

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO.318 OF 2010
IN
WRIT PETITION NO. 2249 OF 1997**

Navjivan Co-operative Housing Society Ltd. & Ors

..Petitioners

Vs.

Navjivan Commercial Premises

Co-operative Sty Ltd & Ors

..Respondents

Mr. V. A. Gangal i/b Mr. A. T. Gade for the Petitioners

**Mr Karl Shroff a/w Ms Khayti Pandit i/b Dhru & Co. for the Respondent
Nos.1 and 2**

Mr. S. D. Rayrikar AGP for the Respondent No.22

CORAM : R. M. SAVANT, J.

DATE : 6th JANUARY, 2017

P.C.

1 The contempt alleged is of the interim order passed by a Learned Single Judge of this court on 6-5-1997 in the above Writ Petition. The gravamen of the allegations is on the basis of clause (h), (i) and (j) of the said order. The said clauses are reproduced hereinunder for the sake of ready reference.

(h) The Petitioner society will not take any policy decision or dispose or alienate or transfer or encumber or part with any part or portion of building no.3.

(i) The Petitioner society will maintain true and correct accounts and will submit it for approval of Respondent No.4 as per provision of by-laws, MCS Act 1960 and Rules framed thereunder

(j) The Petitioner society will recover all arrears prior to 31st March 1996 of members / occupants of Building No.3 within twelve weeks from today and will pay the same to the Respondent No.1.

2 The subject matter of the above Writ Petition is the order passed by the then Hon'ble Minister for Co-operation in Appeal filed by the Petitioner herein by which order the Appellate Authority set aside the order of bifurcation passed by the Deputy Registrar Co-operative Societies. The said bifurcation was between the Petitioner herein and the Respondent who is the original Writ Petitioner. The above Writ Petition is pending hearing and final disposal. The said order dated 6-5-1997 is by way of an interim arrangement so that the administration of the society is not affected. In so far as clause (h) is concerned, it is the case of the Petitioner society that the Writ Petitioner society is taking policy decisions from time to time, revolving around the transfer of various commercial premises in building no.3. In terms of clause (i) the Writ Petitioner society is obliged to maintain true and correct account and in terms of clause (j) the Writ Petitioner society was required to recover all arrears prior to 31-3-1996 of the members / occupants of the building no.3 within 12 weeks from today and pay to the Respondent No.1 i.e. the Petitioner society herein. The bone of contention appears to be the transfer charges recovered by the Writ Petitioner society on account of the transfer of various commercial premises from time to time. The said amount seems to be a large amount. A reading of the said order dated 6-5-1997 of which contempt is

alleged prima facie does not indicate that the amounts recovered by way of transfer charges are covered by the said order.

3 It appears that the Writ Petitioner society has deposited an amount of Rs.19,00,000/- in this court pursuant to the order dated 2-5-2013 passed in the above Contempt Petition. The said amount is towards the arrears prior to 31-3-1996. The said amount of arrears is sought to be disputed by Mr. Gangal the Learned Counsel appearing for the Petitioner herein. It seems that the Petitioner society has filed a Civil Application No.236 of 2008 in the above Writ Petition and the principal relief sought is that the Writ Petitioner society and its office bearers be directed to forthwith pay to the Petitioner society a sum of Rs.45.91 lacs being the arrears which the Writ Petitioner society owes to the Petitioner society upto 31-3-1996. There are other reliefs sought in the said Civil Application which are not relevant in so far as the instant Contempt Petition is concerned. By an order passed on 9-10-2009, by a Learned Single Judge of this Court the said Civil Application has been directed to be heard along with the above Writ Petition. In so far as the said relief of Rs.45.91 lacs is concerned it is claimed on the basis of the services, allegedly provided by the Petitioner society prior to the order of bifurcation.

4 Be that as it may, in my view it is not necessary to proceed with

the above Contempt Petition and exercise the contempt jurisdiction when the principal issue which is required to be adjudicated is as regards whether the society in question is required to be bifurcated. This fact along with the fact that the Petitioner has already filed the Civil Application claiming an amount of Rs.45.91 lacs which Civil Application is directed to be considered along with the Writ Petition, as also the fact that the Writ Petitioner society had deposited an amount of Rs.19 lakhs in this court impinges upon whether the Contempt jurisdiction is required to be exercised. Since the bone of contention appears to be the amount received by the Writ Petitioner society on account of the transfer of the premises, the said issue can undoubtedly be gone into at the hearing of the Writ Petition along with the Civil Application. In my view no case of breach and violation of the said order dated 6-5-1997 is made out, there is therefore no warrant to keep the above Contempt Petition pending which to accordingly stand dismissed.

5 However, it is clarified that the contentions of the parties are kept open for being urged at the appropriate time in the Writ Petition.

[R.M.SAVANT, J]