

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CRIMINAL CONTEMPT PETITION NO.1 OF 2014
IN
NOTICE OF MOTION NO.138 OF 2012
IN
TESTAMENTARY SUIT NO.29 OF 2012

Shernaz Faroukh Lawyer and Anr. Petitioners

V/s

Manek Dara Sukhadwalla & Anr. Respondents

Mr. Iqbal Chhagla, Senior Counsel a/w Mr. F.E. Devitre, Senior Counsel and Mr. Rahul Navichandra, Senior Counsel and Mr. Naval Agarwal and Ms. Taruna Nagpal and Mr. P.A. Kabadi i/b M/s Doijode Associates for the Petitioners.

Mr. M.K. Tanna i/b M/s. Duttmenon and Dunmorrsett for the Respondent No.1.

Mr. Amit Shastri, AGP for the Respondent No.2/State.

CORAM : A.S. OKA &

A.A. SAYED, JJ.

DATED : 08 AUGUST 2016

ORDER:

1 The submissions of the learned Counsel appearing for the parties were heard from time to time. The action under the Contempt of Courts Act, 1971 for committing criminal contempt was sought against the first Respondent. The action was sought on the basis of the order dated 21 June 2012 passed by the learned Single Judge of this Court on a Notice of Motion No.138 of 2012 in Testamentary Suit No.29 of 2012. The present Petitioners are the Plaintiffs in the said suit and the first

Respondent is the first Defendant in the said Suit. By the said order, ad-interim relief was granted in terms of prayer clauses (b) and (c) except the bracketed portions. By the said order, the first Respondent was restrained from making any representation to any person on the basis and/or from acting upon in furtherance of alleged Will dated 8 September 2011 of Late Purvez Burjor Dalal (for short 'deceased'). The attention of the Court is invited by the Petitioners to the conduct of the first Respondent in the proceedings of Suit No.2763 of 2008. It is pointed out that by suppressing the aforesaid order of the injunction, the first Respondent got himself impleaded in Suit No.2763 of 2008 on the footing that he is the executor of the Will dated 8 September 2011.

2 It will be necessary to make a reference to the orders passed from time to time by this Court. On 28 April 2016 the learned Counsel appearing for the first Respondent stated that he will file necessary Application before the learned Single Judge for recall of the order dated 15 February 2013 passed in Chamber Summons No.405 of 2012 in Suit No.2763 of 2008 by inviting attention of the learned Single Judge to the fact that when Affidavit-in-Reply was filed by the first Respondent/ Contemnor to the said Chamber Summons, he did not disclose the aforesaid order in the Affidavit-in-Reply. Though the Notice of Motion (L) No.1509 of 2016 was taken out by the first Respondent Contemnor, he

did not move the same before the concerned Court. This fact is noted in order dated 1 July 2016.

3 The further Affidavits filed on record disclose that the Notice of Motion was moved before the learned Single Judge in Suit No.2763 of 2008 and the order impleading the first Respondent/Contemnor was recalled. The attention of the Court was invited to the order dated 15 July 2016 passed by the learned Single Judge in Suit No.2763 of 2008. There is an Affidavit-in- Reply filed by the first Respondent/Contemnor dated 20 July 2016 in which he has tendered unquantified apology for any act or omission on his part he had unknowingly obstructed the administration of justice. The first Respondent/Contemnor deposited a sum of Rs.50,000/- with Maharashtra State Legal Services Authority.

4 Thereafter, when this Petition came up before this Court it was pointed out the manner in which the first Respondent/Contemnor filed Affidavits in Civil Contempt. The said Affidavits show that apart from justifying his conduct, the first Respondent/Contemnor violated the orders passed by this Court. After all this was pointed out, on the last date i.e. 5 August 2016 the first Respondent/Contemnor filed an Affidavit. Paragraphs 2 to 4 of the said Affidavit read thus:

“2 At the outset, I tender my unqualified apology for any act or omission on my part which may have interfered with or obstructed the administration of justice. I Humbly say and

submit that I have the highest regard for this Hon'ble Court and the orders passed by this Hon'ble Court. I have never deliberately or wilfully committed any act or omitted to do any act which may result in violation of any order passed by this Hon'ble Court. I Humbly and sincerely pray for forgiveness if any unintentional or inadvertent act or omission on my part has resulted in violation of the orders dated 21st June 2012 and 24th December 2013.

3 *I Humbly say and submit that there has been an unintentional, inadvertent and bonafide error on my part in not bringing the order dated 21st June 2012 in Notice of Motion 138 of 2012 to the knowledge of this Hon'ble Court in Chamber Summons No.405 of 2012 in Suit No.2763 of 2008 and I do not offer any justification for the same. I further undertake not to offer any justification for this omission and mistake on my part in any proceedings.*

4 *I again tender my unconditional apology if any inadvertent and unintentional act or omission on my part has resulted in interference with the administration of justice.”*

5 The present Contempt Petition is already admitted for final hearing. The conduct of the first Respondent/Contemnor of not bringing the notice of the concerned Court the order dated 21 June 2012 certainly amounts to interference in the administrative of justice. Though belatedly, the first Respondent/Contemnor took a step towards purging the Contempt by applying for the recall of the order by which he was impleaded in the capacity of the executor under the alleged Will

dated 8 September 2011. Though the subsequent conduct of filing Affidavits in the other proceedings including in the Civil Contempt was not bonafide, on 5 August 2016 the first Respondent/Contemnor has tendered unquantified and unconditional apology. Apart from the apology, the first Respondent/Contemnor has given undertaking not to offer any justification for omission and mistake on his part. We accept the apology and the understanding.

6 It is only in view of the act of the first Respondent/Contemnor of purging the contempt and the apology tendered in the Affidavit dated 5 August 2016 that we are inclined to drop the proceedings against the first Respondent/Contemnor. Moreover, he has paid a sum of Rs.50,000/- to the Maharashtra State Legal Services Authority by way of donation.

7 Accordingly, we dispose of the Contempt Petition by passing following order:

- i) The unconditional apology tendered by the first Respondent/Contemnor is accepted. The undertakings in his Affidavit dated 5 August 2016 are accepted.
- ii) Subject to what is observed above, the contempt notice issued to the first Respondent/Contemnor is discharged. The Petition is disposed of.

(A.A. SAYED, J.)

(A.S. OKA, J.)