

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 488 OF 2014

Shirish Ratilal Shah & Anr.

... Petitioners

Vs.

Smt. Padmavati Shantilal Shah alias

Smt. Padmavati Rasiklal Shah

... Respondent

Mr. Praful B. Shah i/b. Mr. Kayval P. Shah, Advocate for the petitioners.

Mr. R.M. Haridas i/b. Mr. Amol P. Mhatre, Advocate for the respondent.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE:14th February, 2018.

P.C.:

This Contempt Petition is against the order dated 26th July, 1994. There is a dispute between the petitioners and the respondent/contemnor in respect of property and they have undivided share in number of properties. Special Civil Suit No. 547 of 1993 was filed and against the order passed therein, Appeal No. 776 of 1994 was filed before this Court. In Appeal from Order, the parties have decided to settle the issues amicably and filed Minutes of Order on 26th July, 1994. The Minutes were signed by the advocate of the parties and by the appellants no. 1 to 3 and respondent nos. 1 to 16. The contemnor-Padmavati Shah has signed the Minutes at Sr. no. 12, however, admittedly she was not

represented by the advocate at the relevant time. The High Court on the same day has accepted the Minutes of Order and undertaking given in the said Minutes. It was agreed especially in Clause no. (g) that there shall be an injunction restraining the parties from encumbering or in any manner creating third party interest in respect of the properties in Special Civil Suit No. 547 of 1993 including the properties mentioned in Schedule 8 of the written statement of defendant no. 1, till the passing of award except the properties enumerated in Schedule I, II of Regular Civil Suit No. 46 of 1946. Despite this undertaking, the contemnor sold two suit properties bearing survey nos. 3282A and 3283B by registered sale deed on 22nd April, 2013, which was the subject matter of clause (g) of the Minutes. Thus, the impugned Minutes of Order signed by the contemnor was breached. Hence, this Contempt Petition is filed.

2. Notice of Contempt Petition was issued to the respondent/contemnor. The contemnor appeared before the Court and filed appearance through counsel. She filed the affidavit-in-reply dated 9th February, 2017 wherein she has denied that she has committed contempt of the Court. It is also contended by her that she was not aware about the interim order passed in the suit so also

she was not aware about the Minutes of Order and the contents mentioned therein. She was not represented at the time of proceedings which took place before the High Court on 26th July, 1994. It is further contended that she had never seen the actual order and the order passed by the High Court. It is further contended in the affidavit that her signature is taken only for informing that the dispute is taken before the mediator, i.e., for settlement and therefore, she has signed. In paragraph 3 she has tendered apology if at all she has committed any breach.

3. At the time of hearing of this Petition, the learned counsel for the petitioner has submitted that the stand taken by the contemnor that she was not aware of the contents in the Minutes of Order and undertaking given at the time of settlement on 26th July, 1994 is false. He relied on number of documents which were signed by the appellant. He submitted that on 22nd April, 2013, the contemnor has entered into registered sale deed in respect of part of the suit properties where the petitioner has undivided shares. He pointed out that prior to 2013, the contemnor has specifically knowledge about the Minutes of Order and the undertaking given in said settlement. He relied on the Application made on behalf of the plaintiff in Spl.

Civil Suit No. 547 of 1993 which were pending before the Court of Civil Judge Senior Division. The said Application was made on 9th November, 1994 wherein there was a reference of the consent terms and order dated 26th July, 1994 in Appeal from Order No. 776 of 1994. This Application was marked at Exhibit 119 and detailed order was passed by the learned Civil Judge Senior Division, Thane on 9th December, 1994 where it is mentioned that defendant nos. 10, 12 and 13 also have no objection to allow this Application. Defendant no. 12 in the said suit is contemnor and the defendants have submitted to that effect vide Exhibits 124 and 123. In paragraph 4 of the said order, the presence of the advocates and parties are mentioned and the name of Padmavati/contemnor is appearing. In the said order dated 9th December, 1994 in paragraph 6 it was ordered that "Injunction in respect of properties specified in clause (g) and (h) is hereby granted till the passing of the award of Arbitrators to whom the disputes are referred by the parties for adjudication as mentioned in clause (b) of the Minutes of Order".

4. Thus, the matter was referred to the Arbitrator by consent and till the passing of the award, the parties agreed that they are bound by the order of injunction. This order was passed on 9th December,

1994 on the Application dated 9th November, 1994. This clearly shows that contemnor Padmavati was aware of the proceedings and she has participated actively in the proceedings in the year 2009.

