

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION No. 405 OF 2012

Kumar Sinew Developers Private Ltd. ... Petitioner
Vs.
Municipal Corporation for the City of Pune & Ors. ... Respondents

Mr. R.V. Govilkar a/w. Ms. Shaba N. Khan, Mr. Murlidhar Kumar,
Advocate for the petitioner.
Mr. Abhijit P. Kulkarni, Advocate for respondent nos. 1, 3, 4, and 5.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **30th July, 2018.**

P.C.:

In this Contempt Petition, the petitioner, who have filed Regular Civil Suit No. 5734 of 2012 wherein the notice dated 26th July, 2012 issued by Pune Municipal Corporation for demolition of the tin sheds, is challenged. The learned Civil Judge Junior Division (P.M.C.) Pune by order dated 1st August, 2012 gave interim injunction as prayed in clause (b) of the suit, i.e., the Defendants be restrained by an order of temporary injunction from taking any action as alleged in the impugned notice dated 26th July, 2012". Despite this order, the Corporation demolished the suit sheds on 26th November, 2012. Hence, the petitioner/plaintiff, filed this Contempt Petition.

2. The learned counsel for the petitioner has submitted that the

interim injunction was passed in favour of the petitioner wherein they have challenged the notice dated 26th July, 2012. The Corporation which is a statutory body, has illegally issued another notice dated 23rd November, 2012 and though it was not served on the petitioner, the Corporation demolished most of the sheds on 26th November, 2012. He relied on the photographs of demolition. The learned counsel further submitted that the Corporation has demolished the same suit structure for which the protection has been granted by the trial Court, He has submitted that the petitioner has filed this Contempt Petition instead of taking steps under Rule 2A Order 39 of the Code of Civil Procedure because it is willful disobedience or breach of the order of the trial Court. He has submitted that the Corporation, which is a statutory body, ought not to have taken law in their hands or should not have violated the order passed by the trial Court. The Corporation was mischievous who issued another notice though the suit challenging the first notice was pending.

3. The learned counsel for the Corporation relied on the affidavit dated 9th December, 2013 filed by Ganpat Salunkhe, Executive Engineer of the Corporation. He has submitted that the Corporation has not taken any action pursuant to the notice dated 26th July, 2012

but has demolished the structures, which are different from suit structure by issuing notice dated 23rd November, 2012. The learned counsel submitted that the said notice was served on the petitioner.

4. Heard the submissions. Perused both the notices, impugned order and the documents which are produced before this Court. It is true that in Contempt, there should be willful disobedience or breach of the order passed by the Court. However, if there is a separate provision to seek relief under the other Act in respect of breach or disobedience of the order passed by the Court, then it is expected that the parties should avail of the other remedy which is specifically mentioned under Rule 2A of Order 39 of Code of Civil Procedure, which states as follows:

2A . Consequence of disobedience or breach of injunction— (1)

In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in

the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.”

5. Thus, it speaks of disobedience or breach of any injunction granted or other order made under Rules 1 and 2 and so also breach of any terms included in the order of injunction. Disobedience is a wider term than willful disobedience. So, under the Contempt of Court Act, it is not mere disobedience or breach but it should be willful, is a settled law. Thus, it requires intention of the contemnor to violate the order of the Court. However, willful disobedience is also covered under Rule 2A Order 39 of the Code of Civil Procedure. A person who is guilty of such disobedience or breach of the order of injunction, the Court can pass the order of attachment of property of such contemnor for nearly a period of one year and also may order additionally to detain a person in the Civil prison upto three months. Thus, considering the rigor of penal powers the Court enjoys under Rule 2A Order 39, it is appropriate for the party to seek remedy under

the said Rule.

6. It is to be noted that in the present matter, the factual details are involved as to whether the structures which are mentioned in the second notice are the suit structures or they are different structures. So also whether the second notice, as claimed under which the demolition was carried out, was really served on the petitioner or not. For verification of all these factual details, it is always appropriate for the petitioner to approach the same Court who has granted the order of injunction. Thus, there may be contempt or there may not be, though there is a breach if suit property is demolished without notice. Under such circumstances, the Contempt Petition is dismissed with liberty that the petitioner may approach the Civil Court. The trial Court may decide it on its own merits.

(MRIDULA BHATKAR, J.)