

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.335/2017

Krishna Dasu Shetty

... Petitioner

V/s.

Thane Municipal Corporation & Ors.

... Respondents

Mr. Manoj Shukla for the Petitioner

Mr. Mandar Limaye for Respondent Nos.1 to 3.

**CORAM: K.K. TATED, J.**

**DATED : JANUARY 18, 2019**

**P.C. :**

1 Heard. By this Petition, the Petitioner alleges that the Respondent has violated the order passed by the Trial Court, hence, an action be taken against them under the Contempt of Courts Act.

2 On the other hand, the learned counsel for the Respondent Corporation submits that the Petitioner has already made an Application under Order 39 Rule 2A of the Code of Civil Procedure, 1908 for the same cause of action. In support of his contention, he relies on paragraph 14 of the Contempt Petition, which reads thus:

*“14. The Petitioner states that he had preferred a Civil Miscellaneous appeal bearing No.106 of 2007 against the impugned order dated 04.05.2007, whereby the technical report of structural engineer was called for. The said appeal was disposed of on 24<sup>th</sup> July 2007. The Petitioner*

*states that one of the tenant Mr. Pedhe who preferred a Misc. Civil Appeal No.102/2007 in RCS 299/2007 and accordingly the Hon'ble District Court appointed a Commissioner by seeking a report about the condition of the said Pande building from the structural engineers of Sardar Vallabhbhai Patel College of Engineering. The Appeal of the Petitioner and another tenant Mr. Pedhe was allowed on same day i.e. 24.07.2007. The said report is also filed in Court to the knowledge of TMC. The said report clearly states that the building can be repaired and it is not in the danger condition. The copy of the order dated 24.07.2007 and technical report dated 28.12.2007 are annexed hereto and marked as **Exhibit-F**. The Petitioner states that in view of the direction given by the District Court the interim Application was heard afresh only in RCS 299/2007, and the Ld. Civil Judge, without considering the technical report dated 28.12.2007, submitted by the structural engineers of Sardar Vallabhbhai Patel College of Engineering, rejected the Ex-5 on 09.01.2009."*

3 In view of the fact that the Petitioner has already made an Application under Order 39 Rule 2A of the Code of Civil Procedure, 1908 for the same cause of action, there is no question of entertaining the Contempt Petition. Hence, the same stands rejected.

(K. K. TATED, J.)