

TCI Telenet Solutions Private Limited ...Petitioner
Versus
 Millennium Motors Private Limited
 and others. ...Respondents

....
Mr.A.Y. Sakhare, Senior Advocate a/w. Mr. Ajay Panicker i/b.
Ajay Law Associates, for the Petitioner.
Mr. Dipak Digambar Naik, Respondent No.2 is present in person.

DATE : 07th SEPTEMBER, 2016

P.C.

1. Heard Mr. A.Y. Sakhare, learned Senior Counsel for the petitioner and Mr. Dipak Naik, respondent No.2 in person, at length.
2. This Contempt Petition is filed complaining breach of the order dated 28.2.2013 passed by this Court in Writ Petition No.7961/2010 as also for committing breach of the undertaking dated 26.3.2013 and in particular clause-4 thereof. Mr. Sakhare submitted that respondent No.2 has instituted Civil Suit No.1208/2006 for specific performance of contract. Pending the suit, application for interim relief was taken out. On 24.3.2008, learned trial Judge rejected the application. Aggrieved by that order, respondent No.2 preferred Appeal from Order in this Court. On 16.7.2008,

this Court granted ad-interim order. Taking advantage of the order of status quo passed by this Court, respondent No.2 committed trespass on 11.10.2008.

3. Mr. Sakhare has taken me through the order dated 19.12.2008 passed by this Court and in particular in Appeal from Order No.670/2008 and in particular paragraphs-6 and 7 thereof. He submitted that though this Court directed respondent No.2 to hand over possession of built up area of 2865 sq. ft. and parking area of about 9600 sq. ft., respondent No.2 did not hand over possession. The petitioner, therefore, filed execution proceedings. Respondent No.2 raised objection about maintainability of execution proceedings. By order dated 18.8.2010, the learned trial Judge disposed of the execution proceedings on the ground of maintainability. Aggrieved by that decision, the petitioner preferred Writ Petition No.7961/2010. This Court allowed the Writ Petition on 28.2.2013 in terms of prayer clause (a) of the Petition. The petitioners were permitted to execute the order dated 19.12.2008 passed by this Court in Appeal from Order No.678/2008 under police protection. Aggrieved by that decision, respondent No.2 preferred S.L.P. which was dismissed on 23.8.2013.

4. Mr. Sakhare has taken me through undertaking dated 26.3.2013 and in particular clause-4 thereof. In clause-4, respondent No.2 undertook to hand over vacant and peaceful possession of the suit premises in the event of his not obtaining suitable orders from the higher Court within a period of six weeks. Despite giving solemn undertaking, respondent No.2 did

not hand over possession. He has taken me through the bailiff's report dated 7.1.2014 and submitted that ultimately through police aid, the petitioners have obtained possession on 17.1.2014. He submitted that respondent No.2 has committed contempt of order dated 28.2.2013 passed by this Court in Writ Petition No.7961/2010 as also clause-4 of the undertaking dated 26.3.2013. He, therefore, deserves to be proceeded under the Contempt of Courts Act, 1971.

5. Respondent No.2 has invited my attention to the affidavit dated 27.7.2016 and in particular paragraphs-19 and 22 to contend that he was never in possession any additional area and thus there was no question of vacating the premises in terms of the order dated 26.2.2013. After arguing the petition for quite some time, respondent No.2 has tendered unconditional apology to this Court. Unconditional apology of respondent No.2 is accepted.

6. Having regard to the fact that the petitioner have obtained possession of the premises on 17.1.2014, through machinery of the Court, as also respondent No.2 has tendered unconditional apology, which I accepted, no case is made out for initiating proceedings under the Contempt of Courts Act, 1971. Petition is disposed of accordingly.

(R. G. KETKAR, J.)