

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.156 OF 2013

Smt. Tara Atmaram Shetye (Deceased) ...Petitioner

vs.

Uday Gopinath Mane ...Respondent

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Ms. Trupti R. Khanivadekar, for the Applicant.

Mr. Atul G. Damle, Senior Advocate, i/b. Rupesh K. Lanjekar, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED : 17 APRIL 2017

P.C. :

. Heard learned Counsel for the parties.

2. This Contempt Petition alleges breach or disobedience on the part of the Respondent Contemner of an order passed by this Court in First Appeal No.216 of 2011. This appeal is from a suit filed by the Plaintiff - Ratnaprabha Jaywant Shirsat. The Respondent is a Defendant to that suit. It is the Plaintiff's case in her suit that she and her sister Tara Shetye (now deceased) appointed the Respondent as a conductor to conduct their business of Pan Bidi and Tobacco in the suit premises, which consists of a shop in a chawl in the compound of Digvijay Textile Mills, Lalbaug, Mumbai, for 10 years from the year 1994. It is submitted that, in the year 1994, before expiry of the conducting agreement, the conductor - Ramesh Rajaram Sawant, illegally and without knowledge of

the Plaintiff, inducted in the suit premises and appointed another conductor (Original Defendant to the suit) to carry on pan bidi business. In the premises, the Plaintiff and her sister filed S.C. Suit No.7450 of 1994 against the Respondent. By a judgment and decree dated 10 January 2011, the Trial Court ordered the Respondent to deliver possession of the suit premises and business to the Plaintiff. In the Respondent's First Appeal (First Appeal No.216 of 2011), this Court, after admitting the appeal, granted stay of execution of the decree of possession granted by the Trial Court, subject to the Respondent (Appellant before the Court) depositing a sum of Rs.2000/- p.m. with the Trial Court from 1 February 2011 in respect of the appeal and on a further condition not to create any third party rights or part with possession of the suit premises, till the disposal of the appeal. It is submitted that, despite this order, the Respondent has created third party rights and parted with possession of the suit premises in favour of his mother, Geeta Gopinath Mane. It is submitted that, when the bailiff of this Court went to execute a warrant of possession of the suit premises on 18 January 2012, it was noticed that the Respondent had changed the pan bidi business and was selling electronic goods, Mobile C.Ds, Pen Drives, etc. in the suit premises. It is submitted that the licence in respect of this business is in the name of the Respondent's mother, Geeta Gopinath Mane. On these facts, a committal order is claimed against the Respondent/Contemner.

3. On the other hand, it is pointed out by the Respondent/Contemner in his affidavit dated 23 November 2016, that his mother, Geeta Gopinath Mane, was in actual exclusive physical

possession and management of the suit premises and selling pan bidi in the suit premises after the demise of his father, late Gopinath Mane, who was originally running the business at the suit premises. It is submitted in the written statement filed in the suit (as far back as on 11 November 1998) that it was the Defendant's mother, who was running the business in the suit premises. It is submitted in the written statement that the Defendant is carrying on the business with his mother at the suit premises after the demise of his father, though the licence continues to exist in the name of his mother, Geeta Gopinath Mane.

4. On these facts, merely because of change of nature of business, it cannot be said that there is any third party right created in respect of the suit premises or its possession has changed hands. It has always been the case of the Respondent that the business was carried on at the suit premises by him, along with his mother, who was in actual exclusive possession and management of the suit premises. The licence relied on by the Petitioner in respect of the new business, namely, the business of sale of mobiles and accessories also is in the name of the Respondent's mother Geeta Gopinath Mane. In the premises, there is no case for proceeding under the contempt jurisdiction of this Court against the Respondent/Contemner.

5. The Contempt petition is, accordingly, dismissed. No order as to costs.

(S.C. GUPTE, J.)