

nsc.

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

***CIVIL CONTEMPT PETITION NO.453 OF 2018
IN
CIVIL WRIT PETITION NO.10952 OF 2018***

Chaya Ram Doifode	...Petitioner
Versus	
Rahul Kuber Patil and Ors.	...Respondents

Mr.Anand Patil i/b Anand Patil and Associates, for the Petitioner.

Mr.Y.D.Patil, A.G.P for the Respondent Nos.3 and 4.

Mr.Manoj A. Patil, for the Respondent Nos.1 and 2.

Petitioner is present in Court.

Respondent Nos.1 and 2 are present in Court.

Respondent Nos.3 and 4 are also present in Court.

CORAM : REVATI MOHITE DERE, J.

DATE : 16th OCTOBER, 2018

P.C. :

1. Heard learned counsel for the parties.
2. Learned Counsel for the Petitioner submitted that the Respondent Nos.1 to 4 are in contempt of the order dated 27th September, 2018 passed by this Court in Writ Petition No.10952 of 2018. He

submitted that despite an ad-interim relief being granted in favour of the Petitioner, the Respondents willfully took possession of the suit property, by breaking open the lock. He submitted that all the Respondents despite being aware of the said order, have flouted the said order, by breaking open the lock and by barging into the petitioner's premises. He submitted that even the Circle Officer i.e. the Respondent No.4 as well as the Tahsildar i. e. Respondent No. 3, were aware of the order dated 27th September, 2018, however, despite the same, they proceeded with their action. He submitted that all the Respondents are in contempt of the order dated 27th September, 2018 and as such, ought to be held for contempt.

3. On 6th October, 2018, notice was issued to the Respondents, pursuant to which all the Respondents have appeared in the said Contempt Petition. Learned counsel for the Respondent No. 2 has tendered an affidavit-in-reply of Rahul Kuber Patil and Jeevan Youhan Hegde i. e. Respondent Nos. 1 and 2. The same is taken on record.

4. The Respondent Nos.1 and 2 tender an unconditional apology to this Court for committing contempt of the order dated 27th September,

2018. Learned counsel for the Respondent Nos. 1 and 2 submits that the Respondent Nos.1 and 2 had no intention to commit breach or contravene the order dated 27th September, 2018 passed by this Court. He submits that due to inadvertence and due to miscommunication, the action of breaking open the lock took place.

5. In the affidavit-in-reply filed by the Respondent Nos.1 and 2, the details of when the communication was received and what transpired on 27th September, 2018 have been set out in detail. The Circle officer as well as the Tahsildar also tender their unconditional apology, for committing breach of the order dated 27th September, 2018. Learned A.G.P. states that the Circle Officer on being informed of the ad-interim relief being granted vide order dated 27th September, 2018, took immediate steps to stop the process of taking the possession. He submitted that infact, the Respondent Nos.1 and 2 even sent a letter to the Circle Officer dated 28th September, 2018, wherein they requested the Circle Officer and the Tahsildar to hand over possession back to the Petitioner and stated that they had no objection if the possession is handed back to the Petitioner. Learned A.G.P. submitted that both the Circle Officer and the Tahsildar, orally

informed the Petitioner to take back the possession, however, the Petitioner did not took back the possession. Learned Counsel for the Petitioner disputes the said statement.

6. Perused the papers. This Court vide order dated 27th September, 2018 had granted ad-interim relief in favour of the Petitioner. By the said order dated 27th September, 2018, the impugned order dated 3rd September, 2018, passed by the Respondent No.5 – Divisional Joint Registrar, Kolhapur, was stayed i. e. the Respondents were restrained from taking possession of the Petitioner's premises. It appears that on 28th September, 2018, the Respondent Nos.1 and 2 with the assistance of the Circle Officer and the Tahsildar went to take possession of the Petitioner's property. Although, the learned counsel submitted that she had informed the Circle Officer of the order dated 27th September, 2018, prima facie, it appears that the said order was received in the office of the Tahsildar on 28th September, 2018. It appears, that despite receipt of the said order, the Respondent Nos.1 and 2 alongwith the Circle Officer and the Tahsildar proceeded to take possession of the Petitioner's premises, in breach of the order dated 27th September, 2018. The Respondent Nos.1 and 2 in their

