

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.429/2015

Mrs. Sangeeta Rajendra Zurange & Anr. ... Petitioners

V/s.

Mr. Madhav Dattatraya Kalbhor & Ors. ... Respondents

Mr. Tejas Dande with Krupanshu Nandu i/b. Tejesh Dande & Associates
for the Petitioner

Mr. Yogesh Dabake, AGP for Respondent Nos.7 and 9.

Mr. Niranjana A. Mogre for Respondent Nos.6 and 8.

CORAM: K.K. TATED, J.
DATED : DECEMBER 15, 2017

PC. :

1. Heard the learned counsel for the parties. The Contempt Petition is filed by the Petitioners - Plaintiff in Regular Civil Suit No.5692/2012 for violating the order dated 04.03.2013 passed by the 17th Jt. Civil Judge, Junior Division Pune below Exhibit- 5 restraining the Defendants in that suit from disturbing the peaceful possession of the Plaintiff Petitioner over the suit property i.e. land being No.20 Hissa No.3/12A/2 of village Bavhdan Khurd, Tq. Mulshi, Dist. Pune divided into two pieces admeasuring 0 H 04.8 R and 0 H and 03.5 R.

2. The learned counsel for the Petitioner Plaintiff submits that the Plaintiff had filed Regular Civil Suit No.5692/212 in the court of Civil Judge, Junior Division Pune for an order of injunction restraining the

Defendants from disturbing the Plaintiff's possession in respect of the suit property. He submits that in that suit they made an Application below Exhibit- 5 for an order of injunction on 20.07.2012 for following reliefs:

“(a) The Defendants, their agents, assigns, servants, employee or any one claiming through them be restrained from entering the suit property or fencing the suit property or dispossessing the Plaintiffs or their agents, servants, assigns from the suit property in any manner whatsoever by an order of temporary injunction till disposal of suit.

(b) Ad-interim prayers in terms of prayer clause a may kindly be granted.

(c)”

3. The learned counsel for the Petitioner submits that the said Application below Exhibit- 5 was decided by the 17th Jt. Civil Judge, Junior Division after hearing both the parties and passed the following order:

“(1) Application is allowed.

(2) The Defendant and the persons claiming through them are hereby restrained from disturbing the peaceful possession of the Plaintiffs over the suit property (described in para 1 of the Application), till the final decision of this suit.”

4. The learned counsel for the Petitioner submits that in the night of 21.02.2015 and 22.02.2015 Respondent No.6 - Defendant No.6, his partner Rajesh Vishnu Jadhav along with their 13-14 gundas attempted to enter into the suit property and disturbed the fencing around the suit property installed by the Petitioners. He submits that immediately thereafter they called the local police station as well as on the help line

number 100. He submits that the Respondent police officer, instead of implementing the injunction order passed by the trial court dated 04.03.2013 left the spot without taking any action. Hence, the Petitioner made the police authority party in the Contempt Petition.

5. The learned counsel for the Petitioner submits that as the Respondent Defendant has violated the injunction order granted by the trial court, they be punished as per the provisions of the Contempt of Courts Act. He submits that if action is not taken against them, they may take further steps to defeat the Petitioner's right in Regular Civil Suit No.5692/2012. Hence, the Contempt Petition be made absolute against the Respondent.

6. On the other hand the learned counsel for the Respondent and the learned AGP vehemently opposed the Contempt Petition. They submit that the Regular Civil Suit No.5692/2012 is pending for hearing and final disposal on merits. They submit that there is alternate efficacious remedy available to the Petitioner as per Order XXXIX Rule 2A of the Code of Civil Procedure, 1908. Both the counsel submit that if an alternate efficacious remedy is available, normally the court should not entertain the petition under the provisions of the Contempt of Courts Act.

7. Both the counsel submit that in view of these facts the Contempt Petition is liable to be dismissed as non maintainable.

8. Heard both sides at length. Order XXXIX Rule 2A of the Code of

Civil Procedure, 1908 reads thus:

2A. Consequence of disobedience or breach of injunction.-

“(1) In the case of disobedience of any injunction granted or other Order made under rule 1 or 2 or breach of any of the terms on which the injunction was granted or the Order made, the court granting the injunction or making the order, or any court to which the Suit or proceeding is transferred, may Order the property of the person guilty of such disobedience or breach to be attached, and may also Order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.”

9. Bare reading of Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 shows that if there is violation of any interim relief granted by the courts then the court has jurisdiction to take action against either party who violates the interim order. In the present proceedings, it is the case of the Petitioner that the Respondent Defendant has violated the order dated 04.03.2013 passed by 17th Jt. Civil Judge, Junior Division Pune below Exhibit- 5 in Regular Civil Suit No.5692/2012. If that is the case, then the Petitioner can make an appropriate application under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 within prescribed period. Instead of filing an Application under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 they filed the Contempt Petition.

10. The apex court in the matter of ***Kanwar Singh Saini Vs. High Court of Delhi (2012) 4 SCC 307*** held that if an alternate efficacious remedy is available to the Petitioner then usually the court should not entertain the Contempt Petition for the said cause of action.

11. In view of these facts and as an alternate efficacious remedy is available to the Petitioner, I am satisfied that the Petitioner has failed to make out any case for an action against the Respondent under the Contempt of Courts Act.

12. Hence, the Contempt Petition stands dismissed. No order as to costs.

(K.K. TATED, J.)