

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

CONTEMPT PETITION NO.50 OF 2015
IN
WRIT PETITION (L) NO.1255 OF 2016

M/s. J. Gala Enterprises & Anr.

.. Petitioners

vs.

Madhyavarti Samiti & Ors.

.. Respondents

Mr.Sanjay V. Kadam a/w Mr.Sanjil Kadam a/w Ms.Sayalee Rajpurkar
a/w Mr.Deepak Enakphale i/b M/s.Kadam and Co. for the petitioners

Mr.Y.E.Mooman a/w Ms.Manisha Gawde for the respondent no.1 in
Contempt Petition No.50 of 2016 and respondent no.4 in Writ Petition
No.1851 of 2016

Mr.P.G.Lad a/w Mr.Devendra Tiwari for respondent no.1 in Writ Petition
No.1851 of 2016 and Ms.Shital Mane for respondent no.3 in Writ
Petition No.1851 of 2016

CORAM : K. K. TATED, J.

DATE : NOVEMBER 18, 2016

P.C.:

1 By this Contempt Petition, petitioner prays to take action against the respondent no.3 as per the provisions of Contempt of Court Act, 1970 for violating the order dated 5.5.2016 passed by this court in Writ Petition (L) No.1255 of 2016 for withdrawing the amount from the Registry of this court.

A few facts of the matter are as under:

2 Petitioner No.1 is the owner of the property bearing C.S. No.770 of Mazgaon Division, situated at Dr. Babasaheb Ambedkar Road, Chinchpokli, Mumbai 400 033. Petitioner is re-developing the suit property under DCR 33(7) r/w Appendix-III of the Development Control Regulations for Greater Mumbai, 1991. Mumbai Building Repairs & Reconstruction Board (hereinafter referred to as “the Board”) granted NOC on 24.11.2006 in favour of petitioner no.1 to undertake redevelopment of property by consuming the then permissible 2.5 FSI. Later on 25.5.2011 the State Government modified DCR 33(7) by enhancing permissible FSI from 2.5 to 3.00 and enhanced the minimum size of rehab tenement from 225 sq.ft. to 300 sq.ft. Pursuant to the said amendment, the Board on 30.4.2014 grant Revised NOC in favour to petitioner no.1 thereby granting them additional 0.5 FSI subject to the condition that petitioner no.1 shall provide to each of the eligible occupant rehab tenement admeasuring 300 sq.ft. carpet.

3 The respondent no.1 was not satisfied with the carpet area of each rehab tenement to be 300 sq. ft. only. Hence, respondent no.1 filed Writ Petition No.1187 of 2014 and 1029 of 2015 against the petitioner and Ors. Both the petitions filed by respondent no.1 were disposed of by Division Bench of this court by order dated 6.10.2015 directing petitioners (in Contempt Petition) to deposit the amount of transit accommodation rent for 59 occupants from 1.12.2013 till November, 2015 in the Registry of this court within two weeks from the receipt of copy of order. The Division also clarified that individual members of respondent no.1 can make application for withdrawal of the amount and such application can be decided on its own merits in accordance with law.

4 Pursuant to the Division Bench order dated 6.10.2015, petitioner deposited in the Registry of this court a sum of Rs.1,65,58,315/- being transit accommodation rent payable to 59 occupants.

5 Thereafter, the respondent members individually and separately preferred Notice of Motions for withdrawal of the said amount. All those Notice of Motions were heard and disposed of vide common order dated 1.4.2016 by Division Bench. The Division Bench refused to grant permission for withdrawal on the ground that those Notice of Motions were taken out in disposed of Writ Petition, the amount could not be withdrawn unconditionally and the Board had not passed any order in the complaint before it.

6 Thereafter, the Chief Officer of the Board passed order on 11.4.2016 in the complaint of respondent no.1 staying revised NOC dated 30.4.2014 until the amended plans showing rehab tenements of 300 sq.ft carpet area are approved by MCGM. By the said order, the Chief Officer allowed the respondents occupants individually to withdraw the amount towards arrears of rent deposited in the Registry of this court.

7 Pursuant to the said permission, the respondent individually filed praecipe in the Registry on 22.4.2016 giving the particulars of their bank account for transferring the amount of their share directly.

8 Thereafter, the petitioner preferred Writ Petition No.1851 of 2016 i.e. Writ Petition (L) No.1255 of 2016 challenging the order passed by the Chief Officer of the Board by which order, the Chief Officer has stayed the Revised NOC in favour of petitioner vide letter

dated 30.4.2014.

