

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

CONTEMPT PETITION NO. 387 OF 2009

Malvika Mukesh Agarwal

..... Petitioner

Versus

Vijay Chiranjilal Agarwal (Lala)
and others

..... Respondents

Mr. Abhijit Kulkarni, for Petitioner in CP No.387/09.

Mr. Ram Apte, Senior Advocate, a/w Mr. Ganesh Murthy, i/by K. V. Aiyar & Associates, for Respondent Nos. 1, 8 to 10.

***CORAM : N. M. Jamdar J.
Thursday 7 July, 2016***

P. C.

1. Heard the learned Counsel for the parties. The contempt alleged is of the order passed in Civil Application No. 661 of 2009 dated 2 June, 2009 in Appeal from Order No. 548 of 2009.

2. The petitioner filed a Civil Suit No. 172 of 2007 in the Court of Civil Judge (Senior Division), Thane against the respondent nos. 1 to 10 challenging the Will produced by the respondent no. 1 of their late father and for partition and separate possession. By order dated 27 February, 2009, the learned Civil Judge (Senior Division), Thane allowed the application filed by the respondent no. 1 seeking permission to give on Leave and License of the suit property.

3. The petitioner challenged this order by way of Appeal from Order No. 548 of 2009. In this Appeal, the order came to be passed on 2 June, 2009, wherein this Court had granted ad interim order in terms of prayer clause (a) and expressed a prima facie opinion that a Receiver of the property needs to be appointed. While these proceedings were pending, the respondents entered into a back dated Leave and License Agreement so as to defeat the orders passed by this Court. Thereafter the Suit was decreed in favour of the petitioner and the First Appeal filed by the respondents is pending in this Court.

4. This Contempt Petition is adjourned from time to time. Various orders have been passed as regards directing the respondents to submit Accounts and Statements of the interest so created by the respondents in the suit property. By order dated 23 November, 2015, the statement of the learned Senior Advocate for the respondents that the respondents are ready to give share of the petitioner in the amount of Leave and License received by the respondents, was recorded. Thereafter the respondents moved for speaking to minutes to get a clarification that respondents are ready to deposit the amount in the Court. The learned Single Judge rejected the prayer for Speaking to Minutes.

5. Heard learned Counsel for the parties.

6. The account statement has been placed on record by the respondents. The amount received has been stated and the

expenses incurred have been stated. The learned Senior Advocate for the respondents submitted that as per the current Leave and License Agreement, the amount received by the respondents is Rs. 3,20,000/- (Rs. 1,60,000/- + Rs. 1,60,000/- for two premises i.e. Rs. 3,20,000/- in toto). The learned Senior Advocate for the respondents submitted that apart from the various Taxes, there are other various expenses, such as water charges, miscellaneous expenses, daily cleaning, brokerage, legal fees, supervision charges which are incurred. The learned Counsel for the petitioner objects to the charges which has stated to be incurred by the respondents. The learned Counsel for the petitioner states that as regard the Property Taxes are concerned, he has no objection, if these property Taxes are deducted before determining the 1/3 share of the petitioner.

7. The learned Senior Advocate for the respondents, on instruction, states that the amount of Rs. 70,000/- would be towards the statutory deductions. He submits that the 1/3 of the remaining amount would be Rs. 83,333/-. The learned Counsel for the petitioner is agreeable of this position. Therefore, by consent this argument can continue in the First Appeal No. 1205/11. If the present Leave and License comes to an end and fresh Leave and License is execute, the learned Senior Advocate for the respondent on instruction states that the new material will be placed on record in the First Appeal, wherein the same arrangement of the petitioner

receiving 1/3 share of the total amount, received minus the property taxes would be continued.

8. The learned Senior Advocate for the respondent on instruction also submits that the amount, that will so paid, will not be subject to final outcome of the amount that is pending wherein the rights of the parties as regard the property would be considered. The statement mean that even if the petitioner fails in the First Appeal to deposit the amount, will not be asked for bad. In view of this statement that irrespective of the outcome of the First Appeal, the respondents will pay 1/3 of the amount of Leave and License Fee received, minus the property taxes and that parties are closely related, I am not inclined to take the Contempt Petition any further.

9. The learned Counsel for the petitioner also states that since the amount will be received by the petitioner per month as above, the petitioner is also not interested in prosecuting the Contempt Petition further.

10. The learned Counsel for the respondents on instruction states that the payment of 1/3 amount of the share of the petitioner would commence from July, 2016 and the arrears would be cleared till 31 December, 2016. The statement on instructions are accepted.

11. All the statements made are accepted. The Contempt petition is accordingly disposed of.

(N. M. Jamdar, J.)