

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

CONTEMP PETITION NO. 225 OF 2015

Mr. Shivram Laxman Kubade. ... Petitioner.

V/s.

Mr. Chandrashekhar Vinayak Kubade & Ors. ... Respondents.

Ms. Shakuntala Mudbidri for the Petitioner.

Mr. H.S. Shreepad Murthy a/w. Abhishek Patil for Respondent 1.

Coram : N.M. Jamdar, J.

Date : 13 April 2017.

Oral Order :-

Heard the learned Counsel for the parties. The Petitioner has alleged that the Respondents are in contempt of the order dated 15 November 2014 passed in Civil Application No. 350 of 2014 in Second Appeal No. 530 of 2007.

2. The Petitioner had filed a Suit bearing No. 31 of 1993 in the Court of Civil Judge, Junior Division, Sawantwadi for recovery of possession of a house property situated at village Banda, Taluka Sawantwadi. The suit was filed for possession on the ground that the

Petitioner is the owner of the suit property and the Respondents have no right to the same. The Petitioner succeeded in the suit. The Appeal filed by the Respondents was allowed by the learned District Judge and the Second Appeal filed by the Petitioner bearing No. 530 of 2007 has been admitted and pending. The Respondents filed a Civil Application No. 350 of 2014 seeking permission to carry out certain specific repairs, such as strengthening the wall, plastering the same by mud and replacing the wooden planks. An additional affidavit was filed in support of the Civil Application wherein it was reiterated that only these repairs will be sought for.

3. By order dated 15 November 2014, the Respondents were permitted to carry out the specific repairs which they had sought for. In the Contempt Petition filed the Petitioners have alleged that the Respondents have carried out the extensive repairs in kitchen and bathroom for which they never took any permission.

4. The learned Counsel for the Respondents initially sought to justify the repairs on the ground that they were necessary as the construction is old and in any case the repairs are beneficial in nature. If the Respondents wanted to carry out repairs to the kitchen and bathroom, which from the photographs appears to be fairly extensive, the Respondents should have applied for permission as they had done in respect of the other repairs. In view of this position, it was put to the learned Counsel for the Respondents as

what remedial steps the Respondents are voluntary to take. The learned Counsel for the Respondents, on instructions, states that to show their deference to the orders of the Court and their bonafides, they are willing to deposit an amount of Rs. 1000/- per month in the Trial Court till the disposal of the Second Appeal.

5. Considering the facts and circumstances, including that the First Appeal filed by the Petitioner was dismissed and that the Respondents have succeeded before the District Court, and the stand taken by the Respondents, I am of the opinion that the Contempt Petition can be disposed of by directing the Respondents to deposit an amount of Rs.1000/- per month in the Trial Court till the disposal of the Second Appeal. It will be open to the Respondents to deposit the amounts in advance, however the Respondents will not be in default. In case of default, it will be open to the Petitioner to revive the present Contempt Petition. The deposits so made shall be subject to the outcome of the Second Appeal. The learned Counsel for the Respondents on instructions also undertakes that no alteration or repairs will be carried out unless a specific application is made and leave is sought from this Court. This undertaking is accepted.

6. The Contempt Petition is accordingly disposed of.

(N.M. Jamdar, J.)