

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

CONTEMPT PETITION NO.212 OF 2018

Purna @ Urvashi Suresh Jahangiani & ors.	...Petitioners
<i>Versus</i>	
The Oriental Insurance Co. Ltd. & ors.	...Respondents

Mr.Mayur Khandeparkar i/b. Mr. E.A. Sasi for the petitioners.

Mr.V. Y. Sanglikar for respondent nos.1 & 4.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 30th SEPTEMBER 2019.

ORAL ORDER:

The 1st petitioner is the mother, and the remaining two petitioners are the daughters. The 1st petitioner's father-in-law, Sevakram, was said to be a tenant under Morvi Royal Family's establishment that existed till 1952. After Sevakram's death, his wife Rani Sevakram succeeded, and after Rani Sevakram's death, her son, Suresh, succeeded. Later, after his death, his wife and daughters succeeded. Those are the petitioners in this contempt case. Their succession included the tenancy rights to a property.

2. About the tenanted property, we may note that a branch of the Morvi Royal family, it seems, had it until about 1952. Later, the Oriental Insurance Company Limited (the "Insurance Company"), a Public Sector Undertaking, took over the property.

3. To the extent relevant for our considering this contempt petition, I may note down a few more facts. In 1977, Rani Sevakram, the first petitioner's mother-in-law, subleased the property to U.P. State Handloom Corporation Ltd. (the "UP Handloom"). But there remains a specific grey area: Has the entire property been subleased or only a part of it. If only a part of it was given, which part? That is, which part did Rani Sevakram retain? As a corollary, has there been any physical demarcation of the property between Rani Sevakram and UP Handloom?

4. At any rate, in 1991, the Insurance Company invoked the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ("the Public Premises Act"). It sought the eviction of both the tenant and the sub-tenant. In October 1993, the Estate Officer allowed that application. Aggrieved, both Rani Sevakram and UP Handloom appealed to the City Civil Court, Bombay. Then, in April 1994, the Civil Court dismissed both the appeals. Eventually, the tenant and the sub-tenant filed Writ Petition Nos.2442 of 1994 and 1422 of 1996, respectively. This Court initially stayed the eviction through its order, dated 18th August 1994. But eventually, on 29th February 2017, through a common judgment, it dismissed both the Writ Petitions. Nevertheless, while disposing of the Writ Petitions, it stayed the eviction for eight weeks subject to the writ petitioners' filing the usual undertaking. The undertaking included that they alone had been in possession of the property and that they would not create any third-party interest.

5. The tenant filed the undertaking within the time, but not the UP Handloom. Then the Insurance Company applied to the Estate Officer and secured a warrant of eviction against the UP Handloom. Then, they executed that warrant and locked the leased premises.

6. The petitioners that is the tenants have filed this Contempt Case. They allege that the Insurance Company and its officials have grossly violated this Court's directives and, therefore, they are liable to be punished under Section 12 of the Contempt of Courts Act, 1971.

Submissions:

7. Shri Mayur Khandeparkar, the learned counsel for the petitioners, i/b. Shri E.A. Sasi, has taken me through the entire record and submitted that this Court granted a time frame for the petitioners to file their undertaking so their possession could be protected. They acted in strict compliance with that directive. Despite that, now they find themselves out of possession. According to him, the authorities of the Insurance Company willfully disregarded the judicial directives and, thus, committed the contempt of Court.

8. To elaborate, Shri Khandekar has submitted that even in eviction proceedings, the Insurance Company has never demarcated the leased property. In other words, both the UP Handloom and the petitioners have common access and also enjoyed the property commonly. To contextualise this assertion, Shri Khandeparkar has submitted that the petitioners' predecessors inducted the UP Handloom into the leased property in 1977, but later in 1987 terminated that arrangement. Yet only a few officers of UP Handloom

remained on the premises. Despite that, the Insurance Company officials have sealed the whole property; they locked it out.

9. Shri Khandeparkar has also submitted that against the judgment of this Court, the petitioners filed an SLP, and that was admitted. In fact, the Supreme Court has ordered the stay of judgment. Thus, even the initial stay granted by this Court stands extended as the Supreme Court has intervened. Shri Khandeparkar has finally contended that the Corporation violated this Court's directive in the interim—that is, after the UP Handloom had failed to file the undertaking on time and before the Supreme Court stayed the judgment. Therefore, it lies entirely within the jurisdiction of this Court to decide the issue whether the respondents have been guilty of willfully violating this Court's order. In the end, he urges this Court to allow this Contempt Petition.

