

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Contempt Petition NO. 246 OF 2016

Smt Padma Vitthalrao Deshmukh

...Petitioner

Versus

Shri Vitthalrao Keshavrao Deshmukh
and another

...Respondents

....

Ms. Seema Sarnaik a/w. Ameya Tamhane, Advocate for the Petitioner.
Mr. Hitesh Vyas a/w. Abhijeet Sarwate, Advocate for Respondent No.1.
Mr. Ashok Purohit i/b. Ashok Purohit & Co. for Respondent No.2.

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CORAM : R. G. KETKAR, J.

RESERVED ON : 28th FEBRUARY, 2019
PRONOUNCED ON: 28th MARCH, 2019

ORDER :

1. Heard Ms. Seema Sarnaik, learned counsel for the Petitioner, Mr. Hitesh Vyas and Mr. Abhijeet Sarwate, learned counsel for Respondent No.1 and Mr. Ashok Purohit, learned counsel for Respondent No.2, at length.

2. This Contempt Petition alleges breach of the order dated 30.9.2015 passed by the learned Judge, Family Court No.2, Pune below Exhibit-19 in P.A. No.309 of 2014. The petitioner also alleges breach of the orders dated 1.2.2016 and 2.8.2016 passed by this Court in W.P. No.12834/2015. By order dated 30.9.2015, the learned trial Judge allowed application Exhibit-19 filed by the petitioner herein and

directed the first respondent herein to pay interim maintenance of Rs.75,000/- per month to the petitioner and Rs.50,000/- per month to each daughter namely Radhika and Krishna (i.e. in all aggregated Rs.1,00,000/-), in all Rs.1,75,000/- per month from the date of the application i.e. from 27.11.2014. Respondent No.1 was further directed to pay litigation cost of Rs.20,000/- to the petitioner. Writ Petition No.12834/2015 instituted by the first respondent challenging the order dated 30.9.2015 was heard by this Court on 1.2.2016. This Court observed that as on date, there was no ad-interim order. Respondent No.1 herein was directed to deposit entire arrears of maintenance in terms of order dated 30.9.2015 with the Family Court, Pune. The petitioner has also challenged the said order by instituting W.P. No.1563/2016. By order dated 2.8.2016, both the petitions were admitted. Respondent No.1 was directed to continue to pay maintenance to petitioner @ Rs.75,000/- per month and Rs.50,000/- per month to one of the daughters Krishna. He was directed to clear all the arrears towards them and given liberty to move the Court for modification of the interim order of daughter Krishna completing her graduation.

3. Contempt Petition was heard for admission before this Court on 19.7.2016 when notice was issued to the respondent

returnable on 24.8.2016. Advocate's notice was permitted. In pursuance thereof, the petition was heard for admission on 24.8.2016. Respondent No.1 appeared in person and sought two weeks time. At his request, the matter was adjourned to 7.9.2016.

4. On 7.9.2016, the petitioner filed additional affidavit. The petitioner annexed the order dated 2.8.2016 passed by this Court admitting Writ Petition Nos. 1563/2016 & 12834/2015. In paragraph-3 of said affidavit, the petitioner contended that the Contempt Petition, at present, is restricted to non-compliance of orders of maintenance payable to the petitioner wife and daughter Krishna only. On 2.8.2016, respondent No.1 had paid Rs.6 Lakhs by way of Demand Drafts. Upto 2.8.2016 the arrears were Rs.21,70,000/-. The calculations were also given in that additional affidavit.

5. The matter was thereafter heard on 18.10.2016. This Court noted that though respondent No.1 was duly served, no one appeared on his behalf. This Court noted that respondent No.1 failed to comply the order dated 30.9.2015 passed by the learned Judge, Family Court No.2, Pune below Exhibit-19 in P.A. No.309/2014 and the order dated 1.2.2016 passed by this Court in W.P. No.12834/2015. As none appeared on that date, the petitioner was directed to intimate the next date of hearing to respondent No.1 by R.P.A.D. and/or by hand

delivery. Liberty was granted to the petitioner to file additional affidavit in the Registry and serve copy to other side. Hearing was deferred till 25.10.2016.

6. On 4.4.2018, respondent No.1 filed affidavit. In paragraph-4, respondent No.1 contended that he is working as Manager in the Petrol Pump which stands in his father's name. After demise of his father, respondent No.1 had requested other family members to give him NOC for running the Petrol Pump. They refused to cooperate. As on date, he is receiving salary of Rs.20,000/- per month from the Petrol Pump. Very soon, the Petrol Pump will be shut down. In paragraph-6, respondent No.1 contended that only one property stands in his name viz. where the petitioner is presently residing. He has given details of that property.

7. The matter was heard for admission on 4.4.2018. The Court dealt with the affidavit dated 7.9.2016 filed by the petitioner as also the affidavit dated 4.4.2018 filed by the first respondent. Respondent No.1 was directed to file an affidavit giving details of his movable and immovable property, both standing in his name and as well as in the joint name, including the property at his native place as has been stated by him in paragraph-5 of the affidavit. It was also made clear that the details of the property given by him on affidavit will be subjected to

verification by the Revenue Officials and this Court intends to direct the Revenue Authorities to verify the details of the property. This Court also granted liberty to implead Indian Oil Corporation (for short, 'IOC') as party respondent. The newly added respondent IOC was directed to give details about the Petrol Pump located at Rashin, Bhandarkar Road, Taluka Karjat, District – Ahmednagar. IOC was directed to give the details as to from what time the Petrol Pump was allotted and to produce the agreement, if executed with the dealer. IOC was directed to make a categorical statement as to whether respondent No.1 is being paid by IOC in the capacity as Manager. Respondent No.1 was directed to produce on record the documents depicting that he is receiving a salary of Rs.20,000/- from the Firm which runs the Petrol Pump, as per his allegations made in paragraph-4 of his affidavit. The matter was accordingly adjourned to 25.4.2018.

