

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

**CONTEMPT PETITION NO. 550 OF 2013
IN
B.C.C.C.S.C. SUIT NO. 6446 OF 2008**

M/s. Magnum Builders

...Petitioner

vs.

M/s. Valecha Engineer Ltd. & ors.

...Respondents

Mr. S. K. Dubey, Advocate for the petitioner.

Mr. Niranjana D. Lapshi i/by Niranjana & Co., Advocate for respondents no.2 and 4.

Mr. Dilip Bodake, Advocate for respondents no.3 and 5.

Coram : Smt. R. P. SondurBaldota, J.

Date : 15th July, 2016

P.C. :

1. This petition seeks action for contempt under Order XXXIX Rule 2A CPC and under provision of Contempt of the Court Act, 1971 against the respondents for breach of the order dated 15th December, 2012 passed by the Bombay City Civil Court at Bombay in SC Suit No. 5446 of 2006.

2. The petitioner claims to be the owner of the property at plot no.1 admeasuring 2347 sq. mts. situate at Sewree-Wadala Station, Sewree, Mumbai. It had entered into agreement dated 18th April, 1994 with respondent no.1 for development of the same. Respondent no.1 in turn entered into agreement with

respondent no.2, which further entered into agreement with respondent no.3 for development of the property. The petitioner alleged that the further agreements executed by respondent nos.1 and 2 were by ignoring the petitioner and hence illegal. Therefore the petitioner had filed SC Suit No. 5446 of 2006 against the respondents for various reliefs. By the judgment and decree dated 15th December, 2012 the suit was partly decreed and respondents no.1 to 3 are perpetually restrained from entering into any agreement or create any third party interest in respect of the suit property. They are further permanently restrained from carrying on any construction on the suit property. The petitioner alleges that respondents no.1 to 3 and respondent no.4 the Proprietor of respondent no.2 and respondent 5 the Director of respondent no.3 have continued with the construction activities at the site and thereby committed breach of the judgment and order dated 15th December, 2012.

3. The petition as filed neither specifies the extent of the work of construction as on the date of the decree i.e. 15th December, 2012 nor that carried on as on today. It does not specify which of the respondents is carrying out the construction. Since it is the petitioner's case, in the plaint as well as in the present petition that respondent no.1 had entered into the development agreement with respondent no.2 for the purpose of developing the property in question and respondent no.2 had in turn entered into similar agreement with respondent no.3, it was necessary for the petitioner to specify as to which of the respondents is actually continuing with the work of the construction at site. It is not the allegation of the petitioner that

all the respondents are jointly carrying on the work of construction. Thus the allegation in the petition is seen to be absolutely vague. The contempt proceedings being quasi criminal proceedings, no action for contempt can lie on vague charges. On this ground alone the petition is liable to be dismissed.

4. Respondents no.2 and 3 in their turn point out that respondent no.2 has filed an appeal against the judgment and decree dated 15th December, 2012 being First Appeal No. 311 of 2013, which is admitted and pending for hearing. The petitioner herein is respondent no.1 to that appeal. On 30th April, 2013 the petitioner made a statement that petitioner will not take any step for execution of the decree. This fact is not disclosed in the contempt petition. It is also contended by respondent no.2 and 4 that the petition as filed is not maintainable since the petitioner is not a partnership firm since the year 2006. As such, the petitioner as described is a non-existing entity. Respondents no.3 and 5 further contend that respondent no.3 is no-more in existence as the name of respondent no.3 stands changed to Goshar Venture Pvt. Ltd. These facts as regards the identity of the petitioner and respondent no.3 have been disclosed in the affidavit-in-reply filed by respondents no.2 to 4. Despite the disclosure the petitioner has not taken any steps to correct the description of the petitioner and respondent no.3. For this reason also the contempt petition is liable to be dismissed. Hence the contempt petition is dismissed.

[Smt. R. P. SondurBaldota, J.]