9 This court by order dated 5.5.2016 after hearing parties stayed the order passed by Chief Officer of the Board dated 30.4.2016 by which the respondent individually were permitted to withdraw the amount deposited by the petitioner in the Registry of this court.

10 Pursuant to the praecipe dated 22.4.2016 filed by respondent individuals in the office of the Prothonotary and Senior Master, the Registry processed the said praecipe and transferred the amount of individual shares in their bank account directly. The said transfer of money took place after 5.5.2016.

11 Hence, the petitioner filed the present Contempt Petition alleging that inspite of the stay order passed by this court on 5.5.2016, the respondent withdrew the amount from the Registry.

12 The learned Counsel for the petitioner submits that though the respondents had knowledge about the order dated 5.5.2016 passed by this court in Writ Petition No.1851 of 2016 they withdrew the amount deposited by them with the Registry and therefore, they be dealt with as per the provisions of the Contempt of Court Act, 1970. He submits that the respondent deliberately insisted the Registry even after order dated 5.5.2016 for withdrawal of the amount. In support of this contention, the learned Counsel for the petitioner relies on the following grounds raised by them in the petition.

“(a) Respondents were well aware of the stay against withdrawal of money, as granted vide the said Order dated 5th

May, 2016. Despite the same, even after 5th May, 2016 the Respondents pressed their praecipe before the Prothonotary & Senior Master for seeking withdrawal of the money deposited with the Registry.

(b) Respondent No.1 was a party to the said Writ Petition bearing (L) No.1255 of 2016. As such Respondent No.1 was well aware of the stay granted vide the said order. Being the body representing Respondent Nos.2 to 58, Respondent NO.1 was bound to apprise them about the said Order and prevail upon them to desist from seeking withdrawal of the amount. However, Respondent No.1 failed to do so.

(c) Respondent No.1 had a duty towards the office of the Court i.e. the Prothonotary & Senior Master, to apprise them about the true and correct facts and assist him to arrive at a decision which would have been in conformity with the said Order dated 5th May, 2016. However, Respondent No.1 failed to perform the said duty.

(d) In all the legal proceedings instituted by Respondent No.1, one and the same advocate has represented them. The said advocate was well aware of the said Order dated 5th May, 2016. Being an officer of this Hon'ble Court the said advocate was duty bound to apprise the Prothonotary & Senior Master about the stay granted vide the said Order. However, the said advocate failed to perform the said duty.

(e) All the Respondents have suppressed the said Order from this Hon'ble Court, despite being well aware of the same. The said suppression is deliberate and intentional.

(f) All the Respondents by their acts of omission and commission, have kept the Prothonotary & Senior Master ignorant about the said Order and misled him to issue the letter dated 27th May, 2016 to the concerned bank inter alia directing it to transfer the amount along with interest accrued thereon to the PLA Account of the Prothonotary & Senior Master.

(g) All all times, the Respondents were aware that the Petitioners had deposited the said amount "under protest and without prejudice to their claims and contentions". Hence,

the Respondents could not withdraw the said amount until all the disputed issues were finally adjudicated.

(h) As the Petitioners had deposited the said “under protest and without prejudice to their claims and contentions”, the Respondents were duty bound to inform the Petitioners about moving their praecipe for withdrawal of the said amount. However, the Respondents intentionally did not inform the Petitioners about the same.

(i) Pertinently the advocate of the Respondents and Respondents themselves abstained from appearing before the Prothonotary & Senior Master on 27th and 29th June, 2016 when the Petitioners' praecipe for stopping further withdrawal of money and redeposit of money which already withdrawn, was taken by the Prothonotary & Senior Master for decision. This demonstrates the mens rea of the Respondents and their advocate while making the entire exercise for unlawfully withdrawing the money.

(j) Upon this Hon'ble Court passing the said Order on 5th May, 2016 Respondents had filed SLP in the Hon'ble Supreme Court on 19th May, 2016. However, instead of waiting for outcome of the said SLP and despite there being no stay against the said Order from the Hon'ble Supreme Court, the Respondent Nos.2 to 58 proceeded for withdrawal of the amount. This amounts to gross disrespect to the Majesty of law.

(k) Respondents had filed SLP in the Hon'ble Supreme Court through the same advocate who had appeared for them along in all the earlier legal proceedings. The same advocate had filed praecipe seeking withdrawal of amount. His junior advocate had accompanied the Respondents in the Registry while the amount was withdrawn. It is thus clear that at all times the said advocate was privy to the steps taken by or on behalf of the Respondents. But instead of advising the Respondents to abstain from taking such steps, he allowed them to proceed with the same.