5. My attention is drawn to the will dated 21st January, 2009 executed by Padmavati Shah wherein she has mentioned that Special Civil Suit No. 547 of 1993 which was numbered as 665 of 1995 is pending. In the said will, she did not mention anything about the settlement in the will. It was submitted that three days thereafter, i.e., 24th January, 2009, she executed a Power of Attorney and also Deed of Confirmation in respect of said land with the builder.

6. The learned counsel for the petitioner has pointed out Exhibit 167 filed in Special Civil Suit No. 765 of 1996. The said Application Exhibit 167 was made by defendant no. 12 Padmavati on 21st January, 2009 where she has mentioned that she has learnt about the settlement. The other Application made by Padmavati/defendant no. 12 in Special Civil Suit No. 765 of 1996 was made on 14th September, 2009 is also pointed out wherein she has mentioned about the compromise pursis before the High Court and referred the matter to the Arbitrator. Another Application is also pointed out which

was filed by Padmavati/contemnor on 17th February, 2011 Exhibit 177 in their reference of compromise pursis is specifically made and the names of arbitrators were suggested. The learned counsel has submitted that all these documents disclosed that Padmavati/contemnor was fully aware of the settlement and injunction granted by this Court. She deliberately breached the order and committed contempt so she is to be penalised.

7. Per contra, the learned counsel for the contemnor while denying all the allegations has submitted that the contemnor is 94 years old and at the time of settlement, she was not represented by the counsel. The learned counsel has further submitted that in the year 2009, she was approximately 82 years old and was not aware of the proceedings. He submitted that considering this factual position and her age, the Court may dismiss the Contempt Petition. He further submitted that if any contempt is committed by the contemnor, then apology is the contemnor be accepted.

8. Perused the papers which are pointed out and referred herein. At the time of submitting the consent terms, the parties have agreed that there will be injunction restraining the parties from encumbering

or in any manner creating third party interest in respect of the properties in the Special Civil Suit No. 547 of 1993 including the properties mentioned in Schedule 8 of the written statement of defendant no. 1. The contemnor/Padmavati Shah has signed the said consent terms at Sr. no. 12 and the record shows that at the relevant time, she was not represented by advocate. So that benefit can be given to the contemnor that as on 26th July, 1994 she might not be aware of the injunction on sale or transfer of the property as per the consent terms. However, other documents especially Application Exhibit 167 which were preferred by her in Special Civil Suit No. 765 of 1996 dated 21st January, 2009 so that Application Exhibit 169 made on 14th September, 2009 , Application Exhibit 177 in Spl. Civil suit No. 765 of 1996 made on 17th February, 2011 and another Application Exhibit 176 made by the contemnor for paper publication of the summons to the parties in the said Spl. Civil Suit on 17th February, 2011 shows that from 21st January, 2009 onwards the contemnor was aware about this settlement. Suprisingly, the contemnor has executed her will on the same day, i.e., 21st January, 2009 wherein she did not state about the settlement but has said that the Spl. Civil Suit No. 765 of 1996 is referred to the Arbitrator. Undoubtedly, this shows that the contemnor was aware of the

contents of the Minutes of Order which was executed in the year 1994.

9. The learned counsel for the respondent has submitted that the contemnor is 94 years old lady and therefore, she was not aware of such proceedings. Her affidavit dated 9th February, 2017 shows her age as 94 years so as on today, as per the affidavit, she is 95 years old. However, in her will, which was executed on 21st January, 2009, she has stated her age as 80 years, so considering that, as on today, she might be 89 to 90 years old. In the said affidavit, she repeated that she was not aware of the contents in the Minutes of Order and the interim order was passed in the suit and she never appeared in the Appeal and was not aware of the proceedings in the High Court and before the trial Court. However, all these submissions appear false. The contemnor though is a party to the earlier suit and so also she has sold the property of her share, her son appears to be the one who in fact is responsible for the breach of the order of this Court. He brought his old mother in the Court before me. The lady is in the position to stand or walk but was taking all the commands of her son. I have no doubt that her son, who is hiding behind her, sold the property for his own benefit which is objectionable, as the order of the Court is in force. However, he was never a

party to the suit and in proceedings, therefore, no order can be passed against him. The fact of selling of suit land for Rs. 46 lakhs on 22nd April, 2013 to one Amrut Builders is admitted. There is no evidence to show that in 2013 she was mentally unfit to understand that she has committed breach of the order of this Court of which she was not aware at least since 2009. Therefore, I hold that the respondent has committed contempt and hence liable to pay fine of Rs.1,000/- which is to be deposited within two weeks from today.

10. Contempt Petition is disposed of.

(MRIDULA BHATKAR, J.)