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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CRIMINAL CONTEMPT PETITION NO.2 OF 2013
IN
SUIT NO.856 OF 1988**

Mr. Cletus Gonsalves	... Petitioner
Versus	
Mrs. Audrey alias Hina Khan and Ors.	... Respondents

Mr. Cletus Gonsalves Petitioner in person.
Mr. R.D. Soni a/w Mr. Gajendra C. Singh for the Respondent No.1.
Mr. U.S. Upadhyay, AGP for the Respondent No.5 – State.
Mrs. Bhaidkar, Assistant Court Receiver, B Present.

**CORAM : A.S. OKA &
P. D. NAIK, JJ.**

DATE : 18th APRIL, 2016

PC.

1 Heard the Petitioner appearing in person and the learned counsel appearing for the third and fourth Respondents who are the contemnors. Notice was issued on 19th December, 2013 to the contemnors.

2 It is pointed out in the contempt petition that though the property subject matter of the suit was custodia legis, the third and fourth Respondents acting as Secretary and the Chairman of the Gabriel Apartment Co-operative Housing Society Limited made an application before the District Deputy Registrar, Co-operative Society Limited

seeking deemed conveyance on the basis of the provisions of Section 5(A), 11(3), 11(4) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short “the said Act of 1963”) and the Rules framed thereunder.

3 The Petitioner along with others filed a Suit No.856 of 1988 in which the Court Receiver, High Court, Bombay was appointed as the Receiver of the suit property. Accordingly, the Court Receiver took possession of the suit property on 12th October, 1988. Consent preliminary decree for partition was passed in the suit. The aforesaid society took out Notice of Motion No.3407 of 2003 in the suit for discharge of the Court Receiver and for directing the Court Receiver to execute a conveyance of the suit property in favour of the said Society. On 2nd March, 2006, the learned Single Judge passed an order discharging the Court Receiver against which an appeal was preferred by the Petitioner. By order dated 1st April, 2010, a Division Bench of this Court proceeded to set aside the order dated 2nd March, 2006. Notice of Motion No.3407 of 2003 was remanded to the learned Single Judge for fresh consideration.

4 The said Notice of Motion No.3407 of 2003 was allowed to be withdrawn with liberty to file a fresh Notice of Motion. Accordingly, Notice of Motion No.2905 of 2010 was filed by the said Society for discharge of the Court Receiver. The said Notice of Motion was dismissed on 19th January, 2011.

5 On 20th December, 2012, the Advocate for the said Society issued notice for deemed conveyance in respect of the suit property. The Petitioner replied to the said notice on 27th December, 2012 by warning the society and its office bearers that an action for contempt of Court will be initiated by the Petitioner if an application for deemed conveyance is filed. Nevertheless the second to fourth Respondents thereafter filed application No.50 of 2013 before the District Deputy Registrar, Co-operative Societies for passing an order of deemed conveyance under the provisions of the said Act of 1963. Ultimately, the District Deputy Registrar dismissed the application for deemed conveyance. However, liberty was granted to the society to make the Court Receiver as party Respondent after obtaining prior permission of this Court.

6 The Petitioner appearing in person submits that before filing of the application, the Petitioner had made the Society and its office bearers aware of the fact that the property was custodia legis. He

submitted that even during the pendency of the application made before the District Deputy Registrar, the Petitioner made the contemnors aware of the fact that they are committing contempt by filing such application. He submitted that the contemnors relied upon the letter issued by the office of the Court Receiver on the basis of the order dated 2nd March, 2006 passed by the learned Single Judge which was set aside in the appeal to the knowledge of the contemnors by the order dated 1st April, 2010. The submission of the Petitioner appearing in person is that it is too late in the day now to tender an apology. He submitted that action of the contemnors of seeking deemed conveyance in respect of the property which was custodia legis amounts to criminal contempt as the custody of the suit property of the Court Receiver is the custody of the Court. His submission is that as the contemnors have committed a very gross criminal contempt of this Court, showing leniency to them will send wrong signals. He submitted that several proceedings were required to be filed by him upto the Apex Court and, therefore, no leniency be shown. He also pointed out the letter of consent dated 13th September, 2013 of the learned Advocate General by which permission/leave under clause (b) of Sub-section (1) of Section 15 of the Contempt of Courts Act, 1971 was granted by the learned Advocate General.

7 The submission of the learned counsel appearing for the contemnors is that the contemnors acting in their capacity as the Honorary Chairman and Honorary Secretary of the Gabriel Apartment Co-operative Housing Society Limited and not in their individual capacity filed the application. He submitted that the contemnors acted as per the legal advise in the larger interests of the members of the Society of which they are office bearers. He submitted that the present age of the third Respondent is about 75 years and the fourth Respondent is 82 years old. He pointed out the statements made in affidavit dated 15th April, 2016 and in particular paragraph 9 in which the contemnors have tendered unconditional apology. The Petitioner appearing in person submits that the proceedings initiated against the Advocate representing in the contemnors alleging professional misconduct were disposed of by holding that the advise given by the Advocate was in the best interest of his client and now the contemnors are relying upon the advise of their Advocate and urging that the advise was incorrect. He submitted that such a contention should not be accepted. The learned counsel appearing for the contemnors on instructions states that each contemnors will pay cost of Rs.5,000/- to the Petitioner.