(l) The conduct of the Respondents is completely contrary to the said Order dated 5th May, 2016.

(m) Respondents were well aware of the contemptuous act committed by them, at all times and in any event as lately as on 27th June, 2016 when the Petitioners moved their praecipe before the Prothonotary & Senior Master. Respondents had an opportunity to give apology on 27th June, 2016, 29th June, 2016, 14th July, 2016, 25th July, 2016 and 1st August, 2016 when the matter was taken up by the Prothonotary & Senior Master. Respondents had further opportunity to give apology on 2nd August, 2016 when the said Writ Petition was placed on board. However, on none of the said dates the Respondents expressed apology for the contemptuous acts committed by them. The conduct of the Respondents show complete disregard to the law and judiciary.”

13 The learned Counsel for the petitioner submits that the order dated 5.5.2016 passed by this court in Writ Petition No.1851 of 2016 was challenged by the respondent before the Apex Court by Special Leave to Appeal No.15240 of 2016. The Apex Court declined to stay the order dated 5.5.2016. The Apex Court order dated 1.7.2016 reads thus:

“ORDER

Having regard to nature of the interim order impugned, we do not propose to go into the matter. The apprehension of the petitioner is only with regard to considering the amended plans in accordance with law. The observation / direction to the Municipal Corporation of Greater Mumbai will be subject to the order that will be passed by the High Court.

The petitioner is at liberty to make a mention before the High Court to take up the main matter(s) and pass appropriate order expeditiously in accordance with law after hearing all the parties.

The special leave petition is disposed of with the

aforesaid observation.

Pending application(s), if any, stand(s) disposed of.”

14 The learned Counsel for the petitioner submits that inspite of having knowledge about the stay order passed by this court, they withdrew the amount and therefore, they are liable to be punished under the Contempt of Court Act. In support of this contention, the learned Counsel for the petitioner relies on the judgment of the Apex Court in the matter of *Maninderjit Singh Bitta vs. Union of India and Others, (2012) 1 SCC 273*. He relies on paragraph 16 to 23 which reads thus:

“16. Now, we would examine certain principles of law which would normally guide the exercise of judicial discretion in the realm of contempt jurisdiction. 'Contempt' is an extraordinary jurisdiction of the Courts. Normally, the courts are reluctant to initiate contempt proceedings under the provisions of the 1971 Act. This jurisdiction, at least suo moto, is invoked by the courts sparingly and in compelling circumstances, as it is one of the foremost duty of the courts to ensure compliance of its orders. The law relating to contempt is primarily dissected into two main heads of jurisdiction under the Indian Law: (a) Criminal Contempt, and (b) Civil Contempt. It is now well settled and explained principle under the Indian contempt jurisdiction that features, ingredients, procedure, attendant circumstances of the case and the quantum of punishment are the relevant and deciphering factors.

17. Section 12 of the 1971 Act deals with the contempt of court and its punishment while Section 15 deals with cognizance of criminal contempt. Civil contempt would be willful breach of an undertaking given to the court or willful disobedience of any

judgment or order of the court, while criminal contempt would deal with the cases where by words, spoken or written, signs or any matter or doing of any act which scandalises, prejudices or interferes, obstructs or even tends to obstruct the due course of any judicial proceedings, any court and the administration of justice in any other manner. Under the English Law, the distinction between criminal and civil contempt is stated to be very little and that too of academic significance. However, under both the English and Indian Law these are proceedings sui generis.

18. While referring to *Justice J.D. Kapoor's Law of Contempt of Court, Second Edition, 2010* which mentioned the Phillimore Committee Report - Report of the Committee on Contempt of Court, of which importantly the following passage can be noticed:

“4. In England and Wales most forms of contempt have been regarded as of criminal character, and as such, are called 'criminal contempts'. In Scotland contempt of court is not a crime nor is a distinction between 'criminal' and 'civil' contempts recognised. Scots law regards contempt of court as a chapter of a law sui generis. This difference of approach is of little more than academic significance in modern practice, but the Scottish explain certain peculiar elements in its operation and procedure. What is of particular importance is that it is branch of the law in which breaches are investigated by a special and summary procedure and where, once established, they may be severely punished.

19. Under the Indian Law the conduct of the parties, the act of disobedience and the attendant circumstances are relevant to consider whether a case would fall under civil contempt or a criminal contempt. For example, disobedience of an order of a court simplicitor would be civil contempt but when it is coupled with conduct of the parties which is contemptuous, prejudicial and is in

flagrant violation of the law of the land, it may be treated as a criminal contempt. Even under the English Law, the courts have the power to enforce its judgment and orders against the recalcitrant parties.

