

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION**

CONTEMPT PETITION (STAMP) NO. 624 OF 2018

Mrs. Florine Wd/o. Winston Lobo @ Alias
Shahnawaz Qadri

....Petitioner

V/S

Ahdad Hussein Fidaali Lala And Ors.

....Respondents

Anand Mishra i/b Ashok M Saraogi for the Petitioner.
Deepak J. Lulia for Respondent Nos. 6 & 7.

**CORAM : DAMA SESHADRI NAIDU, J.
DATED : 31th July 2019**

P.C.:

The petitioner claims to be a tenant under the respondents 1 to 5. The sixth respondent is another tenant, against whom the petitioner has a rival claim over the same tenanted property. She filed a suit for declaration in RAD Suit No. 661/991 of 2010 before the Small Causes Court at Mumbai. On 27th August 2010, the Trial Court passed an interim order, directing the parties to the litigation not to create any third-party interest. Later, pending the litigation, the original landlord sold the property to a third party. That third-party company was brought on record as seventh defendant. Through an order, dated 7th January 2017, the Trial Court applied the interim order to the *lis pendens* purchaser, too.

2. Eventually, the purchaser, that is the seventh defendant, applied for modification of the original order. The Trial Court allowed it on 23rd January 2017; it permitted the seventh defendant to develop the property, but not to create any third-party interest.

3. Because of the Trial Court's modified order, dated 23rd January 2017, the seventh defendant, that is the *lis pendens* purchaser, demolished the old structure and began to raise a new structure. In the course of time, the petitioner came to know that on 5th October 2016, the seventh respondent created a third-party interest. That is, it entered into a registered agreement with the sixth defendant. The petitioner has filed this contempt case contending that the agreement of sale over the suit scheduled property violates the Trial Court's interim orders, dated 27th August 2010, dated 7th January 2017, and 23rd January 2017.

4. Initially, I was of the view that the contempt petition had been barred by limitation. In that context, the petitioner's counsel brought to my notice the case *Pallav Sheth v. Custodian*¹. He has contended that the petitioner could not know about the

¹ (2001) 7 SCS 549

agreement of sale though it was registered. According to him, the respondents suppressed that document and did not even whisper about it before the Trial Court. When the seventh respondent was brought on record, he had entered into that agreement of sale. But it did not disclose that fact to the Trial Court. In that context, the learned counsel asserts that as the seventh respondent is a *lis pendens* purchaser, even the first interim order, dated 27th August 2010, would bind it. So he argues that there was no delay in the petitioner's filing the contempt case because as soon as the petitioner came to know about the transaction, it approached the Court.

5. On the other hand, the learned counsel for the seventh respondent has contended that the purchaser was not a party to the proceedings until 2011, when it was brought on record. So the Trial Court's order, dated 27th August 2010, would not bind the seventh respondent. He has also contended that the order restricts the respondents from creating a third-party interest. But the transaction was between the sixth and seventh respondents. It does not amount to third-party interest. Finally, he contends that the contract between the sixth and the seventh respondents is not

at all an agreement of sale.

6. Heard Shri Anand Mishra, the learned counsel for the petitioner, and Shri Deepak Lulia, the learned counsel for the seventh respondent.

7. This case presents much ado about nothing. Taking up the last point first, I may note, as rightly contended by the seventh respondent's counsel, what was entered into between the sixth and the seventh respondent was not an agreement of sale. It was only an agreement for providing an alternative accommodation to the sixth defendant.

8. That said, the other issues—the *lis pendens* purchaser being bound by the directions against its vendor, the creation of third-party interest, and the parties' committing contempt of court—pale into insignificance. They render themselves moot. And, so, they require no answer.

9. At any rate, the seventh respondent has been fair in its conduct as was reflected in its submission. It has emphatically submitted before the Court that it intends to violate no court's

order—interim or otherwise. It is, on the contrary, willing to abide by the outcome of the litigation, as well as the interim orders so far the Trial Court has passed. As to the rivalry between the petitioner and the sixth defendant, both of whom claim tenancy rights over Shop No. 2 on ground floor, this Court observes nothing.

10. I reckon the contempt petition is misconceived and deserves to be dismissed. So it is dismissed.

11. As suit has been pending for considerable time, the Trial Court will make all efforts to dispose it of expeditiously.

(DAMA SESHADRI NAIDU, J.)