

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL CONTEMPT PETITION NO.12 OF 2012**

Locosoft Solutions Pvt. Ltd. and Anr. ... Petitioners
 Vs.
 Samadhan Dhanedhar and Ors. ... Respondents

...
 Ms. Prachi Khandge i/by M/s. M.P. Vashi & Associates for the Petitioners.
 Mr. Abad H.H. Ponda with Parvez Memon and Mr. Waseem Pangarkar i/by
 MZM Legal for the Respondent Nos. 4 and 5.
 Dr. F.R. Shaikh, APP for the Respondent – State.

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CORAM : A.S.OKA &

A.A. SAYED, JJ.

DATED : 21 SEPTEMBER 2016

P.C.:

Heard the learned Counsel appearing for the Petitioners and the learned Counsel appearing for the alleged Contemnors. The contempt as alleged in the Petition is based on the order dated 7 September 2011 in Criminal Revision Application No.1674 of 2009 filed by the present Petitioners. The said Criminal Revision Application was filed by the present Petitioners being aggrieved by the order dated 3 December 2009 passed by the learned Metropolitan Magistrate, Andheri in a proceeding under section 145 of the Code of Criminal Procedure, 1973 initiated at the instance of the first Respondent in the said Criminal Revision Application. By the judgment and order dated 7 September 2011, the Revision

Application was allowed by the learned Additional Sessions Judge by setting aside the order dated 3 December 2009 and directed that the seal applied by the Police Officer to the property subject matter of the Revision Application, will be maintained till the order of the competent civil Court.

2. Essentially, the contempt is alleged against the fourth and fifth Respondents (alleged Contemnors). The allegation is that for defeating the order of the Sessions Court, the premises subject matter of the said order was demolished by the said Respondents.

3. Our attention is invited to the order dated 10 August 2012 passed by the learned single Judge of this Court in Writ Petition No.3237 of 2011 filed by the first Respondent in the said Criminal Revision Application filed for challenging the order dated 7 September 2011. The said order takes a note of the demolition of the premises. But however, it is observed that subsequent demolition will not dilute fruits of the order passed by the Additional Sessions Judge. In the Affidavit-in-Reply filed by the fourth and fifth Respondents, though a stand is taken that before the order dated 7 September 2011 was passed, the premises was demolished, the precise date of demolition is not specifically mentioned in the Affidavit. However, our attention is invited to the order passed by the Court of Small Causes in

R.A.D.Suit No.1218 of 2009, admittedly filed by the present Petitioners, in respect of the premises/building subject matter of the aforesaid Criminal Revision Application. In the said order dated 8 August 2011, the learned Judge in Court Room No.12 of the Court of Small Causes has specifically recorded the concession made by the Counsel appearing for the present Petitioners (Plaintiffs in the said suit) that the building in question has been demolished in its entirety. Today, the learned Counsel appearing for the Petitioners, on instructions, states that such statement was made by the advocate for the Petitioners. Thus, at least as on 8 August 2011, the premises the subject matter of the Criminal Revision Application No.1674 of 2009 was not in existence. The contention of the learned Counsel appearing for the Petitioners is that the said statement was made when the representative of the Petitioners was not present. However, for last more than five years, the Petitioners have neither challenged the said order dated 8 August 2011 nor have applied for the clarification thereof.

4. The question is whether this Court should initiate action under the Contempt of Court Act, 1971 against the fourth and fifth Respondents. In this Contempt Petition, it is not necessary for us to go into the contentious issues between the parties as regards the rights in respect of the premises subject matter of this Petition. Suffice to say that in the light of the

statement of the advocate for the Petitioners recorded by the learned Judge of the Court of Small Causes in the order dated 8 August 2011, it cannot be said that the fourth and fifth Respondents have committed willful breach of the order dated 7 September 2011 passed in the Criminal Revision Application or that they have committed a criminal contempt by demolishing the premises after 7 September 2011.

5. Hence, no case is made out to initiate proceedings under the Contempt of Court Act, 1971. We may make it clear that we have made no adjudication on any of the contentious issue between the parties in respect of the subject premises.

6. The Contempt Petition is accordingly disposed of.

(A.A. SAYED, J.)

(A.S.OKA, J.)