

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

**CONTEMPT PETITION NO. 328 OF 2010**

M/s. Advance Home Makers Group  
Through Ramesh D. Shah

... Petitioner

**vs.**

Sudatta D. Dive and ors.

... Respondents

Mr. P. R. Arjunwadkar, Advocate for the petitioner.

Mr. T. D. Deshmukh, Advocate for respondent no.1.

Mr. S. R. Agarkar, A.P.P. for the State/respondent no.1.

**Coram** : Smt. R. P. SondurBaldota, J.

**Date** : 1<sup>st</sup> March, 2017

**P.C. :**

**1.** This petition filed under the Contempt of Court Act seeks action for contempt against respondent no.1 for willful violation of the order dated 18<sup>th</sup> August, 2009 passed by this Court in Criminal Application No. 2772 of 2009. It also alleges willful breach of the undertaking given by respondent no.1 to the Court pursuant to the order.

**2.** The petitioner carries on business as builder, developer and estate agent. Respondent no.1 also carries on the same business. There are business transactions between the parties over purchase of certain lands in respect of which suits for specific performance have been filed separately by them against the owners of the land. The petitioner filed R.C. No.23/2009 in the Court of Judicial Magistrate, First Class, Uran against respondent no.1 alleging commission of offence

punishable under Section 420, 406, 409 r/w 34 of Indian Penal Code contending that respondent no.1 had cheated the petitioner to the extent of Rs.56,57,000/-. By the order dated 3<sup>rd</sup> February, 2009, the Trial Court passed order under Section 156(3) Criminal Procedure Code (Cr.P.C.) directing Uran Police Station to file report. On 12<sup>th</sup> February, 2009 Uran Police Station registered criminal case being M. Case No. 2 of 2009. Then respondent no.1 filed an application for anticipatory bail to the Sessions Court, Raigad. The application was opposed by the petitioner as the complainant. The Sessions court by it's order dated 12<sup>th</sup> March, 2009 rejected the application.

**3.** In the month of November, 2009 respondent no.1 approached this Court for anticipatory bail vide Criminal Miscellaneous Application No. 227 of 2009. The petitioner intervened to oppose the application. Since the main allegation of the petitioner related to the payment of Rs.56,57,000/- to respondent no.1 during the course of submissions on the application for anticipatory bail a statement had been made on behalf of respondent no.1 that he was willing to return the amount of Rs.56,57,000/- together with interest thereon and offered to deposit amount of Rs.60,00,000/- in three installments in the Court. This Court considered the facts alleged by the petitioner in the complaint filed by it and expressed a view that the dispute reflected in the complaint is predominantly civil in nature and touches the agreement and the documents forming part of civil suits already filed. Therefore respondent no.1 was entitled for anticipatory bail. Despite this view expressed, while granting anticipatory bail to respondent no.1 this Court imposed the following as one of the conditions :

**iii)** The applicant shall file an undertaking during the course of the day that he would deposit a sum of Rs.20 lacs within 15 days from today in the trial Court, a sum of further Rs.20 lacs within 45 days from today and balance of Rs.20 lacs within a period of 75 days from today without prejudice to the rights and contentions of the parties.

**4.** The petitioner duly deposited the first installment of Rs.20,00,000/- but failed to maintain the timeline for deposit of remaining two installments. The same have been deposited subsequently.

**5.** Respondent no.1 filed affidavit-in-reply to oppose the application stating that there was no willful default on his part in fully complying with the condition of the anticipatory bail. He states therein that on the transaction in dispute, he has so far spent more than Rs.95,00,000/-. Since his substantial amount is blocked in the very transactions, he was suffering from severe financial crunch and was unable to deposit the amount within the stipulated time. He has also stated all the details of the transactions between the parties, the proceedings filed arising therefrom and the orders passed therein. It appears that the petitioner has, in some of the very transactions arrived at direct settlement with owners of the land, bye-passing respondent no.1 and has also received possession of the properties through Court.

**6.** Mr. Deshmukh, the learned advocate for respondent no.1 submits that undoubtedly respondent no.1 was duly bound to comply with the condition in question within the stipulated

time. However considering the background of the case and in particular the view expressed by this Court while granting anticipatory bail that the dispute between the parties is essentially a civil dispute, the delayed compliance of the condition of bail should not be treated as willful disobedience of the Court's order. Mr. Arjunwadkar, the learned advocate for the petitioner submits per contra that the delay in deposit of the amount in compliance with the orders of the Court need to be viewed seriously because the deposit made by respondent no.1 has been only after the petitioner filed the present contempt petition.

7. It has already been observed by this Court that the dispute reflected in the complaint filed by the petitioner is predominantly civil in nature. This observation, to certain extent, would reflect upon the possible final outcome of the complaint. Besides deposit of the amount by respondent no.1 was only for the purpose of showing his bona-fides. Hence in my opinion considering the background facts and the fact that the petitioner has though belatedly deposited the amount in the Court and further the fact that in the proceedings filed no claim can be made by the petitioner to the amount, the unconditional apology tendered by respondent no.1 can be accepted and the notice for contempt be discharged. The unconditional apology tendered for delay in deposit of the amount is accepted and the notice for contempt is discharged. The petition is disposed off in these terms.

**[Smt. R. P. SondurBaldota, J.]**