

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

**APPEAL FROM ORDER NO.861 OF 2000
WITH
CIVIL APPLICATION NO.8796 OF 2000
IN
APPEAL FROM ORDER NO.861 OF 2000**

Laxmikant Mahadev Gujarathi & Anr. ..Appellants/Applicants
V/s.
Pradeep Ramakant Gujarathi & Ors. ..Respondents

**WITH
CONTEMPT PETITION NO.159 OF 2003**

The Registry City Civil Court, Bombay ..Applicants
V/s.
Laxmikant M. Gujarathi & Ors. ..Respondents

Mr.Laxmikant Mahadev Gujarathi Appellant Party in person present.

Mr.Omkar Nagvekar i/by Mr.P.R. Arjunwadkar for the Appellant.

CORAM : M. S. SONAK, J.

DATE : 16 FEBRUARY 2017.

P.C.

1. Since, the learned counsel for the appellants Mr.Laxmikant Mahadev Gujarathi and his wife states that he does not even have the case papers to proceed with this matter, this Court is left with no option but to proceed with this matter after offering Mr.Pradeep Ramakant Gujarathi who appears in person, an

opportunity of being heard. On 05 January 2017, since, the advocates for the appellants were not present, this appeal was dismissed for default. At that stage, since Mr.Laxmikant Gujarathi, who is stated to be 74 years of the age and who is present in the Court, was informed that this is an old matter and notwithstanding the same, the same will be restored provided that his advocate agrees to proceed with the matter on the date he applies for restoration.

2. The application for restoration was taken out on 08 February 2017. On that date, though the matter was restored, the learned counsel Ms.Prabha Badadare expressed her inability to proceed with the matter and stated that this matter be taken up on 16 February 2017 along with Contempt Petition No.159 of 2003 which was scheduled to come upon on the said date.

3. On 08 February 2017, this Court made an order restoring the Appeal From Order No.861 of 2000. In paragraph No.3 of the said order it was observed thus :-

“3. It is made clear that no further indulgence will be granted to the appellants, since on one hand, the appellants refuse to proceed with the matter and on other hand, these very appellants, complain about delay in disposal of matters or seek precedence in the matter of

disposal of such matters on the ground that they are senior citizens.”

4. Today, when the matter is called out, again, Mr.Omkar Nagvekar appears in the matter, who states that his senior is supposed to argue the matter and his senior is not available. He states that he does not have the case papers and he is not in a position to argue the matter. This is neither being fair to the appellant nor to the Court. Nevertheless, it is noticed that Shri.Laxmikant Gujarathi regularly appears in the Court. He even writes letters complaining about delay in disposal of this appeal. However, when the matter is called out, the matter does not proceed. Accordingly, Mr.Laxmikant Gujarathi was heard in person.

5. The challenge in this appeal is to the order dated 14 November 2000 made by the learned Trial Judge, the operative portion of which, reads thus :-

“Notice of Motion made absolute in the following terms :

a) Both the defendants are found guilty of wilful disobedience of the ad-interim order passed on 29-03-2000. Both of them are, therefore, ordered to be detained in civil prison for a period of one month from the date he/she is taken in custody. Sheriff of Mumbai to execute

this order.

b) A reference under sec.10 of the Contempt of Courts Act be made to the Hon'ble High Court against the respondents for interference in administration of justice by dispossessing the plaintiffs from the suit premises on 20-07-2000 at the instance of the defendants who were under ad-interim injunction against dispossessing the plaintiff therefrom by preparing false record and despite information about the said order.

c) The Respondent No.1 through its officers are directed to restore possession of the suit premises to the plaintiff within two weeks from today. It is clarified, that the plaintiffs continued occupation of the premises will be subject to the result in the main N/M No.1894-2000.

d) The defendants 1 and 2 as well as respondents 1,2, and 3 are directed to pay costs of Rs.2,000/- each , to the plaintiff of this N/M within two weeks from today.

e) The documents submitted by the respondents shall be kept in safe custody of the Registrar, and be forwarded to the Hon'ble High Court with other papers while forwarding the reference in terms of clause (b) above.

Pending N/M along with suit, adjd. To 9-1-01 for hrg.

(Mr.Indu Prakash for respondents, applied for stay of restoration of possession of the suit premises to the

Plaintiff vide clause (c) above. However, in view of the gross conduct of the officers of Respondent No.1 and in view of the fact that two weeks time is already granted to them to comply with the order, request rejected.”

6. In terms of clause (b) of the impugned order, the reference under Section 10 of the Contempt of Courts Act has been numbered as Contempt Petition No.159 of 2003. Accordingly, it is appropriate that this Appeal from Order as well as the Contempt Petition are taken up together and disposed of by common order.

7. The learned Trial Judge, made an order dated 29 March 2000, the operative portion of which reads thus :-

“It is undisputed that the plaintiff today is in possession of the suit premises. The defendants allege that the Plaintiff forcibly entered in the suit premises about 3 or 4 years back. On 20th March, 2000 he gave an undertaking to the Defendants that he would vacate the suit premises within 15 days. The Plaintiff alleges that the Writing was taken from him under duress. It is undisputed that the defendants have another premises at Chambur. The notice of this appln. has been served upon the defendants at their Chambur address. The defendants allege that the plaintiff has no rights in respect of the suit premises. The contentions of the respective rights of the parties to the suit premises will have to be considered at the time of

hearing of the Notice of Motion. Since the Plaintiff is in possession today, he is entitled to the int. inj. Sought by him. Ad-int-inj. In terms of prayer clause (a) of the draft N/M. Usual leave, and Undertaking. Notice of Motion is made ret. On 26-04-2000. Mr.Marathe waives service of the Notice of Motion on behalf of the defendants.”

