

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

**SUO MOTU CONTEMPT PETITION NO.416 OF 2013
IN
CIVIL REVISION APPLICATION NO.686 OF 2013**

**High Court on its own motion : Petitioner.
Versus
Ramesh Sahadu Bhagwat : Respondent.**

Ms. Manjiri S Parasnis for the Respondent.

**CORAM : R. M. SAVANT, J.
DATE : 04th January 2016**

P.C.

1 The cause for issuing suo motu notice for contempt was the non-compliance of the order dated 13/07/2011 passed in the Civil Revision Application No.572 of 2010 by which order the Civil Revision Application was dismissed by a learned single Judge of this Court (J.H.Bhatia, J), however, on the request of the Revision Applicant i.e. the Respondent herein, 6 months time was granted to vacate the suit premises on the usual undertaking being filed by the Revision Applicant in this Court. In terms of the said order, the Revision Applicant filed an undertaking which was sworn on 22/07/2011. In clause (3) of the said undertaking the Revision Applicant has undertaken to pay all arrears if any and has also undertaken not to create any third party interest in the suit premises and has also undertaken to vacate the suit premises after the expiry of six months. The said order dated 13/07/2011 passed in the Civil Revision Application No.572 of 2010 was carried to the Apex Court by way of a

SLP being No.30570 of 2011. The said SLP came to be dismissed by the Apex Court by order dated 21/11/2011, however, the Apex Court granted time up to 31/03/2012 to vacate the premises on the condition that the Applicant shall file necessary affidavit and undertaking before the Apex Court. The Applicant has accordingly filed the undertaking before the Apex Court by way of an affidavit which was sworn on 28/11/2011. Hence in terms of the order passed by the Apex Court, time to vacate the suit premises was extended up to 31/03/2012.

2 It seems that the son of the Applicant one Hemant Ramesh Bhagwat had filed an application under Order XXI Rule 97 of the Code of Civil Procedure obstructing the execution of the decree which was passed in favour of the Plaintiffs/landlords. The said application came to be rejected by the Trial Court by the judgment and order dated 30/10/2012. The son of the Applicant thereafter filed an Appeal being Appeal No.530 of 2012 against the said order dated 30/10/2012 which Appeal came to be dismissed by the learned District Judge-6, Nashik by the order dated 14/06/2013. It is against the said two orders that the son of the Applicant has filed the above Civil Revision Application No.686 of 2013.

3 The learned Single Judge (R.G.Ketkar,J) who was hearing the said Civil Revision Application No.686 of 2013 has adverted to the dismissal of the

Civil Revision Application No.572 of 2010 filed by the Applicant and the undertaking filed by the Applicant pursuant to the order dated 13/07/2011 passed by the learned Single Judge of this Court (J.H.Bhatia, J) dismissing the said Civil Revision Application, However, the learned Single Judge found fault with the undertaking furnished by the Applicant on the ground that the Applicant has not mentioned in the said undertaking that he alone is in possession of the suit premises and none-else. The learned Single Judge found the same to be in violation of the order dated 13/07/2011 for the reason that the son of the Applicant had filed an application under Order XXI Rule 97 of the Code of Civil Procedure obstructing the execution of the decree.

4 It is required to be noted that the learned Single Judge (R.G.Ketkar, J.) has dismissed the above Civil Revision Application No.686 of 2013 by confirming the order dated 30/10/2012 and 14/06/2013 passed by the Trial Court as well as the Appellate Court on the ground that the premises claimed by the son of the Applicant are different than the suit premises and therefore no enquiry was required to be conducted in respect of the said application filed by the son of the Applicant under Order XXI Rule 97 of the Code. Hence though the undertaking filed by the Applicant pursuant to the order dated 13/07/2011 *sticto senso* does not meet the requirements of the usual undertaking in view of the fact that the statement to the effect that he alone is in possession of the premises and no one else is absent. However, it

would have to be borne in mind that the Applicant has filed the undertaking as drafted by his advocate who was appearing for him at the relevant time. In view of the fact that the application filed by the son of the Applicant under Order XXI Rule 97 of the Code and the Appeal filed thereafter being dismissed by the concerned Courts on the ground that the premises claimed by the son are different than the suit premises, there is now no warrant to proceed against the Applicant in the contempt jurisdiction. It is also required to be noted that the Applicant i.e. the Judgment Debtor has filed an Application dated 31/03/2012 in the Executing Court that though the premises are vacant, the decree holder has not come forward to take possession. The suo motu notice issued by this Court is accordingly required to be discharged and the contempt proceedings are accordingly dropped. The above Contempt Petition No.416 of 2013 to accordingly stand disposed of.

[R.M.SAVANT, J]