

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

**WRIT PETITION NO. 8781 OF 2014
AND
WRIT PETITION NO. 8782 OF 2014**

Smt. Kesarben Awachar Shah,
since deceased, Shri Khetshi
Awachar Singh and Anr

..Petitioners.

Vs

Mrs Meena Vijay Shirsat and Ors

.. Respondents

Mr. Sanjeev R. Singh, Advocate for Petitioners.
Mr. Bhavin Gada and Mr. Vasim Shaikh i/b M/s Pravin Mehta and
Mithi & Co, Advocates for Respondents.

**CORAM : R.G.KETKAR,J.
DATE : 15/07/2016**

PC:

1. Heard Mr. Sanjeev Singh, learned counsel for the petitioners and Mr. Bhavin Gada, learned counsel for the respondents in both petitions at length.
2. Writ Petition No. 8782 of 2014 takes exception to the judgment and order dated 28.3.2014 passed by the learned Judge presiding over Court Room no. 38 of the Court of Small Causes at Mumbai below Exh.99 in R.A.E. Suit no.435/1305 of 1992 as also the Judgment and order dated 17.7.2014 passed by the Appellate Court in Revision No.98 of 2014. By order dated 28.3.2014, the learned trial Judge directed the plaintiffs to lead evidence to prove their contentions in the contempt notice. The

learned trial Judge also gave liberty to the defendants to lead evidence, if any. Aggrieved by this order, defendants no. 1(a) to 1(c) preferred Revision Application No.98 of 2014 which was dismissed on 17.7.2014 by the Appellate Court on the ground of maintainability.

3. Writ Petition No. 8781 of 2014 takes exception to the judgment and order dated 28.3.2014 passed by the learned Judge presiding over Court Room no. 38 of the Court of Small Causes at Mumbai below Exh.101 in R.A.E. Suit No.435/1305 of 1992 as also the Judgment and order dated 17.7.2014 passed by the Appellate Court in Revision No. 97 of 2014. By order dated 28.3.2014, the learned trial Judge allowed the application made by the plaintiffs for taking photographs on record subject to its admissibility in evidence adduced by the plaintiffs in contempt petition. Aggrieved by that decision, defendants no. 1(a) to 1(c) preferred Revision Application no.97 of 2014 which was dismissed on 17.7.2014 by the Appellate Court on the ground of maintainability.

4. In support of these petitions, Mr. Singh strenuously contended that the contempt petition was argued and was kept for passing orders on 29.1.2014. As the Court was vacant on 29.1.2014 the matter was adjourned to 6.2.2014. It is at that stage the plaintiffs made application Exh.99 for adducing

evidence. The plaintiffs also filed application Exhibit 101 for taking more photographs on record. He submitted that once the recording of evidence was over and matter was kept for orders, it was not open to the plaintiffs to file applications Exhibits 99 and 101 for adducing further evidence. The learned trial Judge was, therefore, not justified in allowing the applications. He relied upon the decision of Bharat Amartlal Kothari Vs. Dosukhan Samadkhan Sindhi, AIR 2010 SC 475, and in particular paragraphs 14 and 15 to contend that the Court cannot grant relief which is not prayed for by the plaintiffs. In the instant case, the plaintiffs did not pray for reliefs which are sought to be claimed in Exhibits 99 and 101 and, therefore, the impugned orders are liable to be set aside and the applications Exhibit 99 and Exhibit 101 deserve to be dismissed.

5. On the other hand, Mr. Gada supported the impugned orders and submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. In the present case, the plaintiff have taken out contempt notice against defendants 1(b) and 1(c) for violating order of injunction dated 26.8.2013. The defendants have filed reply Exhibit 100 opposing the said application. By

order dated 26.8.2013 the defendants were restrained from carrying out any further additions and alterations of permanent nature in the suit premises. The plaintiffs alleged that the defendants have illegally and unauthorizedly carried out additions and alterations and, therefore, action for initiating contempt proceedings deserves to be taken.

7. The plaintiffs took out application Exh.99 for adducing evidence. The learned trial Judge while allowing the application observed that for deciding the application, the evidence is required to be recorded. Without recording evidence, the contempt notice cannot be decided on merits. The burden lies on the plaintiffs to establish the contentions raised in the notice. The learned trial Judge while allowing the application, passed following directions

1. The plaintiffs to lead the evidence to prove their contentions in this contempt notice.
2. The defendants are at liberty to adduce their evidence, if any.
3. Keep the matter for adducing evidence on this contempt notice.

Perusal of the aforesaid directions shows that the learned trial judge gave liberty to both the plaintiffs as well as defendants to adduce evidence.

8. Mr. Singh submitted that the matter was kept for orders

and at that stage it was not open to the plaintiffs to file applications. I do not find any merit in this submission for the reasons already recorded herein above as also for the reasons recorded by the learned trial Judge in paragraph 4 of the impugned order. The learned trial Judge has permitted both the parties to adduce evidence. Hence, no case is made out for invocation of powers in Writ Petition No.8782 of 2014 and Petition fails and the same is dismissed.

9. As for as Writ Petition No.8781 of 2014 is concerned, the learned trial Judge allowed the application Exhibit-101 and photographs annexed with the application were taken on record subject to its admissibility in evidence adduced by the plaintiffs in contempt notice. I have already upheld the orders passed by the Courts below on Exhibit 99 permitting the plaintiffs as well as the defendants to adduce evidence in this regard. Though the photographs are taken on record, they are subject to admissibility of evidence adduced by the plaintiffs. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned orders. Hence, no case is made out for invocation of powers in Writ Petition no.8781 of 2014. Both Petitions fail and the same are dismissed.

(R.G.KETKAR, J.)