

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

CONTEMPT PETITION NO.354 OF 2017

IN

WRIT PETITION NO.7588 OF 2017

Prakash Haribhau Tupe	]	Petitioner
Vs.		
Aniruddha Pradyumn Deshpande	]	
[A Managing Director of CITY	]	
CORPORATION LIMITED]	]	
and others.	]	Respondents

.....

Mr. Sudhir V. Sadavarte, for Petitioner .

Mr. G.S. Godbole, Sr. Advocate i/b D.S. Patil i/b B.G. Ligade, for Respondents No.1 to 3.

.....

CORAM : R.G. KETKAR, J.

DATE : 10TH AUGUST, 2018.

P.C.

Heard M. Sadavarte, learned Counsel for the petitioner and Mr. Godbole, learned Senior Counsel for respondent No.1 to 3 at length.

2. As the Regular Court has passed 'not before me' order, the petitioner has moved this Court as per the Administrative order passed by Hon'ble the Acting Chief Justice.

3. This Contempt Petition alleges breach of the order dated 6th July, 2017 passed by this Court in W.P. No.7588 of 2017. The petitioner, hereinafter referred to as "plaintiff" has filed suit, inter alia, praying for declaration and injunction. During pendency of that application, he filed application at Exhibit 5. By order dated 30th March, 2017, the learned trial Judge allowed the

application and issued temporary injunction restraining respondent, hereinafter referred to as “defendant No.1” from obstructing the plaintiff's possession over the suit property and structure. Against this decision, Misc. Civil Appeal No.111 of 2017 was preferred before the learned District Judge by defendant No.1. By order dated 31st May, 2017, the learned District Judge allowed the appeal and set aside the trial Court's order and dismissed the application Exhibit 5. After the appeal was dismissed, the plaintiff filed application Exhibit 23 in disposed of appeal. By order dated 8th June, 2017, the learned District Judge stayed operation/effect/execution of the order dated 31st May, 2017 passed in Misc. Civil Appeal No.111 of 2017 for a period of one month i.e till 7th July, 2017.

4. Against this order, the plaintiff preferred Writ Petition in this Court. The Petition was heard on 6th July, 2017 and the earlier stay granted by the learned District Judge was extended till next date and the same was continued from time to time. The plaintiff has, therefore, instituted Contempt Petition alleging breach of order dated 6th July, 2017.

5. In my opinion, Contempt Petition is wholly mis-conceived. As noted earlier, the appeal was allowed on 31st May, 2017. Instead of requesting the Appellate Court to continue injunction order which was granted by the learned trial Judge, the plaintiff applied for stay of the order passed by the District Court. The learned District Judge had dismissed the application Exhibit 5. Stay granted to the order passed by the Appellate Court was wholly redundant. Understood thus, I do not find that any case is made out for initiating contempt proceeding. Contempt Petition is dismissed.

[R.G. KETKAR, J.]