Procedural Development:

10. I have noticed this Court initially required the petitioners to serve notice on respondents 4 to 6. The 1st respondent is a Company. The 2nd respondent is the Estate Officer, who has acted in the quasi-judicial capacity, and the 3rd respondent is an officer of the Insurance Company. The 4th respondent is the Executive officer; the 5th respondent is the Chairman-cum-Managing Director, and the 6th respondent is said to be a director. Then, respondents 7 to 10 are other officials, and respondent no.11 is the State of Maharashtra.

11. At any rate, this Court, through its order dated 28th December 2018, ordered notice only to respondents 4 to 6. But the petitioners could serve notice only on the 4th respondent. When I

desired to have the notice served on the other respondents, the learned counsel Shri Sanglikar representing, according to him, the 1st and 4th respondents, has insisted this Court may first ascertain where there is any prima facie case. Then, it may notify the other respondents. At any rate, he has submitted that some of the officials are non-existent, and most others live in Delhi, having nothing to do with the execution proceedings. Under these circumstances, I continued the hearing.

Respondents:

12. Shri Sanglikar, the learned counsel for the 1st and 4th respondents, on his part, has submitted that the petitioners have misconceived the scope of contempt proceedings. He stresses it is an abuse of process. To elaborate, he has argued that the respondents are responsible public officer having no intention of violating the Court's directives. According to Shri Sanglikar, under the Public Premises Act, the orders affect the property rather than the occupants. In that sense, the orders are *in rem*. Once a tenancy is terminated, that termination affects all those who possess the property. They include the subtenants and other occupants. That is, all those occupants are termed unauthorised occupants. Here both the petitioners and UP Handloom, too, suffered eviction.

13. Shri Sanglikar has submitted that in compliance with this Court's directives, only the petitioners submitted the undertaking—but not the UP Handloom, which occupied a substantial portion of the property. Under these circumstances, the respondents applied to this Court and secured a clarification. In other words, this Court permitted the Insurance Company to proceed against the UP Handloom and

ensure its eviction. Then, the officers secured a warrant of eviction from the Estate Officer. At any rate, Shri Sanglikar has submitted that through repeated correspondence, the Insurance Company asked the petitioners to access the portion allegedly in their possession through a rear entrance. But they refused. To have the front entry, the petitioners approached this Court, Shri Sanglikar stresses, twice but without success. Those orders have become final.

14. To conclude, Shri Sanglikar has submitted that this Court has repeatedly observed that the Supreme Court has already been seized of the matter, and it is entirely open for the petitioners to vindicate their grievance before it. When the matter is pending before the Supreme Court, it is, according to him, inadvisable for this Court to direct the respondents to reverse the execution—that is, opening the entire shop. It is in the face of the petitioners' assertion that they hold only a minuscule portion of the shop in their possession. At any rate, he underlines the respondents' *bona fide* conduct by contending that the petitioners could always operate their portion of the shop from the rear, for they do possess only the rear part of the shop.

15. As to the alleged contempt, he submits that the officials have acted *bona fide*: they applied to this Court; sought its permission to proceed with the execution, especially because the UP Handloom had not filed undertaking on time; and only then did the Company's official executed the decree. Besides, they have repeatedly wanted the petitioners to access the shop from the rear, even if they want to carry on their business. Thus, he urges this Court to dismiss this Contempt Petition.

Discussion:

16. To begin with, I may hold that the Contempt Proceedings, in a sense, are non-adversarial. Complainants or petitioners act as informants: they notify the court that its orders have been violated and that the judicial majesty has suffered. Contempt proceedings, however, are not execution proceedings in disguise. Pithily put, the proceedings aim to protect the dignity and majesty of the law.

17. Indeed, the petitioners and the UP Handloom did suffer a decree of eviction. The courts, including this Court, concurrently held against them. Eventually, the matter has reached the Apex Court. And after admitting the case, the Supreme Court suspended the Judgment. As a matter of chronology, the Supreme Court admitted the matter and stayed the impugned Judgment on 25th April 2017. But the alleged eviction or violation of this Court's Judgment took place on 3rd April 2017. If we accept the petitioners' contention that they had been dispossessed, that dispossession happened before the Supreme Court could admit the matter and stay the judgment. And the stay, admittedly, applies only to the petitioners.

