

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO.529 OF 2014**

Dr. Shantiprasad Aadappa Tippannavar & Anr. .. Petitioners
Versus
Shri. Kirtikumar Ganapayya Shetty & ors. .. Respondents

Mr. A.M. Kulkarni for petitioners.

**CORAM : K.K. TATED, J.
DATE : 04 FEBRUARY 2019.**

P.C:-

. Heard learned Counsel for petitioner.

2. By this contempt petition, petitioner alleged that as the respondent has violated the order dated 20.01.2012 passed by District Judge, Sangli in Miscellaneous Civil Appeal No.195 of 2011, hence, action to be taken against them under the Contempt of Court's Act.

3. The learned Counsel for the petitioner submits that the learned District Judge by its order dated 20.01.2013 in Miscellaneous Civil Appeal No.195 of 2011 directed respondents not to demolish the structure. The operative part of the said order reads thus :-

- “1. Appeal is hereby partly allowed as under.
2. The order passed by trial Court is modified as under.

3. Defendant Nos. 1 and 2 do deposit Rs.25,000/- before trial Court towards the amount of compensation to repair the damage caused to the building of the plaintiffs while pulling down the structure of defendants on their property.

4. The trial Court shall appoint court commissioner particularly civil engineer by passing order below Exh.1 to assess the damage caused to the structure of plaintiffs building while removing the building of defendant Nos. 1 and 2 and allow plaintiffs to carry out those repairs with expenses which will be deposited in the Court by defendant Nos. 1 and 2 Rs.25,000/- as stated above on or before 15-02-2012.

5. Defendant Nos.1 and 2 are permitted to construct their premises by keeping 10 ft. area towards west side of their property from building of the plaintiffs and obtain revised construction plan by showing that 10 ft. area open space towards west side and for such revised plan, application plaintiffs consent signature is not at all needed.

6. Defendants should fill the ditches which will come within 10 ft. area adjacent to plaintiffs property by using proper material and protect the standing building of plaintiffs as it is and see that right of support of plaintiffs building will not go away.

7. Defendant Nos. 1 and 2 do all this compliance as per order of this Court and on these conditions defendant Nos. 1 and 2 are permitted to do the construction in their own premises by following Rules and regulations of building construction as discussed above in the judgment.”

4. Learned Counsel appearing on behalf of petitioner submits that the respondent on 30.12.2013 illegally enters in the premises and with the help of JCB demolished the suit structure in violation of order dated 20.01.2012 passed by the Appellate Court in Miscellaneous Civil Appeal No. 195 of 2011. In support of

this contention, learned Counsel for the petitioner relies on paragraph 11 of the Contempt Petition which reads thus :-

“11. The petitioners state that in pursuance of the said order the Petitioners filed fresh suit bearing No.582 of 2013 on 30/12/2013. However, surprisingly the Defendant Nos. 1 and 2 all of a sudden on 30/12/2013 at around 7.30 p.m. illegally entered the premises of the Plaintiffs and with the help of JCB started to demolish the portion of staircase. It is pertinent to note that number plate of JCB was also scratched with tar with an intention that the owner of the JCB could not be recognized. The Petitioners requested the Defendants not to demolish the staircase as the same act is in complete breach of the orders passed by the District Court, however, the Defendants did not give any heed to the request made by the Petitioners and continued their illegal action of demolition and as on the said date the Defendants have demolished the staircase. Hereto annexed and marked as **Exhibit-'J' (Colly)** are the photographs. Immediately thereafter the Petitioners filed complaint to the Police Station, Vishrambaug and requested the police to take action against the Defendants. Immediately thereafter the Petitioners filed application seeking injunction against the Defendants on the very next date i.e. 31/12/2013. Hereto annexed and marked as **Exhibit-'K'** is the copy of the said application. After hearing the Plaintiffs the Ld. Joint Civil Judge Jr. Division was pleased to grant temporary injunction vide order dt.31/12/2013. Hereto annexed and marked as **Exhibit-'L'** is the copy of the said order. Thus, as it appears the Respondent Nos. 1 and 2 have openly flouted the order dt. 20/01/2012 passed by the District Court so also have not adhered to their own undertaking submitted to the court and therefore are jointly guilty of contempt of the Court.”

5. Learned Counsel for the petitioner submits that in view of subsequent development, petitioner has filed Writ Petition No.5039 of 2013 before this Court. He submits that the said writ petition stands disposed of by order dated 09.12.2013. Thereafter, as per the liberty granted by this Court, plaintiff filed the Regular Civil Suit No.582 of 2013 before Civil Judge, Junior Division, Sangli for same cause of action and compensation. He submits that the said suit is pending for hearing on its own merits.

6. It is to be noted that alternate remedy is available to the petitioner under Order 39 Rule 2A of the Civil Procedure Code, 1908. In addition to that, liberty can be granted to the petitioner to raise all these issues in regular Civil Suit No.582 of 2013 which is pending before Civil Judge, Junior Division, Sangli for same cause of action. Hence, following order :-

a) Contempt Petition stands dismissed with liberty to the petitioner to raise the issue of compensation in Regular Civil Suit No.582 of 2013 and same to be decided on its own merits by the Court.

b) No order as to costs.

(K.K.TATED, J.)