

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

**CIVIL APPLICATION NO. 990 OF 2016
IN
SECOND APPEAL NO. 752 OF 2003**

Arvind Anant Thakur

...Applicant

In the matter of

Smt.Indirabai Anant Thakur,
since deceased through her legal representatives
Mr.Yashwant Anant Thakur,
since deceased substituted by
Ram Anant Thakur (Orig.Respondent No.4)
now deceased

vs.

Sou. Malti Madhav Thakur & Ors.

...Respondents

Ms.Gauri Godse for Applicant.
Mr.S.N. Chandrachood for Respondent Nos.1 and 5.
Ms.Anjali Helekar for Respondent Nos.2 and 8.

CORAM : S.C. GUPTE, J.

24 MARCH 2017

P.C.:

Heard learned Counsel for the parties.

2 This application under Order 39 Rule 2(A) of the Code of Civil Procedure seeks a committal order against Respondent No.1 for having disobeyed the injunction order passed by this court on 10 December 2003 in Civil Application No.1378/2003. The order of this court *inter alia* restrained the Respondents from carrying out any construction over the suit property. The suit property consists of an old dilapidated house at City Survey No.304-A situated at Shaniwar Peth, Haveli, District Pune.

3 It appears from the record that in or about 2011, an application was made by the Respondent herein for carrying out repairs of the suit premises. It was disclosed to the court at that time that the premises were demolished pursuant to a notice dated 10 June 2011 issued by the Pune Municipal Corporation under Section 268(7) of the Bombay Provincial Municipal Corporation Act, 1949. Learned Counsel for Respondent No.1 herein (Applicant before the court in Civil Application No.806/2011) stated that without claiming any equities of whatsoever nature or without claiming reimbursement of expenses, his client wants to carry out repairs in the suit premises. Learned Counsel further stated that a list of three architects and three structural engineers practicing in Pune would be submitted to the court within two weeks so that one architect and one structural engineer could be chosen for supervising the entire work. The civil application was, accordingly, stood over.

4 It so happened that, instead of filing this list of architects and engineers and having final orders in her civil application, Respondent No.1 proceeded to seek permission from the Pune Municipal Corporation and thereafter, even proceeded to carry out the work. It is one of the grievances in the present application that in the guise of carrying out repairs, in fact, Respondent No.1 reconstructed the suit premises. After going through the reply filed by Respondent No.1 in the present civil application, this court was of the view that Respondent No.1 was not forthright in explaining her conduct, which *prima facie* exhibited a serious breach of the order passed by this court. Learned Counsel for Respondent No.1 contemnor thereupon sought time to file an additional affidavit of his client to enable her to make a clean breast of what she had done. Accordingly, a further affidavit dated

16 March 2017 has been filed by Respondent No.1. In the affidavit, at the very outset, the Respondent contemnor accepts that her conduct in the matter amounted to a clear breach of the order passed by this court. She, however, tenders an unconditional apology for her conduct and submits that this conduct on her part was not intentional or with a view to deliberately flout the orders of this court. She submits that through oversight or mistake in understanding the correct import of the order, she went ahead with the work under a *bona fide* impression that her civil application was practically over in the sense that her statement was accepted by this court and that she merely had to file a list of architects and engineers. She inadvertently omitted to file such list and instead, under a *bona fide* belief that her statement for carrying out repairs was already accepted by the court, went ahead and obtained permission for repairs of the suit premises from the Municipal Corporation, and even proceeded to carry out the work. It appears that there has been a stop-work notice issued by the Municipal Corporation as of 14 September 2016 coupled with a communication addressed to the Vishrambaug Wada Police Station to physically stop the work. Anyway, by an order passed by this court on 8 July 2016 in this very civil application, Respondent No.1 contemnor has been restrained from carrying out any further construction or creating any third party rights in the suit premises.

5 On these affidavits and also considering the fact that Respondent No.1 contemnor is about 80 years old and bedridden, this court does not propose to pass any order of committal. The demolition of the suit premises was anyway communicated to this court in her earlier civil application, along with her intention to repair the suit premises. From the tenor of the order, it does appear that the court was very much

inclined to consider her application for permission to carry out such repairs. On these facts, her explanation that, under a *bona fide* belief that this court had accepted her statement and granted her permission, she proceeded to carry out the work of repairs, deserves to be accepted. Whether in the guise of a repairs permission, she actually re-constructed the premises is a matter for the Municipal Corporation to check and rule on. This court is not inclined to take up that issue in the present proceedings under Order 39 Rule 2-A.

6 Learned Counsel for the Applicant submits that Respondent No.1 contemnor must at least be called upon to disclose the name of the person, who has carried out this work, considering the fact that she claims to be an 80 year old lady, who is bedridden. This court is not inclined to pass any such order, considering the fact that the Respondent contemnor has actually accepted that it was she who carried out this work and has also expressed remorse for her actions. She has, as I have noted above, who also explained the circumstances in which she committed this error. This court has accepted the explanation and apology tendered by the Respondent contemnor. In the premises, the order pressed by learned Counsel for the Applicant need not be passed.

7 The contempt notice is, accordingly, discharged.

8 It is, however, made clear that the operative order passed by this court on 8 July 2016, which is reflected in para 7 thereof, shall continue to operate.

9 In the peculiar facts and circumstances and considering that

this appeal is of the year 2003, the same may be expeditiously taken up for hearing. The appeal shall appear for final hearing in the week commencing from 12 June 2017. Printing of appeal paper book is dispensed with. The Appellant may file a private paper book of the papers and proceedings before the courts below, which are not already part of the appeal paper book filed before this court, within twelve weeks from today.

10 Learned Counsel for the Applicant / Appellant submits that the issue as to whether there is a breach of the permission given by the Municipal Corporation for repairs to the suit premises should be kept open. I have already reflected on that issue in my order and there is no need to pass any separate order in this behalf. In any event, that is not the subject matter of the present civil application.

11 The civil application is disposed of accordingly.

(S.C. GUPTE, J.)