

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO. 1 OF 2018**

IN

PARSI SUIT NO. 26 OF 1989

Mehrooz Adi Ghadiali	...Petitioner
<i>Versus</i>	
Ruby Ghadiali	...Respondent

Mr Wasim Siddiqui, i/b Akshay Pawar, for the Petitioner.
Mr DR Zaiwala, i/b DH Nanavati, for the Respondent.

CORAM: G.S. PATEL, J
DATED: 8th March 2018

PC:-

1. The Petitioner is the ex-husband of the Respondent. Their matrimonial disputes in Parsi Suit No. 26 of 1989 resulted in Consent Terms dated 20th December 1989. A copy of the order on those Consent Terms, along with the Consent Terms themselves is at Exhibit "A" from page 21 to page 28.

2. For the purpose of the present Petition two clauses of the Consent Terms are relevant and these are clauses 16 and 18 at pages 25 and 26.

16. Ordered that during her lifetime, the Plaintiff do have a right of undisturbed residence in the said flat and neither the Defendant nor the Defendant's parents or any

other relative shall interfere with the Plaintiff's said right of residence in any manner whatsoever. Ordered further that the tenancy rights in respect of the said flat do enure for the ultimate benefit of the two daughters Manaz and Farah and no one will be entitled to surrender the tenancy rights in respect of the said flat. Ordered further that the Plaintiff be and is hereby restrained from creating any third party rights in the said flat and/or inducting any third person in the said flat even though she may marry at any time. Ordered that the Plaintiff be entitled to lock her room in her sole discretion.

18. Ordered that the Defendant is hereby restrained from residing in the said flat or any part thereof overnight. Ordered further that the co-Defendant is hereby permanently restrained from entering the said flat. Order further that after the demise of the Defendant's parents, and during the lifetime of the Plaintiff, the Defendant is restrained from entering the said flat.

3. The flat in question also the subject matter of clause 14. This is Flat No. 36, Building No. 5, Wadia Baug, Parel Tank Road, Mumbai 400 033. Clause 15 of the consent terms also made it clear, especially when read with clause 18, that it was the Defendant, the present Contempt Petitioner, who was restrained from residing in the flat.

4. On behalf of the Contempt Petitioner (the husband) it is argued that the Respondent has illicitly and in connivance with the trustees of the Bombay Parsee Punchayet Trust and Funds transferred the tenancy of the flat to her own name. This is said to be in contempt of clause 16 of the Consent Terms. It is argued that the two daughters Manaz and Farah have thus being deprived of the

tenancy benefits. It is also urged that there was a Will by the Contempt Petitioner's mother purporting to make a bequest of the tenancy in favour of the Contempt Petitioner and that Probate has been obtained to this.

5. The last point is clearly irrelevant because there can be no bequest by a testamentary instrument of a tenancy. The making of a Will confers no rights in that regard.

6. As to the question of whether a transfer of the tenancy in favour of the Respondent (the wife) can be termed even *prima facie* as contempt, the answer will have to be in the negative. The clause itself only says that the tenancy rights must "enure for the ultimate benefit of the two daughters". All that this means is that Manaz and Farah should not be deprived of the benefits of the tenancy. As between the Contempt Petitioner and the Respondent, they could not have purported to transfer the tenancy by virtue of these consent terms. The clause in question therefore quite rightly did not make any such provision. Both daughters are married and reside elsewhere. Indeed, correctly read all that the relevant portion of clause 16 said or intended was that the shelter and residence of the minor daughters should not be affected during their minority by virtue of any party purporting to surrender the tenancy. None attempted any such surrender. The two parties to the divorce action could not, *inter se*, purport to create any tenancy rights without the consent of the landlord trust.

7. In any case it is difficult to see how the Contempt Petitioner can bring this action without joining the trustees and the two

daughters. This is a material defect in Contempt Petition. These are matter that are to be construed strictly and not liberally. The two daughters have so far made no claim to this tenancy. *Prima facie*, therefore, it is difficult to appreciate what is being suggested: that though the tenancy cannot be in the daughters' names; cannot be in the Contempt Petitioners' name; even so it cannot be in the Respondent's name, though this is where she lives. This is an entirely perverse approach. What the submission overlooks is that by taking the tenancy in her name, and given the state of the law regarding heritability of tenancy, the Respondent has actually ensured that the tenancy enures to the parties' daughters. The purpose of Clause 16 is fully achieved by having the tenancy in the Respondent's name. It is not subserved by the Contempt Petitioner's case that it should be in nobody's name (since it evidently cannot be in the names of the two daughters at this stage).

8. Last but not least, I find that the prayer in the Contempt Petition are also defective in that it does not set out specifically the act of contempt, or when it was said to have been committed.

9. In my view the Contempt Petition is without substance. It is dismissed. There will be no order as to costs.

10. Affidavit in Reply to be filed in the registry after proper pagination.

(G. S. PATEL, J)