18. There were two occupants under the Public Premises Act, and neither could be termed a tenant. Once their occupation stood terminated through the process of law, they rendered themselves unauthorised occupants. Therefore, for these contempt proceedings, there cannot be any distinction between the petitioners and the UP Handloom. Only the petitioners filed the undertaking before this Court.

19. According to the Insurance Company, before the Estate Officer it has brought on record the evidence that the UP Handloom possessed a substantial portion of the property; only a small extent, in the rear corner of the shop, remained with the petitioners. Shri Sanglikar has also submitted that there has been leave and license agreement (agency agreement) between the petitioner and the UP Handloom, demarcating the area in their respective occupation. That document, according to him, has already been brought on record.

20. I have seen from the record once the UP Handloom had failed to file its undertaking, the Insurance Company did not straightway go for execution. Instead, it applied to this Court and secured the order, dated 6th April 2017. In fact, this Court has observed that the Company should act under the law to evict the UP Handloom. Then, it applied to the Estate Officer, secured a warrant of execution, and sealed the premises. Yet it has written to the petitioners that they could access the shop through the rear portion of the property. To justify this arrangement, the Company has maintained that the employees of UP Handloom resisted the eviction; they had to be sent out with the police protection. Then, there has been a threat of their barging into the property. So the Insurance Company was constrained to seal the whole property. Despite that, it has engaged in a series of correspondence with the petitioners that they could access the shop through the rear portion. But the petitioners showed no interest in that arrangement. According to them, they could conduct no business through the rear portion.

21. That said, the petitioners have approached this Court to have access through the front portion, but the Court refused to interfere. True, now, the petitioners have insisted that the Court may appoint an advocate-commissioner to ascertain whether there has been a physical demarcation of the shop between UP Handloom and the petitioners. At any rate, in this contempt petition, I must observe, the scope is very much limited: whether the respondents have *willfully* violated the Court's directives.

22. Indisputably, the authorities have taken every possible step before they executed the decree. Of the two occupants, only one filed the undertaking, not the other. So they took the Court's leave to execute the decree against the defaulting occupant, applied to Estate Officer, secured a warrant of eviction, took police protection because of the physical resistance they faced, and sealed the property. Nevertheless, they time and again told the petitioners to have access from the rear. According to the Insurance Company, the employees of UP Handloom had picketed and created law and order problem.

23. And the petitioners did apply to this Court twice for a direction to have access to the shop through the main entrance. But the Court rejected their request. So, by no stretch can I conclude that the respondent officials have acted contumaciously in utter disregard for the judicial majesty. Nor do I find any element of willfulness on their part to violate the binding judicial directive.

24. Even if I were to confine this adjudication to the 4th respondent, I reckon, the Insurance Company *per se* could not be a contemnor, as its officials have lawfully executed a decree then

subsisting. And that execution was against the UP handloom, which did not file the undertaking.

25. At the cost of repetition, I may note that the petitioners have already approached this Court twice to have access from the front portion. On both occasions, the Court has refused. In that context, I cannot once again reappreciate the same issue, in the name of contempt, and make any interim arrangement. Put differently, now it is not the question about whether the petitioners have been dispossessed; it is rather a question about from which part of the building the petitioners could enter “their portion” of the shop. I am afraid it is hardly a matter of contempt.

26. Once the element of wilfulness is absent, the contempt proceedings must fail, for they are quasi-criminal, requiring a higher level of proof. I must observe that the Apex Court has already admitted the matter and suspended the impugned Judgment. By then, the petitioners were dispossessed, if it were so. The petitioners ought to have brought to the Supreme Court’s notice about this development. Instead, they remained quiet. Later, they came up with this Contempt Petition. A contempt petition is no device for interim arrangements, more particularly when the Supreme court has been seized of the matter.

As a result, I close the Contempt Petition.

Digitally
signed by
Vina A.
Khadpe
Date:
2019.11.13
19:13:02
+0530

Vina A.
Khadpe

[DAMA SESHADRI NAIDU, J.]