

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**CONTEMPT PETITION NO. 57 OF 2017**  
**IN**  
**NOTICE OF MOTION NO. 1040 OF 2015**  
**IN**  
**SUIT NO. 555 OF 2015**

|                              |                |
|------------------------------|----------------|
| Rajesh Ashwin Merchant       | ...Petitioner  |
| <i>Versus</i>                |                |
| Sandip Ashwin Merchant & Ors | ...Respondents |

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**Mr Vishal Kanade**, *with Kauser Banatwala, I/b Tushar Goradia, for the Petitioner.*

**Mr Kundlik Panchangne**, *i/b M/s. Lex Conseiller, for Respondents Nos. 2 and 3.*

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**CORAM: G.S. PATEL, J**  
**DATED: 31st July 2018**

**PC:-**

1. The contempt alleged is of an order dated 17th April 2017 passed by KR Shriram J. Paragraph 1 of that order reads thus:

"1. Mr Shah appearing for defendant nos. 2 & 3 on instructions from defendant no. 3 (son of defendant no. 2) who is present in Court undertakes to deposit within six weeks from today with the Prothonotary & Senior Master, high Court, Bombay 50% of the compensation/license fees

received from/payable by defendant no. 4 from the date the leave and license was created i.e., 19.2.2010 upto date. It is clarified that the amount that will be deposited is after adjusting 50% of the society dues paid by defendant nos. 2 & 3. While depositing this amount, the defendant nos. 2 & 3 shall file an affidavit enclosing therein the leave and license agreement with extension/further agreements and also render detailed accounts. Copy of this affidavit to be provided to the plaintiff within a period of 3 days of filing the affidavit. Likewise all future compensation/ license fees shall be deposited with the Prothonotary and Senior Master, High Court, Bombay.

Mr Shah states that leave and license agreement is coming to an end by 30.06.2017 and as and when defendant nos. 2 & 3 take possession back from the licensee, they shall inform the plaintiff's advocate within one week from taking possession."

2. Mr Kanade for the Petitioner states that Respondents Nos. 2 and 3 deposited only an amount of Rs. 3,70,277/-. In doing so, they deducted not only society dues aggregating to Rs. 2,47,147/- but also brokerage paid for finding a licensee, registration, stamp duty and documentation charges and repairs and renovation expenses as well. According to Mr Kanade, the deductions other than society maintenance charges were not contemplated by the order of 17th April 2017 and hence Respondents Nos. 2 and 3 are in contempt.

3. I do not believe that this is the kind of matter that invites the exercise of Court's jurisdiction in contempt. I will, however, keep all contentions open and leave it open to the Plaintiff (present Petitioner) to file a separate proceeding for a direction against the

Respondents that the remaining amount or at least part of the remaining amount should also be brought into Court. All contentions in that behalf are kept open.

4. I may also note that while making these deductions, the Defendants have produced no supporting documentation whatsoever. They are specifically put to notice that if the correctness of these computations are questioned in any fresh application, they will be required to produce the necessary supporting particulars.

5. The Plaintiff is, however, entitled to withdraw an amount of Rs. 3,70,277/- that has been deposited. The withdrawal of the amount by the Plaintiff is without prejudice to all rights and contentions.

6. The Contempt Petition is disposed of in these terms. No costs.

7. List the suit for directions on 21st August 2018.

**(G. S. PATEL, J)**