

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

**CONTEMPT PETITION NO.97 OF 2016
in
CIVIL REVISION APPLICATION NO.872 OF 2013**

Placid Joseph D'Souza ... Petitioner
Vs.
Azadnath Lalman Tiwari & ors ... Respondents

Mr.A.B.Tajne for Petitioner.
Mr.R.R.Tripathi with Mr.Mahadev Choudhari for Respondents
Ms.Tanaya Goswami AGP for State/Respondent no.3
Mrs.Kavita Ambekar Ist Assistant to Court Receiver present

**CORAM : G.S.KULKARNI, J.
DATE : FEBRUARY 21, 2018.**

P.C.:

1. By an order dated 23.2.2017 this Court had recorded the statement on behalf of the respondent no.1 that the respondent no.1 has no objection for handing over the possession of shop no.4 situate on city survey no.11/9 and that the respondent no.1 shall hand over possession of shop no.4 on 9.3.2017 at 11 a.m. By a further order dated 23.3.2017 this Court had observed that since the order was passed against respondent no.1 in respect of shop no.4 which the respondent has already agreed to hand over, it was further observed that respondent no.1 himself has stated that the area of shop no.4. was 300 sq.ft. On this background, the matter was again considered by this

Court on 10.8.2017 when *prima facie* considering the stand of the parties, the Court had observed that it was necessary that Court Receiver be appointed. The Court in para nos. 9 to 13 while appointing the Court Receiver made the following observations :

9. “Upon due consideration of the submissions made by Mr.Chaudhari, I am satisfied that hardly any cogent defence has been raised. However, since this is a petition for contempt, some additional time can always be granted to respondent no.1 and 2 to establish that they have not committed any contempt of court. In the meanwhile, it is necessary that Court Receiver is appointed directed to, if necessary after taking police protection, visit the site and take over physical possession of the premises in question. It is made clear that the Court Receiver is not to entertain any dispute with regard to the existence of the two shops whether distinct or otherwise. The Court Receiver is to ensure that possession of 400 sq.ft area or such as is available at the site is taken over. The Court Receiver is to report compliance within a period of two weeks from today. It is clarified that the portion of 90 sq.ft from out of the suit premises which has already been handed over to the petitioner can remain in possession of the petitioner and the Court Receiver should not disturb the same.

10. After the Court Receiver has secured the physical possession of 400 sq.ft of the area or such area as is available at the site without being influenced by any dispute as raised by respondent no.1 and 2, this court shall consider the issue of appointment of a suitable person, including for respondent nos.1 and 2 and agents of the Receiver, subject of course to the appropriate terms and conditions. However, in the matter of this nature, it is imperative that the physical possession is to be secured by the Court Receiver and the contemnors are not allowed to defeat lawful orders of courts by raising *prima facie* dishonest pleas.

11. This court in its order dated 23rd March 2017 has already noted that *prima facie* respondent no.1 is proven to disobey judicial orders. This was in the context of theailable warrant of the Apex Court on 17th April 2015.Mr.Tajane pointed

out that the matter before the Supreme Court was disposed of on 17th April 2015 and respondent no.1 was directed to pay an amount of Rs.1,00,000/- to the petitioner in the said contempt petition. Mr.Chaudhari pointed out that the said dispute has nothing to do with the dispute in the present case. However, respondent no.1 who was present in court admitted that the amount of Rs.1,00,000/- has till date not been paid.

12. The respondent no.1 is directed to deposit in this court by 24th August a sum of Rs.25,000/- towards tentative costs for appointment of an official receiver.

13. The Court Receiver is further requested to proceed in terms of this order, whether or not respondent no.1 deposits the amount of Rs.25,000/-.”

2. It is on this background, I have heard learned counsel for the parties.

3. The Court Receiver has placed on record his report No.178 of 2017 to which is annexed a report dated 23.8.2017 of Mr.Gajanan Govind Surve representative of Court Receiver. Paragraph 7 thereof records that the area of the suit premises is 195.65 sq.ft in total which reads thus:

“7. During inspection, Mr.D'Souza – Petitioner took measurement of the suit premises who stated that the area of the suit premises in question of 210 sq.ft approx. Mr.AzadnathTiwari also stated that the area of the suit premises in question is of 210 sq.ft approx. The fact is that the length and breadth of the suit premises are of 21.5” and 9.10 ft. respectively (as measured by the Petitioner) which comes to 195.65 sq.ft in total.”

4. Mr.Choudhari learned counsel for the respondent while opposing this contempt petition has drawn my attention to various documents including documents of city survey which point out that the area of the suit premises bearing city survey no.11/9 is 13.2 sq.meters which comes to about 145 sq.ft. Relying on the city survey documents, he states that there was also acquisition of land for the purpose of road widening. In short, his contention is that though initially the respondent no.1 before the trial Court had admitted that the area of the suit premises being shop no.4 was 10 x 35 sq.feet, however, actually it was not so. My attention is also drawn to the cross-examination of PW1 whereby PW 1 also has stated that the area of city survey no.11/9 is about 110 sq.ft.

5. Considering the above conspectus and that already city survey no.11/9 being shop no.4 has already been handed over to the petitioner-plaintiff, with a reduced area of 145 sq.ft not the actual area as asserted by the petitioner. In my opinion, the contention of the petitioner that on the short fall of the area, contempt proceedings be initiated against the respondent no.1 cannot be accepted. The scope of the contempt jurisdiction would be only to consider willful and/or intentional disobedience of the orders of the court. However, the issue as being urged by the petitioner is purely an issue wherein there is a

factual dispute on the actual area as also interpretation of the decree. All these issues cannot be gone into in exercise of contempt jurisdiction of this Court as the issues necessarily are required to be gone into in execution proceedings which may be adopted by the petitioner-plaintiff to execute the decree.

6. Learned counsel for the petitioner fairly submits that considering the facts and circumstances of the case, the petitioner shall proceed to adopt appropriate proceedings to execute the decree as granted by the appellate bench of the Small Causes Court, Mumbai in R.A.E.& R No.2474 of 1989 which is in respect of premises being city survey no.11/9 9,Room no.4 situated being city survey no.11/9.

7. Nonetheless, considering the observations made by the Courts in the orders as noted above, it would be appropriate and in the interest of justice that Court Receiver as appointed by this Court by an order dated 10.8.2017 shall continue to act as Receiver of the suit premises till the executing Court passes appropriate orders in execution proceedings which may be adopted by the petitioner-plaintiff.

8. Mr.Tajne learned counsel for the petitioner-plaintiff states that the petitioner shall move executing proceedings within a period of two weeks from today. Statement is accepted.

9.. Needless to observe that if such execution proceedings are

not filed and commenced within the said period, Court Receiver as appointed by this Court shall stand discharged without further reference to the Court.

10. In view of above, contempt petition would not require any further adjudication. It is accordingly disposed of. No costs.

11. All expenses of the Court Receiver which are so far not paid shall be deposited by the petitioner-plaintiff within a period of two weeks from today as also further necessary charges of the Court receiver shall also be borne by the petitioner-plaintiff.

(G.S.KULKARNI, J.)

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