20. In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful violation of the orders of the court, even to constitute a civil contempt. Every party to lis before the court, and even otherwise, is expected to obey the orders of the court in its true spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution. The Government Departments are no exception to it. The departments or instrumentalities of the State must act expeditiously as per orders of the court and if such orders postulate any schedule, then it must be adhered to. Whenever there are obstructions or difficulties in compliance with the orders of the court, least that is expected of the Government Department or its functionaries is to approach the court for extension of time or clarifications, if called for. But, where the party neither obeys the orders of the court nor approaches the court making appropriate prayers for extension of time or variation of order, the only possible inference in law is that such party disobeys the orders of the court. In other words, it is intentionally not carrying out the orders of the court. Flagrant violation of the court's orders would reflect the attitude of the concerned party to undermine the authority of the courts, its dignity and the administration of justice.

21. In *Vinay Chandra Mishra*, In (1995) 2 SCC 584, this Court held that (SCC p.617 paragraph 29)

“39. ... judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. Dignity and

authority of the Courts have to be respected and protected at all costs.”

22. Another very important aspect even of the Civil Contempt is, 'what is the attribution of the contemnor" There may be cases of disobedience where the Respondent commits acts and deeds leading to actual disobedience of the orders of the court. Such contemnor may flout the orders of the court openly, intentionally and with no respect for the rule of law. While in some other cases of civil contempt, disobedience is the consequence or inference of a dormant or passive behaviour on the part of the contemnor. Such would be the cases where the contemnor does not take steps and just remains unmoved by the directions of the court. As such, even in cases where no positive/active role is directly attributable to a person, still, his passive and dormant attitude of inaction may result in violation of the orders of the court and may render him liable for an action of contempt.

23. It is not the offence of contempt which gets altered by a passive/negative or an active/positive behaviour of a contemnor but at best, it can be a relevant consideration for imposition of punishment, wherever the contemnor is found guilty of contempt of court.”

15 The learned Counsel for the petitioner submits that they by their letter dated 12.7.2016 called upon the respondent no.1 as well as all other respondents individually to redeposit the entire amount immediately in the Registry of this court in view of the order dated 5.5.2016 in Writ Petition No.1851 of 2016. He submits that inspite of that letter and knowledge about the order dated 5.5.2016 the respondents failed and neglected to redeposit the entire amount immediately in the Registry of this court.

16 The learned Counsel for the petitioners submits that Writ

Petition No.1851 of 2016 was on board before the learned Prothonotary and Senior Master, High Court, Bombay for direction on 14.7.2016. At that time, learned Prothonotary and Senior Master also directed respondents to redeposit the entire amount immediately. In spite of that directions, respondents failed and neglected to do so. He submits that thereafter Writ Petition No.1851 of 2016 was on board before this court on 2.8.2016. At that time, at the request of advocate for respondent, this court by order dated 2.8.2016 directed respondent to redeposit the entire amount immediately. In this way, the respondent committed contempt of this court.

17 On the basis of these submissions, the learned Counsel for the petitioner submits that it is crystal clear that in spite of having knowledge about the stay order passed by this court on 5.5.2016 respondent withdrew the amount from the Registry of this court and therefore, they may be dealt as per the provisions of Contempt of Court Act.

18 On the other hand, the learned Counsel for the respondent vehemently opposed the present Contempt Petition. He submits that there is no deliberate violation of the order dated 5.5.2016 passed by this court in Writ Petition No.1851 of 2016.

19 The learned Counsel for the respondent submits that Chief Officer of the Board by order dated 11.4.2016 allowed the respondent i.e. old tenements/occupants to withdraw the amount towards the arrears of rent deposited in the Hon'ble High Court as permissible in law. He submits that pursuant to the said permission granted by Chief Officer of the Board, they filed petition dated 22.4.2016 in the Office of

the Prothonotary and Senior Master for withdrawal of the amount. He submits that as per the procedure prescribed by this court at the time of filing praecipe, they provided bank account number for transfer the amount directly. He submits that thereafter as soon as they learnt about the stay order dated 5.5.2016 passed by this court, they never insisted and or made any application in the office of the Prothonotary and Senior Master for withdrawal of the amount. He submits that as per the procedure, office of the Prothonotary and Senior Master directly transferred the amount in the respondent's bank account. He submits that when the matter was on board before the Prothonotary and Senior Master on 14.7.2016 they immediately shown their willingness to redeposit the entire amount. Same was recorded by the Prothonotary and Senior Master in its order dated 14.7.2016 which reads thus:

