

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Contempt Petition NO. 347 OF 2018

Vinaykumar P. Sath

...Petitioner

Versus

Smt. Jasumati Jamnadas Lathigara
(since Deceased) through L.Rs.
Prafulla Jamnadas Lathigara
and others.

...Respondents

....

Mr. Karan S. Thorat, Advocate for the Petitioner.
Ms. Sultana V. Sonawane, Advocate for Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 29th OCTOBER, 2018

P.C.

1. Heard Mr. Karan S. Thorat, learned counsel for the petitioner and Ms. Sultana V. Sonawane, learned counsel for the respondents, at length.
2. This Contempt Petition is instituted by the petitioner alleging breach of the order dated 18.3.2016 passed by this Court in C.R.A. No.317/2014. By that order, C.R.A. preferred by the respondents herein was dismissed and the orders dismissing the application filed by the respondents under Order IX Rule 13 of Code of Civil Procedure, 1908 (for short, 'C.P.C.') for setting aside exparte decree dated 4.5.2002 were confirmed. Aggrieved by this decision, the respondents preferred S.L.P. No.15565/2016, which was also dismissed on 26.10.2016.

3. Contempt Petition was heard at length on 3.9.2018. In paragraph-3 of that order, the grievance of the petitioner that the respondents have not handed over possession of the suit premises was noted. It is the case of the respondents that possession of the suit premises was handed over to the petitioner in pursuance of the warrant of possession issued on 5.1.2017. Respondent No.3 filed affidavit. In paragraph-8 it was contended that in the year 1997, the suit premises was divided in two parts with the consent of the petitioner. The suit premises bearing No.37 was divided into (1) premises bearing No.37 and (2) premises bearing No.58. The respondents contended that after handing over possession of premises No.37, defendant No.3 is in occupation of Room No.58 since the year 2010.

4. No material to substantiate this contention was produced before this Court when C.R.A. was dismissed on 18.3.2016. It is, therefore, not possible to accept the contention of the respondents that the suit premises was divided in the year 1997 into two parts as alleged by them. A perusal of the bailiff's report 25.1.2017 shows that the respondents have not handed over possession of the premises which is described as 'side room' to the petitioner.

5. Ms. Sonawane further submitted that initially in the year 1977, the area where the suit premises is situate was declared as a slum

area. Mr. Thorat submitted that said declaration was set aside by the Tribunal vide order dated 12.5.1981 in Appeals No.388 and 390/1977. Ms. Sonawane tendered a photo-copy of the Public Notice dated 1.11.2017 issued by the Deputy Collector (Encroachment/Removal) and Competent Authority, Bandra-2, Mumbai about carrying out survey of Cluster ID No.KE-067 for the purpose of finding out the eligibility of the slum dwellers and issuing Annexure-II. She submitted that this area is declared as a slum area and, therefore, survey is carried out. The suit premises is situate in a slum area. She has, however, not produced declaration either under Section 4 or 4A of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short, 'Slum Act').

6. In view thereof I *prima facie* find that the respondents have committed breach of the order dated 18.3.2016 passed by this Court in C.R.A. No.317/2014. Ms. Sonawane states that the respondent No.3 Devang Prafulla Lathigara is present in the Court today. She has tendered a photo-copy of his PAN card, which is taken on record and marked 'A' for identification. Upon taking instructions from him, she states that respondent No.3 Devang Prafulla Lathigara is residing along with his wife Jinal P. Lathigara and brother Chirag Prafulla Lathigara who is adult and that no one else is residing. Ms. Sonawane, upon

instructions, states that the respondents will hand over possession of the side room to the petitioner on or before 31.12.2018. She further states that on or before 26.11.2018 they all will file undertaking in this Court to the effect that they will hand over vacant and peaceful possession of the side room, more particularly described in the bailiff's report dated 25.1.2017. She further states that the unconditional apology on behalf of the respondents may kindly be accepted.

7. Mr. Thorat invited my application dated 13.2.2017 filed by respondents No.3 & 4 in Execution Application No.25/2017 for stay of the execution proceedings. Ms. Sonawane assures that the respondents No.3 & 4 will withdraw said application on or before 26.11.2018.

8. As the respondents have now agreed to hand over vacant and peaceful possession of the side room to the petitioner as also have tendered unconditional apology, I do not find that this is a fit case for initiating contempt proceedings against them. In view thereof, Contempt Petition is disposed of subject to respondent No.3 Devang Prafulla Lathigara, his wife Jinal P. Lathigara and respondent No.4 Chirag Prafulla Lathigara, filing undertaking incorporating therein :

- i. they are in possession and nobody else is in possession of the side room, more particularly described in the bailiff's report dated 25.1.2017;
- ii. they have neither created third party interest nor parted with possession of the side room, more particularly described in the

- bailiff's report dated 25.1.2017;
- iii. they will hereafter neither create third party interest nor part with possession of the side room, more particularly described in the bailiff's report dated 25.1.2017;
 - iv. they will vacate and handover possession of the side room, more particularly described in the bailiff's report dated 25.1.2017 to the petitioner on or before 31.12.2018 and will not seek further extension of time; and
 - v. Respondents No.3 & 4 will withdraw the application dated 13.2.2017 filed in Execution Application No.25/2017 for stay of the execution proceedings, on or before 26.11.2018.

9. The undertaking shall be filed with advance copy to other side on or before 26.11.2018. In case, respondents No.3 and 4 as also wife of respondent No.3 do not file the undertaking, in the aforesaid terms, within the stipulated period the Contempt Petition shall stand revived without further reference to the Court. Despite filing of the undertaking, as aforesaid, if respondents No.3 and 4 as also wife of respondent No.3 do not hand over vacant and peaceful possession of the side room, more particularly described in the bailiff's report dated 25.1.2017 to the petitioner on or before 31.12.2018, the Contempt Petition shall stand revived without further reference to the Court.

10. List the Contempt Petition for reporting compliance firstly on **28.11.2018.**

(R. G. KETKAR, J.)