

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 73 OF 2017

Vilas Pandharinath Goregaokar .. Petitioner
vs.
Damodar Nemchand Dharavat & Ors. .. Respondents

Mr. Diwakar Dwivedi i/b. Dattatray Adarkar for Petitioner.
Mr. Atul Singh for Respondent Nos. 7 and 8.
Mr. A. Singh i/b. Mr. A. Mishra for Respondent No. 10.
Ms M. R. Bhoir for MCGM.
Mr. S. P. Thorat for Respondent No. 13 – SRA.

CORAM : M. S. SONAK, J.
DATE : 21 MARCH 2017

P.C :

1] Heard learned counsel for the parties.

2] In this contempt petition, the petitioner alleges that the respondents have breached the undertakings given to this Court, which are recorded by this Court in orders dated 8 December 2014 and 21 July 2016. Learned counsel for the petitioner states that the said undertakings were to the effect that the respondents herein, who are styled as respondent nos. 7 and 8 in the aforesaid two orders, will not carry out further construction on CTS No. 88 except for construction of the compound wall. Learned counsel for the petitioner submits that the respondents have commenced construction upon the property bearing CTS No. 88 and this constitutes a breach of the undertaking or the interim orders.

3] On the other hand, Mr. Atul Singh, learned counsel for the respondents, who are alleged to have committed contempt, categorically submits that no construction is being undertaken upon

any part of the property bearing CTS No. 88. The construction is proceeding on property bearing CTS Nos. 201 and 202. Such construction is in relation to building no. 6. Building no. 2 which is already constructed on property bearing CTS No. 88 is complete. He points out that though there was liberty to undertake construction of the compound wall, even such compound wall has not been constructed.

4] The issue as to whether the construction now being undertaken by the respondent is on property bearing CTS No. 88 or on property bearing CTS Nos. 201 and 202 is really a disputed question of fact. Besides, by the two orders, in which, the undertakings are recorded, by this Court, the learned trial Judge had granted some interim reliefs to the petitioners, in this sense, therefore, there is a merger. The petitioner can always be granted liberty to take out application under Order XXXIX Rule 2A of CPC, since, in such proceedings, it will perhaps be open to the parties to lead evidence, in case they choose to do so.

5] Accordingly, this Contempt Petition is disposed of. However, liberty is granted to the petitioner to take out proceedings under Order XXXIX Rule 2A of CPC. Such proceedings if taken out will be decided in accordance with law and on their own merits. It is made clear that this Court has not expressed any opinion on the merits of the matter and therefore all contentions of all parties are left open to be determined by the learned trial Judge as and when the occasion arises.

6] The Contempt Petition is disposed of in the aforesaid terms.