8 We have considered the submissions. The legal position is crystal clear. The possession of the Court Receiver appointed by the Court is possession of the Court as the Court Receiver holds the property on behalf of the Court. It is well settled that any attempt to interfere with the property which is custodia legis constitutes interference with the possession of the Court which constitutes a criminal contempt. One such decision of this Court is in the case of *Bank of India Vs. Senior Travels Pvt. Ltd. and Ors.*¹ In the present case, the contemnors were fully aware when they moved the District Deputy Registrar of Co-operative Societies for order granting deemed conveyance that the property was custodia legis. In fact, before filing the application, in response to the legal notice issued by the Society which was represented by the contemnors, the Petitioner by way of a reply had put them to notice that action of seeking deemed conveyance will be contemptuous. Hence, there may not be any difficulty in holding that the act of the third and fourth Respondents of filing an application seeking deemed conveyance under the said provisions of the said Act of 1963 and the act of further prosecuting the said application is certainly contemptuous. Now, the only question is whether contemnors should be penalised.

1 1991 (4) Bom. CR 261

9 It cannot be disputed that an application for deemed conveyance filed by the contemnors was in their capacity as the office bearers of a registered Co-operative Housing Society. We have perused translation of the order passed by the Competent Authority and the Deputy Registrar on 27th August, 2012 on the application made by the Society. The said order specifically records an objection raised by the Petitioner appearing in person that the property is custodia legis and therefore, making an application for deemed conveyance and passing order of deemed conveyance will amount to contempt of this Court. Response of the contemnors to the said objection is noted in the order which reads thus :-

“To the said Objection, Advocate Shri S.P. Nalawade, on behalf of the Applicant Society has explained (submitted) that, as per Section 11 of the MOFA (Maharashtra Ownership Flat [Regulation of the Promotion of Construction, Sale, Mangement and Transfer] Act) 1963, the Promoter should make conveyance of the property. As per Order 'XL', Rule 1 of the Code of Civil Procedure, Court Receiver is merely a Custodian of the Property and not an Owner of the property. Respondent No.4 has withdrawn the Contempt Petition filed before the Hon'ble High Court. The Respondent No.4 has submitted his arguments to the explanation given by the Applicant.”

10 The submission which is recorded by the District Deputy Registrar of Co-operative Societies clearly shows that the Society was advised that notwithstanding the fact that the Court Receiver has been appointed, an application can be moved for grant of deemed conveyance as the Court Receiver was merely a custodian of the property. In the affidavit dated 15th April, 2016 of the fourth Respondent filed by himself and on behalf of the second and third Respondents, in paragraph 7, he has stated that advise received by them was incorrect.

11 Now, the contemnors have tendered an unconditional apology to this Court. Moreover, the application made by the Society for deemed conveyance has been rejected. The learned counsel appearing for the contemnors on instructions states that after rejection of the said application, a fresh application has not been filed by the contemnors. The affidavit tendered today discloses that the age of both the Contemnors is more than 75 years. Both of them have not acted in their individual capacity but they have acted as office bearers of a registered Co-operative Housing Society. Their action was of filing an application seeking deemed conveyance under the said Act of 1963 for enforcing the alleged rights claimed by the Society. It is true that the

Petitioner is required to take many proceedings. Though conduct of the contemnors is contemptuous, considering the aforesaid circumstances, we are satisfied that this is a fit case to show leniency to them especially when they have tendered an unconditional apology and they have offered to pay an amount of Rs.10,000/- by way of cost to the Petitioner.

12 The Petitioner appearing in person submits that wrong signal will be sent if the apology is accepted and the contemnors are let off. It is well settled that the contempt jurisdiction cannot be exercised for upholding dignity of the Court. Thus, this is one of those cases where we are of the view that magnanimity deserves to be shown considering the totality of the circumstances brought on record. As the contemnors on their own have made a statement to pay costs to the Petitioner, we are not passing separate orders of cost. Accordingly, we dispose of the Petition by passing the following order :-

ORDER

- (i) The apology tendered by the contemnors is accepted;
- (ii) By accepting the apology, contempt notice issued to the contemnors is hereby discharged;
- (iii) We accept the statements made by them to pay cost to the Petitioner appearing in person. Accordingly, we

direct the said contemnors to pay total cost of Rs.10,000/- to the Petitioner within a period of four weeks from today;

- (iv) We make it clear that no observations made in this order shall be construed as any finding on merits of the controversy in the pending litigations between the parties.

(P. D. NAIK, J)

(A.S. OKA, J)