

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Contempt Petition No. 360 OF 2015

Unmesh Kamdar

...Petitioner

Versus

The New India Cooperative Housing Society Ltd.

And Ors

...Respondents

*Mr.R.V.Govilkar, for the Petitioner.**None for the Respondents.*

CORAM : G.S. KULKARNI, J.**DATE : 24th August, 2016.**

PC.:-

1. Heard Mr.Govilkar, learned Counsel for the Petitioner. The Petitioner has filed this contempt petition alleging breach of the order dated 1 February 2013 passed by the learned Single Judge of this Court in Writ Petition No.4567 of 2007 and more particularly the following directions:-

“27. At this stage, Mr.Dani, learned Counsel for the Petitioner seeks stay of the impugned orders for a period of eight weeks from today. As a matter of fact, while this Court granted rule, leave aside there being an order of stay, the learned Single Judge who was exercising present jurisdiction at the relevant time, vide order

dated 3rd March,2008, had issued certain directions to the petitioner society directing to admit respondent No.2 as member subject to respondent No.2 complying with all formalities. No doubt, those directions have not been complied with for some or other reasons and, as such, I am not inclined to go into that aspect of the matter. In that view of the matter, I do not see any case is made out for stay of the impugned orders. The prayer is, thus, rejected.”

2. The grievance is that despite the directions, the Respondent – Society did not admit the Petitioner (original Respondent No.2) as a member and the said directions are not complied with. Perusal of the order clearly indicates that the Court while passing the above order, has noted that in the earlier order of the Court dated 3 March 2008, there was a direction to the Respondent Society to admit the Petitioner as a member subject to the Petitioner complying with all formalities. The order also notes that those directions were not complied by the Respondent Society. However noting this the learned Judge, the Court has refused to undertake any inquiry in that regard. If this be the position the Petitioner cannot now allege that those directions as contained in the order dated 3 March 2008 as extracted in the order in question, being not complied would amount to contempt. Even assuming that the issues have attained finality between the parties as urged by the Petitioner it is not a case that

the authorities under the Act became powerless to see that the orders of the Court which had attained finality are not given effect and/or executed.

3. Considering the nature of the directions as also after perusal of the correspondence, more particularly, letter dated 9 February 2015 issued by the Respondent-Society to the Petitioner, also reveals that there is an issue as regards the breach of the conditions of the lease. The Petitioner has also averred that the dispute between the parties is now pending before the Supreme Court in a Special Leave Petition.

4. In the circumstances, I am of the clear opinion that no case is made out for issuing of any notice in the Contempt Petition. The petition is devoid of merits and is accordingly rejected.

5. It is clarified that the above observations are made in the context of this contempt petition and is not an expression on the respective rights of the parties which have either attained finality or subject matter of any pending proceedings.

(G.S.KULKARNI, J.)