

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

CONTEMPT PETITION NO. 91 OF 2014

IN

WRIT PETITION NO. 2527 OF 2013

WITH

NOTICE OF MOTION (L) NO. 240 OF 2014

Kakade Infrastructure Private	}	
Limited	}	Petitioner
versus		
State of Maharashtra and Ors.	}	Respondents

Dr. Milind Sathe – Senior Advocate with
Mr. Chetan Kapadia and Ms. Manorama
Mohanty i/b. M/s. S. K. Srivastava and Co.
for the petitioner.

Ms. I. K. Calcuttawala – AGP for
respondent state.

CORAM :- S. C. DHARMADHIKARI &
G. S. KULKARNI, JJ.

DATED :- MARCH 30, 2016

P.C. :-

We have heard Mr. Sathe learned Senior Counsel
appearing for the Petitioner and the learned AGP appearing for
the respondents. The petitioner complains that the order passed
by this court on 11th March, 2014 and an undertaking dated 8th
March, 2010 in Writ Petition No. 2527 of 2013 have not been
complied with. A case of civil contempt is, therefore, made out.

2) The petitioner is a company and engaged in the business of building construction. A tender was submitted by the petitioner, which came to be accepted by the respondents for a certain project. That public project and the details of which are set out in para 3 of the petition required the petitioner to pay a sum of Rs.146.45 crores and submit a bank guarantee of Rs.6.40 crores. There is thus a concluded contract on the basis of which the petitioner claims that the respondents should have taken the further steps. However, when the writ petition was placed before the court, both sides stated that there is an amicable settlement/arrangement and which they desire that this court should take on record.

3) The minutes of order drawn up by parties and signed were taken by this court on record and the petition itself came to be disposed of. The order dated 11th March, 2014, copy of which is at page 17 of the paper book reads thus:-

“The petitioner and the respondent have arrived at an amicable understanding and settled the dispute in terms of Minutes of the Order. It is signed by the Advocate for the petitioner and the respondent. The Minutes of Order be taken on record and marked 'X' for identification. The petition is accordingly disposed of in terms of Minutes of order.”

4) The contention of Mr. Sathe is that a case of civil contempt is made out for this court, based on the Consent Minutes, passed an order. This court, therefore, recorded that

the sum of Rs.146.45 crores would be refunded within 6 weeks and equally the bank guarantee would be returned duly cancelled. The contempt petition proceeds on the footing that the period of 6 weeks had expired and yet the amount was not paid nor compliance made with the Minutes of Order. Therefore, an advocate's letter was addressed, copy of which is at page 21 of the paper book and to which, a reply was given by the State, through its Executive Engineer, Building Construction Division, Mulund, Mumbai that they are informed by the office of the Government Pleader that a stay was granted and extended in certain proceedings by this court. Therefore, the State is unable to refund the amount and the petitioner was requested to make an application in this court so that appropriate orders can be passed to honour the Consent Terms.

5) We find that in the affidavit in reply, which is filed to this petition, the State has set out that one Chhatrapati Infrastructure Private Limited filed a notice of motion being Notice of Motion (L) No. 240 of 2014 and in that, an order was passed on 23rd April, 2014 injuncting and restraining the respondents from repaying the sums till 5th May, 2014. The matter did not reach on 5th May, 2014 and therefore, the Executive Engineer took up the issue with the office of the

Government Pleader and the Assistant Government Pleader informed the Executive Engineer that it would not be proper to return the sum and the bank guarantee as well for the matter is pending in this court.

6) It is on 23rd April, 2015 that the project was cancelled. Once the project itself was cancelled now the State is ready and willing to make the payment, but has sought 6 months' time.

7) True it is that the period of 6 months is also over. However, going by the plain definition of the term civil contempt as appearing in the Contempt of Courts Act, 1971, we do not think that the ingredients thereof are satisfied in the facts and circumstances of the present case. There is no wilful disobedience of the order of this court assuming there is one and not just a disposal of the petition based on the consent Terms. The affidavit indicates as to how steps have been taken to honour the terms between parties. The order of this court is dated 11th March, 2014. It merely takes on record the terms. There is a disposal of the petition, but it is doubtful whether the Minutes of the Order incorporate any specific direction of the court. Assuming that to be so still in such a situation, where an effective remedy is provided by law for enforcing that order and the petitioner has not availed of that remedy but files such a petition.

Hence, mere inaction will not enable us to entertain this petition. The petitioner has an executable and enforceable order in its favour. It can enforce it and recover the moneys in accordance with law. A case of civil contempt is not made out and for the reasons that have been placed before us on affidavit. The petition is misconceived and is therefore dismissed.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)