affidavit-in-reply have tendered an unconditional apology to this Court, for their action. They have stated that they never had any intention to breach and/or to contravene the order of this Court and that due to miscommunication the incident took place. The Respondent Nos.1 and 2 have also expressed regret for the in-convenience and for their action, in the affidavit-in-reply. They have also stated that on 27th September, 2018, at about 8.30 to 9.00 p.m. one Jahangir Mujawar, a representative of Respondent Nos. 1 and 2 had called Mr.Manoj Patil and requested him to enquire whether any order was passed in the Writ Petition. It is mentioned in the affidavit-in-reply that the advocate sought time to verify the same, however, thereafter the advocate could not be contacted. It is stated that they had not received any communication from their Advocate nor any enquiry was done with respect to the above Petition. They have further stated that on 27th September, 2018, Mr. Patil contacted the Petitioner's Advocate and during the conversation, it was revealed about the order passed by this Court. They have further stated that the order could not be communicated to their Advocate, Jahangir Mujawar and that till the next date i.e. 28th September, 2018 there was no communication between them and their lawyers. It is further stated that the action of taking and handing

over possession of the subject property was completed by the Circle Officer inadvertently, in the absence of the Petitioner and her family members. It is further stated that on 28th September, 2018 at about 2.00 p.m. Advocate, Jahangir Mujawar, called Advocate Ashish Pawar and asked him to contact urgently. At 2.00 p.m., Respondent Nos.1 and 2's Advocate, Mr. Manoj Patil called Jahangir Mujawar and informed him about the order passed by this Court and asked them to immediately restore the petitioner's possession. It is further stated that at about 3.00 to 4.00 p.m, the Respondent Nos.1 and 2 also informed the Circle Officer to restore the possession back to the Petitioner and accordingly also submitted a letter to that effect to the Circle Officer. It is further stated that on 28th September, 2018 at about 2.30 to 3.00 p.m., Advocate Manoj Patil called the Petitioner's Advocate, Mr. Anand Patil, and informed about the inadvertent act of taking over the possession and tendered an apology on behalf of the Respondent Nos.1 and 2 and stated that they were ready and willing to restore the possession and requested that the possession be taken back. It is further stated that Mr. Anand Patil though assured to convince the Petitioner of taking back the possession, also informed that he would initiate contempt action for the alleged act. The Respondent Nos.1 and 2

have again tendered an unconditional apology and have undertaken not to violate any orders passed by this / any Court.

7. Respondent Nos. 3 and 4 i.e. Circle Officer and the Tahsildar have also tendered an unconditional apology and have assured not to breach any orders passed by this Court. All the Respondents have stated that they are ready to hand over the possession of the premises to the Petitioner. The apologies tendered by the Respondent Nos.1 to 4 are accepted. The Respondents to ensure that they do not flout any orders passed by this / any Court / authority in future.

8. In view of the unconditional apology, no further action is required to be taken against the Respondents. The statement made by the Respondents is also accepted that they will hand over possession of the premises to the Petitioner forthwith.

9. The Petitioner is personally present in Court and states that she is ready to take over the possession of the premises on **Friday, 19th October, 2018**. The Respondent Nos.1 and 2 are present in Court and

tender an unconditional apology to the Court as well as to the Petitioner, who is present in Court. The Respondent Nos.1 and 2 also undertake to give an unconditional apology to the Petitioner in writing, which letter will be handed over to the Petitioner, at the time of handing over possession. All those who were present at the time of taking over possession of the Petitioner's premises to remain present on 19th October, 2018, while handing over the possession back to the Petitioner.

10. Petition is accordingly disposed of on the aforesaid terms.
11. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)