

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.39 OF 2014

Harjindar Singh Giansingh Nagi

.. Petitioner

vs.

Triveniprasad Varma and Others

.. Respondents

Mrs.Batibha Shelke i/b Mr.P.J.Thorat for the petitioner

Mr.Milind Gyani for the respondent nos.1 to 4

CORAM : K. K. TATED, J.
DATE : APRIL 25, 2016

P.C.:

1 Heard the learned counsel for the parties.

2 This petition is preferred by original plaintiff landlord alleging that the respondent tenant violated the order dated 9.5.2013 passed by this court in Civil Application No.195 of 2013 in Civil Revision Application No.16 of 2012.

3 In the present proceeding, petitioner plaintiff filed R.A.E.Suit No.3077 of 1986 in the court of Small Causes at Mumbai for obtaining possession of the suit premises i.e. Room No.14, 2nd floor of the

building bearing No.2/12, situate at Dadyseth Agiari Lane, Kalbadevi Road, Mumbai 400 002 on the ground of unlawfully sub-letting, arrears of rent and carrying out permanent additions and alterations. The suit filed by the plaintiff was dismissed by judgment and decree dated 23.9.1999 passed by learned Judge, Small Causes Court at Bombay. Thereafter the plaintiff preferred Appeal No.365 of 2000 before the appellate bench of Small Causes Court. That appeal was also dismissed by the appellate bench of Small Causes Court by judgment and decree dated 23.8.2011.

4 Being aggrieved by the order passed by the appellate bench of Small Causes Court the plaintiff preferred Civil Revision Application No.16 of 2012. In that Revision Application, the plaintiff preferred Civil Application No.195 of 2013 restraining the defendant from creating any third party right, title and interest in respect of the suit premises. Prayer Clause (b) of the said Civil Revision Application reads thus:

“b. That by an Order of this Hon'ble Court the hearing of the Civil Revision Application No.16 of 2012 may kindly be expedited and the same may be heard peremptorily.”

5 That Civil Application was allowed by this court. In that Civil Application this court granted ad-interim relief in terms of prayer clause (a) on 9.5.2013 and subsequently that Civil Application was allowed by this court by order dated 10.1.2014. The plaintiff communicated order to the respondent by their letter dated 9.5.2013.

Plaintiff tried to serve the letter dated 9.5.2013 by hand delivery and thereafter the same was forwarded by registered A/D post on 11.5.2013. It is the case of the petitioner that the respondent created third party right, title and interest in respect of the suit premises by allowing third party to start Dhanvantri Clinic. Hence, the present Contempt Petition.

6 The learned counsel for the petitioner submits that though ad-interim relief passed by this court restraining the defendant from creating any third party right, title and interest in respect of the suit premises, the respondent allowed third party to start Dhanvantri Clinic. She submits that the respondent allowed third party to start the said clinic on 13.5.2013. She submits that in support of this contention, the learned counsel for the petitioner relies on paragraph 10 of the Contempt Petition as well as photographs on page 26. She submits that in this way the respondent violated the order passed by this court on 9.5.2013 in Civil Application No.195 of 2013 and therefore, the action be taken against them under the Contempt of Courts Act.

7 On the other hand, the learned counsel for the respondent vehemently opposed the present Contempt Petition. The respondent filed their Affidavit-in-Reply dated 7.10.2014. The respondent denied the contentions made by the petitioner about creating any third party right, title and interest. The learned counsel for the respondent submits that even the suit filed by the plaintiff before the Small Causes Court for eviction of tenant was on the ground of sub-letting. He submits that the respondent defendant have not created any third party

right, title and interest in respect of the suit premises. He submits that grand daughter and grand daughter-in-law of the original tenant is conducting clinic in the suit premises since 2009. He submits that name of the original tenant was Dhanvantri. He submits that when the Civil Application No.195 of 2013 was on board for final hearing on 10.1.2014 that time they made specific statement in their Affidavit-in-Reply particularly in paragraph 4 that they do not want to create any third party right, title and interest in respect of the suit premises. That statement was accepted by this court and passed final order in Civil Application on 10.1.2014. Paragraph 3 and 4 of the said order reads thus:

“3. Mr.Gyani invited my attention to the affidavit made on behalf of respondent No.1a to 1d and particular in paragraph 4. In paragraph 4 it is stated that respondent Nos.1a to 1d did not intend to create third party rights in suit premises or any part thereof nor they intend to part with possession thereof.

4. Mr.Gyani reiterates the said statement. The said statement is accepted as an undertaking.”

8 The learned counsel for the respondent submits that today also they are making statement to this court that they have not created any third party right, title and interest in respect of the suit premises till the hearing and final disposal of Civil Revision Application No.16 of 2012. Hence, there is no substance in the present Contempt Petition and same be dismissed with costs.

9 I have heard both the sides at length. It is to be noted that in the

present proceeding ad-interim relief was granted by this court on 9.5.2013. The same was served on the respondent on or about 15.5.2013 by registered post A/D. The respondent in their Affidavit-in-Reply specifically stated that Dhanvantri Clinic is run by grand daughter and grand daughter-in-law of the original tenant since 2009. He submits that those facts were disclosed by them in their affidavit in reply to Civil Application No.195 of 2013 also. When the matter was for final hearing, that time also they made a statement to that effect. This itself shows that inspite of knowing the fact that respondents are running Dhanvantri clinic in the suit premises since 2009, the petitioner filed the present Contempt Petition just to bring pressure on the other side.

10 Hence, I do not find any substance in the present petition and same stands dismissed with cost of Rs.2500/-.

JUDGE