8. It is alleged that on 20 July 2000, the appellant No.2 accompanied by four unidentified persons and police constables from Antop Hill Police Station came to the suit premises and forcibly removed the plaintiffs articles and things therefrom, despite, the plaintiff bringing to the notice of the appellant and the persons accompanying him, the text of the interim order dated 29-03-2000.

9. The appellant No.2, has not really denied the incident of 20 July 2000. However, the explanation is that such dispossession was by the officials of the MHADA and the appellant No.2 was merely present at the site. It is also the defence of appellants that they had already addressed a letter dated 21 March 2000 to MHADA and the delay in the receipt of the letter is attributable to the Postal Department. For these reasons, appellants submit that they have not willfully disobeyed the order dated 29 March 2000 made by the learned Trial Judge.

10. Without prejudice, the appellant No.1 submits that as of now he is 74 years of the age. He submits that the appellant no.2 who is his wife, is of 69 years of age. He submits that both of them are suffering from several ailments. He submits that the possession of the suit premises has already been restored to the plaintiff in the suit i.e. Mr.Pradeep Gujarathi who is his nephew. The appellant No.1 submits that in case, this Court comes to the conclusion that there was any deliberate or wilful disobedience of the Court orders, the appellant No.1 and his wife express their regret and tender apology to this Court. He submits that they are otherwise law abiding citizens and they have great respect for the judiciary. He submits that it is possible that he may have gone by some incorrect advice in the matter. For all these reasons, he submits that this is a fit case to take a lenient view in this matter.

11. In this case, there is really no case made out to interfere with the findings of facts recorded by the Trial Judge in its order dated 14 November 2000. The record clearly indicates and in fact it was not even denied that the appellant No.2 was present at the site on 20 July 2000, when the incident of possession took place. This is not even the case of the appellants that they were unaware of the order dated 29 March 2000. The defence that such action was taken

by the MHADA officials and that appellant no.2 was merely present on the site is not a defence which deserves acceptance. Similarly, the defence that letter was addressed on 21 March 2000 to MHADA and there was postal delay it is also not acceptable. It is incoceivable that a letter addressed by post before 21-03-2000 reached MHADA only on 05-05-2000. Instead, the material on record indicates that the letter was received by the MHADA authorities on 05-05-2000 vide Inward entry no.3808/2000 in respect of which the rubber stamp has been affixed on the original letter. It clearly means that the defence of postage of the letter dated 21-03-2000 is quite sham and was created only to cover the deliberate breach of judicial order. This aspect has been considered in great details in the impugned order and there is really no case made out to take any different view in the matter.

12. It is apparent that the orders made by the Trial Court were breached wilfully and intentionally by the appellants. Therefore, the finding of wilful and intentional disobedience need not be interfered with. However, when it comes to the sentence, some leniency is warranted particularly considering the submissions made by Mr.Laxmikant Gujarathi who appears in person. From his demeanor it does transpire that his apology is genuine and the

same, can be accepted at this stage. Besides, the circumstances that Mr.Laxmikant is 74 years of age and his wife is 69 years of age is also an additional factor for the exercise of leniency. There is also an additional factor i.e. Mr.Laxmikant and his wife are suffering from several medical ailments. Mr.Laxmikant Gujrathi also stated that his wife is drawing pension, he has certain savings and his son is software engineer. Taking into consideration all these circumstances, it will be appropriate if the sentence for detention in civil imprisonment is substituted with the sentence for payment of fine. Accordingly, the appellant Nos.1 and 2 are directed to pay fine of Rs.25,000/- each to Mr.Pradeep Gujarathi, who, in breach of the interim orders made by the Trial Court was forcibly dispossessed from the suit premises. The statement made by the appellants that Mr.Pradeep Gujarathi was restored the possession of the suit premises is accepted. Mr.Laxmikant Gujarathi confirms this position time and again.

13. The fine amount shall be deposited by the appellants in this Court within a period of two weeks from today. In case, the fine amount is not deposited in this Court within a period of two weeks from today, the sentence of Civil imprisonment will revive and the appellants shall have to serve the same. However,

Mr.Laxmikant Gujarathi assures this Court that the fine amount will be deposited within a prescribed period without fail. His statement is again accepted.

14. The Appeal from Order and the Contempt Petition are disposed of, since, the same arise out of the very same order dated 14 November 2000.

15. Mr.Pradeep Gujarathi shall be entitled to withdraw an amount of Rs.50,000/- from the Registry of this Court unconditionally. The Registry to address an intimation to Mr.Pradeep Gujarathi about deposit of such fine amount, so that, he can withdraw the same unconditionally. Such letter is to be addressed within two weeks from the date of such deposit, if the deposit is made.

16. All concerned to act on the basis of the authenticated copy of this order.

(M. S. SONAK, J.)