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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.16 OF 2011

IN

SUIT NO.2912 OF 1992

John Builders Pvt. Ltd. and Franklin John ..Petitioner.
V/s.

Earnest John & Co. Ltd. & Ors. ..Respondents.

Ms.K.R.Daviervalva i/b. Mulla & Mulla C. B. & C. for the Petitioner.

Mr.P.K.Dhakephalkar, Senior Advocate with Dr.Birendra Saraf,
Mr.Rajeev Carvalho and Mr.Vishesh Malviya i/b. M/s. Federal and
Rashmikant for Respondent Nos.1 to 4.

Coram : K.R.SHRIRAM, J.

Date : 21 APRIL, 2017

P.C.:-

This contempt petition is filed by the Petitioner on the ground that the Respondents have committed breach of clause (12) of the consent terms which was taken on record vide order dated 29 April, 1994. The petition has been filed after almost 18 years since entering into consent terms. Clause (12) of the consent terms reads as under:-

“12. The Plaintiffs agree and undertake to this Hon'ble Court to make an application within three weeks after receiving amounts of Rs.20,00,000/- mentioned above, Rs.13,00,000/-

mentioned above and the Bank guarantee mentioned above, to the Bombay Municipal Corporation for the issue of an occupation certificate in respect of the entire building known as 'Earnest House' and in the event of the Bombay Municipal Corporation having any objection or any requisition in relation to any area in possession of the Defendants, then the Defendants agree to remove the same and in the event of the Bombay Municipal Corporation having any other objection or requisition, the Plaintiffs agreed to remove the same."

2. Mr.Daviervalva states that the Petitioner has paid amounts mentioned in the clause quoted above, still the Respondents have not applied for Occupation Certificate to the Mumbai Municipal Corporation and hence there is a breach of undertaking by the Respondents.

3. Mr.Dhakephalkar, the learned senior counsel on instructions submits that the petition should be dismissed due to the gross delay because the Petitioner is alleging breach of clause 12 after almost 18 years. Secondly, Mr.Dhakephalkar on instructions, submits that the Respondents have applied for occupation certificate and there has been lot of correspondence exchanged between the parties subsequent thereto. Nevertheless, Mr.Dhakephalkar states that copy of the application will be sent to the Petitioner's Advocate within two weeks from today.

4. The Contempt Petitioner is accordingly disposed.

(K.R.SHIRIRAM, J.)