“Advocate for Petitioner in first two Petitions and Respondent No.4 in third Petition submits that he has already informed some of the Petitioners/Occupants/Tenants with regard to redeposit of the amount with the Registry as per Order dated 27th June, 2016 and 29th June, 2016 passed by the Prothonotary and Senior Master and some of the Petitioners/Occupants/Tenants, who yet not have been informed, he will try to inform with regard to redeposit of the amount as per notice which has been issued and received by him, for which some time will take place since building, mentioned in the cause title of the Petitions where Petitioners/Occupants/Tenants were residing, is demolished for redevelopment and now they Affidavit in reply residing elsewhere. However, Advocate for Petitioner in first two Petitions and Respondent No.4 in third Petition further submits that as per his instructions he will move application for appropriate relief before the Hon'ble Court. Mr.Y.E.Mooman, Advocate for Tenants/Occupants further submitted that in fact Application for withdrawal was made in the last week of April, 2016 and despite that, till Order dated 5th

May, 2016 staying Order of Chief Officer of MHADA – Respondent No.5 in first two Petitions was passed, amount was not disbursed by the Registry.

According to me, for encashment of F.D.R. the Registry is required to take time, so also, in between there was May vacation and even otherwise, by earlier Orders passed by the Hon'ble Division Bench of this Court while disposing first two Petitions on 6th October, 2015 and subsequent Order dated 1st April, 2016, there was no order as such allowing withdrawal of the amount by the Occupants/Tenants.”

20 The learned Counsel for the respondent submits that some of the respondents invested the said amount in fixed deposit and or utilised for their personal use. Hence, there was delay on their part to redeposit the entire amount in this court immediately. He submits that as on today entire amount is already redeposited by the respondents in the Registry of this court. He submits that though the impugned order was passed by this court on 5.5.2016, petitioner and or their advocate failed and neglected to intimate immediately the same to the office of the Prothonotary and Senior Master. He submits that there was no intention on the part of the respondent to violate the order dated 5.5.2016. He submits that after 5th May, 2016 on behalf of respondents, no one contacted office of the Prothonotary and Senior Master for withdrawal of the said amount. He submits that the petitioner being the owner and developer of the suit property filed the present Contempt Petition just to bring pressure on them to settle the matter by accepting less area in redevelopment project. He submits that as per the amended provisions of Development Control Regulations for Greater Mumbai, 1991, respondents are entitled additional area and that the petitioner do not want to provide. He submits that if this court comes to the conclusion that respondents

committed contempt by violating the order dated 5.5.2016 they are tendering their unconditional apology. He submits that in the interest of Justice this Hon'ble Court be pleased to dismiss the Contempt Petition as there is no substance in the matter.

21 I have heard both the sides. It is to be noted that in the present proceeding, petitioner is owner of the land and developer whereas respondents are tenants/occupants of the old premises. Petitioner want to develop the same by using additional FSI as per the amended provision of development control rules. It is to be noted that in the present proceeding, respondents filed praecipe on 22.4.2016 in the office of the Prothonotary and Senior Master for refund of the amount as per the premises granted by Chief Officer of the Board. It is to be noted as soon as the impugned order passed by this court on 5.5.2016 respondent neither filed any application, praecipe and / or insisted Prothonotary and Senior Master to allow them to withdraw the amount. Apart from that, the petitioner also failed and neglected to intimate the office of the Prothonotary and Senior Master that this court passed stay order and therefore, respondents are not entitled to withdraw the amount deposited by them.

22 This itself shows that the amount was not withdrawn by the respondent with intention to float the order dated 5.5.2016 passed by this court. Even the authority cited by the petitioner in the matter of *Maninderjit Singh Bitta vs. Union of India and Others, (2012) 1 SCC 273* shows that if there is willful disobedience/contumacious conduct then only court can take action under the Contempt of Court Act.

23 Considering the above mentioned facts, I am of the opinion that petitioner failed to prove that the respondent willfully disobeyed the orders passed by this court on 5.5.2016. Not only that to obey the order passed by this court on 5.5.2016 respondent redeposited the entire amount in the Registry of this court. Considering these facts, I do not find any substance in the present Contempt Petition.

24 Hence, Contempt Petition stands dismissed summarily.

25 No order as to costs.

JUDGE