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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**CONTEMPT PETITION NO.74 OF 2015
IN
ARBITRATION PETITION NO.1393 OF 2015**

Dimple Realty LLPPetitioner
vs
Chetan D. Gosalia And 4 Ors. ...Respondents

.....
Mr. Kayval P. Shah, for the Petitioner.

Mr. Trushar Bhavsar, i/b. Mr. Nikhil S. Udeshi, for Respondent Nos. 1 to 4.

.....

CORAM : S.C. GUPTE, J.

DATED: 27 NOVEMBER, 2018

P.C.:

. This contempt petition complains of breach or disobedience of an order passed by this Court on 4 August 2015, by which the Respondents' statement before this Court that they would enter into an agreement of permanent alternate accommodation with the Petitioner herein and attend the office of the Sub-Registrar of Assurances for registration of the agreement, was accepted by this Court. It is the grievance of the Petitioner that despite this express assurance to the Court, and which was recorded in the form of a statement solemnly made before the Court, the Respondents/Contemnors refused to execute any agreement with the Petitioner. Learned Counsel for the

Respondents/Contemnors, at the very outset, tenders his apology on behalf of the Respondents. Learned Counsel submits that the agreement was not executed so far due to some internal matter between the Respondents. It is submitted that during the course of this time, Respondent Nos. 2 to 4 herein have executed a gift deed in favour of Respondent No.1, based on which the internal matter has been resolved and, as a result, his clients offer to forthwith execute the permanent alternate accommodation agreement with the Petitioner. Learned Counsel submits that he only would make a request for an amendment being made accordingly in the recitals of the agreement so as to give effect to the gift deed executed by Respondent Nos. 2 to 4 in favour of Respondent No.1. Learned Counsel for the Petitioner has no objection to this amendment being made in the recitals to the agreement so long as all four Respondents sign the alternate accommodation agreement with his client. Learned Counsel for the Respondents submits that his clients are prepared to do so. Respondent Nos. 2 to 4 shall join the alternate accommodation agreement as confirming parties.

2. In view of these statements, the contempt petition can be appropriately disposed of by accepting the Respondents' apology and recording the respective statements of the parties.

3. Learned Counsel for the Petitioner, however, prays for heavy costs. Learned Counsel submits that as a result of the obstructive attitude adopted by the Respondents/Contemnors in the face of an express order by this Court, the overall project itself has suffered. Learned Counsel submits that this attitude on the part of the

Respondents has considerably delayed the implementation of the project and, as a result, the Petitioner had to incur heavy costs. While the claim towards costs incurred by the Petitioner, as a result of the obstructive attitude of the Respondents, is a matter of damages and could be agitated in an appropriate proceeding before an appropriate forum, it is not permissible to take that into account whilst awarding any cost in the present contempt petition. Considering, however, that the Respondents made the Petitioner approach this Court in its contempt jurisdiction and the petition has been pending for over three years appearing on board on a multiple occasions, the Respondents/Contemnors must be saddled with reasonable costs. Learned Counsel for the Respondents/Contemnors leaves the matter of costs to the Court.

4. In the premises, the following order is passed:
 - (i) The Respondents' unconditional apology for having delayed the execution of the permanent alternate accommodation agreement with the Petitioner is accepted;
 - (ii) Learned Counsel for the Petitioner and the Respondents state before the Court that they shall execute a permanent alternate accommodation agreement, modified as indicated above, with the Petitioner within a period of two weeks from today, by including an appropriate recital in the draft so as to give effect to the gift deed executed by Respondent Nos. 2 to 4 in favour of Respondent No.1 in respect of the flats for which the agreement is being executed; save and

except this recital, there will be no modification in the draft proposed by the Petitioner. The statements are accepted. Upon execution of such agreement, the Petitioner shall handover possession of the permanent alternate accommodation of the flats to Respondent No.1.

- (iii) Learned Counsel for Respondent Nos. 1 to 4 also states that he shall pay the electricity bills for consumption, if any, from May 2017 till date.
- (iv) The contempt petition is disposed of.
- (v) Needless to say that all rights and contentions of the parties in respect of the Petitioner's case on damages for the purported obstruction caused by Respondent Nos. 1 to 4 shall be kept open.
- (vi) Respondent Nos. 1 to 4 shall pay costs of this contempt petition quantified at Rs.1 lakh to the Petitioner. Payment of such costs shall be a condition precedent. Learned Counsel for Respondent Nos. 1 to 4 states that the costs, in any event, shall be paid by Respondent Nos. 1 to 4 within a period of one week from today. The statement is accepted.

(S.C. GUPTE, J.)