petition No. 418 of 2014 stands dismissed.

(MRS.MRIDULA BHATKAR, J.)