

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CONTEMPT PETITION NO.589 OF 2018
IN
SECOND APPEAL NO.317 OF 2018

1. Rajaram s/o Gopinath Badade,
Age 27 years, Occupation Labour,
R/o Kadiwadgaon Tq. Wadwani
Dist. Beed.
2. Asarabai w/o Gopinath Badade,
Age 77 years, Occupation Household,
R/o Kadiwadgaon Tq. Wadwani
Dist. Beed.
3. Asaram s/o Gopinath Badade,
Age 32 years, Occupation Labour,
R/o Kadiwadgaon Tq. Wadwani
Dist. Beed.

...Petitioners/
Appellants.

VERSUS

1. Trimbak s/o Dattatraya Badade,
Age 38 years, Occupation Agriculture,
R/o Kadiwadgaon Tq. Wadwani
Dist. Beed.
2. Jayant s/o Eknath Magar,
Age 38 years, Occupation Service,
R/o Majalgaon Tq. Majalgaon
Dist. Beed.

...Respondents/
Contemnor

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Mr. S. J. Salunke, Advocate for Petitioners.
Mr. S. G. Chapalgaonkar, Advocate for Contemnor No.1.
Mr. M. M. Patil (Beedkar), Advocate for Contemnor No.2.
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 03-05-2019.

JUDGMENT :

1. Present petition has been filed by the original appellants – plaintiffs. They have filed the second appeal challenging the Judgment and decree dated 25-11-2011 passed by learned Adhoc District Judge, Majalgaon in Regular Civil Appeal No.48 of 2005 reversing the Judgment and decree passed by learned Civil Judge, Junior Division, Majalgaon in Regular Civil Suit No.91 of 2000.

2. While admitting the second appeal on 10-01-2012, this Court had taken statement made by learned advocate for Contemnor No.1 on record who on instructions from client made the statement that the contemnors are not going to alienate the suit property or create any third party interest since they are residing in the suit properties. Further statement was made that, if at all the contemnors wish to sell or create third party interest in the suit property in future then unless such application is made and permission is obtained from this Court, no such creation of third party interest or alienation of property would be done. In view of the said statement, the civil application for injunction was disposed of, however later on present

respondent No.1 – contemnor No.1 transferred the suit property in the name of contemnor No.2 on 21-10-2016 by way of registered sale deed dated 21-10-2016. After petitioner No.1 came to know about the execution of the sale deed, he approached the Village Development Officer and made application on 30-12-2016 regarding the fact that the matter is sub-judice before the Court. Contemnor No.2 is serving in Majalgaon Court as Clerk. He was aware about the facts yet in defiance with the orders passed by this Court, the transfer of the suit property has been done. Contemnor No.1 has also willfully disobeyed the order of this Court, and therefore I t is stated that action under the Contempt of Courts Act, 1971 be initiated against the contemnors. Prayer is also made to condone the delay of 277 days in filing the contempt petition.

3. Affidavit in reply has been filed by both the contemnors separately. They have denied that, there is willful disobedience of the order of this Court. Contemnor No.1 has admitted that, on his instructions the said statement was made by his advocate before this Court as recorded in order dated 10-01-2012 and he abided the said statement. It is stated that, his father Dattatraya Badade was referred on 16-06-2015 for getting Histo Pathology Report in respect

of few Grayish Bits by Dr. Atul Soni to Vrindavan Diagnostic Services Centre. After examination it was noted that, small round tumor cells were found and his father was diagnosed with Andenocarcinoma. He was in financial constraints because of the medical expenses. Therefore, he approached contemnor No.2 and requested him to advance money. Contemnor No.2 had given amount of Rs.2,00,000/-. That amount was also exhausted during the course of medical treatment of his father. When he again requested contemnor No.2 to advance more money at that time contemnor No.2 expressed inability. Further the father of the contemnor No.1 was advised for medical treatment at a higher centre in September-October 2010. the estimated expenses for the future medical treatment was Rs.2,00,000/- more, and therefore, he had no option but to raise the funds with that background he requested contemnor No.2 to advance at least Rs.1,00,000/-, and therefore, the agreement to sell in respect of house property took place on 07-10-2016. After getting the medical expenses, father of contemnor No.1 was treated at Dinanath Hospital, Pune. He could not return amount of Rs.2,00,000/-, and therefore, ultimately sold the house property in pursuant to the agreement to sell on 21-10-2016. It is stated that, due to the constrained circumstances to raise funds he was

required to enter into that transaction. His father expired in the month of November 2017. Thereafter he could manage the amount and thereafter gave it to contemnor No.2. Contemnor No.2 had then executed sale deed dated 16-10-2018 in respect of suit property in favour of contemnor No.1. As such the property in question is now standing in the name of contemnor No.1. It is also stated that, he has no intention to flout undertaking given to this Court and his acts were not deliberate at all.

