

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

**CONTEMPT PETITION NO.221 OF 2012
WITH
CIVIL APPLICATION NO.40 OF 2012
IN
CONTEMPT PETITION NO.221 OF 2012**

M/s. Sherali Khan Mohammed Manekia & Anr. ... Petitioners
Versus
Kamlakar Rane and Ors. ... Respondents

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Shri Simil Purohit a/w. Shri Yogesh Gaikwad I/b. M/s. Bilawala & Co. for the petitioners.

Shri Mandar Limaye for respondent Nos.1 and 2.

Son of respondent No.1-Shri Dilip Kamlakar Rane present in the Court.

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CORAM : M. S. KARNIK, J.

DATE : 4th JULY, 2019.

P. C.:

1. Heard learned counsel for the petitioners.
2. Learned counsel Shri Purohit had extensively argued the Contempt Petition on the last occasion. The matter was heard again for sometime. The order in respect of which breach is alleged is dated 10.03.1983 passed in Appeal From Order No.221 of 1980. It is the contention of the petitioners that this Court had restrained the respondent No.1 from making any construction in the suit property.

3. My attention is invited by learned counsel to the Court Receiver's report indicating that the respondent No.1 had put up the hoarding on the suit property despite the order passed by this Court. Shri Purohit therefore urged that there is flagrant violation of the order passed by this Court.

4. Learned counsel for the respondent No.1 Shri Limaye would submit that undoubtedly the Court had directed the respondent No.1 not to put any unauthorised construction in the suit property. However, the Court Receiver had taken possession of area which was more than the area of the suit property in respect of which the order was passed. He would invite my attention to the order passed by this Court on 14.01.2013 in a connected proceeding wherein it has clearly been observed that the Court Receiver took possession of an area more than the area of the suit property. He would submit that the hoarding which put up was not on the suit property but was on the excess portion.

5. Be that as it may, he would submit that the hoarding has been removed in July 2012 itself. Respondent No.1 who is 92

years of age has filed an affidavit tendering an unconditional apology to this Court. He has stated that the hoarding was on the excess portion of the property which was in the possession of the Court Receiver beyond the suit property. The affidavit is tendered by learned counsel for the respondent No.1. The Affidavit is taken on record and marked as 'X' for identification.

6. Learned counsel would submit that the respondent No.1 being 92 years of age is unable to remain present in the Court but his son Mr. Dilip Kamlakar Rane is present.

7. Considering the fact that the respondent No.1 is 92 years of age; the hoarding has been since removed; in the subsequent orders of the Court as it has been observed that Court Receiver has taken excess possession beyond the suit property and further considering that an unconditional apology is tendered by the respondent No.1, the same deserves to be accepted. The respondent No.1 is discharged. The Contempt Petition stands disposed of.

8. It is made clear that I have accepted the unconditional apology in the peculiar facts of the present case as respondent

No.1 is 92 years of age and the hoarding has since been removed. It is clarified that I have not dealt with the merits of the rival contentions. All contentions are kept open.

9. In view of the disposal of the Contempt Petition, nothing survives for consideration in the Civil Application. The Civil Application is disposed of accordingly.

(M. S. KARNIK, J.)