4. The contemnor No.2 submits in his reply that, he was unaware about any orders passed by this Court. Contemnor No.1 had not given him any history. After agreement to sell was entered into on 07-10-2016 he has obtained permission from his employer i.e. Principal District Judge, Beed on 13-10-2016 to purchase suit property and in view of the said permission the sale deed has been executed. He had also issued publication in daily newspaper on 10-10-2016 inviting objections. He did not receive any objection and therefore the sale deed was completed. He came to know about the pendency of the appeal and suit property involved in the same after receiving the notice in this petition and therefore he has sold the said property back to contemnor No.1. Since it is not his willful

conduct he prayed for dropping the proceeding against him.

5. Heard Mr. S. J. Salunke, Advocate for petitioners, Mr. S. G. Chapalgaonkar, Advocate for contemnor No.1, and Mr. M. M. Patil (Beedkar), Advocate for contemnor No.2. All the learned advocates representing the respective parties argued in support of their respective contentions.

6. It is not in dispute and rather it is a part of record that, while admitting the Second Appeal No.317 of 2011 on 10-01-2012 this Court had recorded the statement made by advocate for contemnor No.1. That statement was made by him after taking instructions. That means, those statements were in fact the statement of contemnor No.1. He categorically stated that, he has no intention to alienate the suit property or create third party interest since he is residing there. A further statement was also made that, if at all he wish to sell or create third party interest in the suit property in future, he would obtain permission or make application to this Court and then only he would take further action. Further it is also not in dispute that, contemnor No.1 has sold the suit property to contemnor No.2 on 21-10-2016. According to the contemnors an agreement to sell had taken place between them prior to the sale

deed i.e. on 07-10-2016 and prior to executing these two documents no permission was made by contemnor No.1 or no application was filed by him. Under such circumstance it is required to be considered as to whether it is a willful disobedience of the order passed by this Court or not.

7. Petitioner has not explained as to how contemnor No.2 could have come to know about the statement made on behalf of contemnor No.1 at the time when the appeal was admitted. A mere statement has been made that, contemnor No.2 had knowledge about the order passed in this Court, that is not sufficient. Further acts of contemnor No.2 can be seen which have been supported by documentary evidence that he had entered into agreement to sell. Thereafter, he had given public notice in newspaper inviting objections and thereafter he entered into the sale deed. Even prior to that, he had sought permission from his employer i.e. Principal District Judge, Beed to purchase the property. That means his intention was genuine to purchase the suit property. If he would have had the knowledge about order passed by this Court or hurdle because of the second appeal then he would not have taken all those procedural steps which are requisite for a genuine transaction. He

being a government servant would be definitely aware about the legal proceedings and consequences thereof. Further it can be said that, he being employee in Court, had the knowledge of consequences of disobedience of order of a Court. Therefore, he would not have dare to purchase a property which is involved in a litigation and in respect of which some order has been passed. Therefore it cannot be said that, the action of purchase by contemnor No.2 was a willful disobedience.

8. Now turning towards conduct of contemnor No.1, it can be seen from the documents produced by him that, his father became ill in 2015 and was diagnosed with cancer. The Histo Pathology report has been produced on record. Before we proceed it will have to be said that since 2012 i.e. the date on which a statement of contemnor No.1 was recorded by this Court till the agreement to sell with contemnor No.2, there was no attempt by contemnor No.1 to create any third party interest. After his father was diagnosed with cancer, it appears that he has given every possible treatment which he could give to his father, such as Chemotherapy and other medicines. He has taken his father to Pune and at other places for the treatment and under such circumstance there is no reason to

disbelieve him that he had incurred huge expenses on the treatment of his father. Under such circumstance in order to come out of the financial crises if he had tried to sell out the property and raise funds then it cannot be said that the said action is in total disregard to the order passed by this Court. Definitely he erred in not approaching this Court and seeking permission but that does not require action under contempt of Court against him. What is required to take action under such laws is the willful disobedience of the order of the Court.

9. Here in this case the circumstances under which the transaction was done by contemnor No.1 has been shown by him and that appears to be a genuine reason. Further conduct of contemnor No.1 is also required to be considered. He has collected or raised the amount of consideration for which he had sold the property to contemnor No.2, gave it to contemnor No.2 and then got the suit property reconveyed to him. He has restored the position of suit property as it is as it was on the day when this Court passed order i.e. on 10-01-2012. Under such circumstance when the conduct of the contemnor No.1 also cannot be said to be a willful disobedience of the order of the Court or in defiance to the order of

this Court, the action of sell was done; it does not require any action to be taken under Contempt of Courts Act. Hence, the application is rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-