8. In pursuance of the order dated 4.4.2018, respondent No.2 IOC filed affidavit-in-reply dated 30.7.2018 of Sunil Puneekar, Senior Manager (Retail Sales) of IOC. In paragraph-2, it is made clear that IOC is nowhere concerned with the internal dispute between the petitioner and respondent No.1. In paragraph-3, it is stated that under Petrol / HSD Petrol Dealer Agreement dated 1.2.1978, IOC granted dealership in favour of M/s. Jagdamba Krishi Seva Kendra, a Partnership Concern

of Shri Keshavrao Raosaheb Deshmukh, Nilkanth Devidas Deshmukh, Vijay Keshavrao Deshmukh and Vishwas Devidas Deshmukh as Partners. That Dealership Agreement dated 1.2.1978 is annexed at Exhibit-A to the affidavit-in-reply. It is further stated that IOC is not aware about the status of respondent No.1 in the said M/s. Jagdamba Krishi Seva Kendra. IOC is also not aware whether respondent No.1 is working as Manager in the said firm and drawing a salary of Rs.20,000/-. IOC is not paying any amount either by way of commission or salary to respondent No.1. IOC, therefore, contended that the statement of respondent No.1 is false.

9. In pursuance of the order dated 4.4.2018, respondent No.1 also filed affidavit dated 17.10.2018. In paragraph-2, he made reference to Criminal Misc. Application No.DV-1147 of 2009 filed by the petitioner before the learned Judicial Magistrate, First Class, Pune under the Protection of Women from Domestic Violence Act, 2005 (for short, 'D.V. Act') and annexed order dated 9.2.2018 in the Criminal Misc. Case No.DV-1147/2009. In paragraph-6, respondent No.1 made reference to application dated 30.8.2016 made by him at Exhibit-60 calling upon the petitioner to file documents about daughter's education and graduation. He also made application under the Right to Information Act, 2005 and obtained certificate showing that daughter Krishna

completed the Bachelor of Architecture in the year 2015. Respondent No.1, therefore, prayed that the maintenance awarded to daughter Krishna may be discontinued from 1.11.2015 onwards.

10. In paragraph-7(a), respondent No.1 contended that IOC has given Petrol Pump on dealership basis in the name of his father Keshavrao Deshmukh. The said name continues even till today. IOC will not give the dealership to any person other than the original licensee. He has been working on the Petrol Pump and has been earning Rs.20,000/- per month. He is filing attendance sheet to substantiate said fact. The license was given by IOC in the name of his later father. His late father had formed a Partnership Firm along with his two uncles Vishwas Deshmukh and Neelkanth Deshmukh and elder brother Vijay Deshmukh. Accordingly said license was transferred in the name of the Partnership and on the official websites their names are shown as Partners.

11. IOC had signed the petrol / HSD Pump Dealer Agreement with all the above named Partners. After the demise of his father, there were disputes as regards running and managing the pump. Since 1.5.2018, as there were disputes between the family members, IOC has stopped the business with the Petrol Pump and stopped supplying petrol/HSD to the petrol pump. He is not privy to the said document as

he was never Partner and was only an employee. He is neither Partner nor privy to the decision between IOC and the Partners of the Partnership Firm.

12. In paragraph-7(b), respondent No.1 contended that Indira bungalow at 7/2, Manoj Co-operative Housing Society, Opposite Market Yard, Pune (for short, 'Indira Bungalow'), was purchased by his father. Said bungalow is admeasuring 3000 sq. ft. built up and is a duplex. It has a huge hall of 1000 sq. ft. on the ground floor and three bed-rooms with attached toilet on the first floor. Respondent No.1 contended that the petitioner has been giving the hall admeasuring 1000 sq. ft. on rent to various paying guests/girls. On an average, the petitioner receives Rs.7,000/- to 12,000/- per month from each paying guest/girl. Thus, on average the petitioner earns Rs.1,00,000/p to Rs.1,50,000/- per month.

13. The matter was heard on 19.10.2018. The statement of Ms.Sarnaik that respondent No.1 is in arrears of Rs.51,75,000/- upto 31.10.2018 was recorded. As against this, the statement of the first respondent that he is in arrears of Rs.45 Lakhs as on 31.10.2018 was recorded. It was observed that even according to the first respondent he is in arrears of Rs.45 Lakhs as on 31.10.2018. Respondent No.1 was present in the Court and upon taking instructions from him, Mr. Vyas

stated that he will deposit Rs.5 Lakhs within two weeks from that date in this Court. After considering the orders passed by the Family Court and this Court dated 1.2.2016 and 2.8.2016, it was observed in paragraph-9 that as no stay is granted, respondent No.1 is bound by order dated 30.9.2015. He either ought to have challenged the orders dated 1.2.2016 and 2.8.2016 before the higher Court or ought to have complied that order by depositing the amount.

14. It was further observed that it is an admitted position that respondent No.1 has not complied that order. It was also noted that respondent No.1 did not comply the order dated 2.8.2016 by which the order dated 30.9.2015 was modified. He filed application in the trial Court for selling Indira bungalow which is presently in occupation of the petitioner and her two daughters. It was, therefore, observed that *prima facie* respondent No.1 is in contempt of the order dated 30.9.2015 passed by the trial Court, order dated 1.2.2016 passed by this Court declining him ad-interim order and order dated 2.8.2016 passed by this Court in W.P. Nos.1563/2016 & 12834/2015. The notice was, therefore, issued to respondent No.1 under Rule 9 of Chapter XXXIV of the Bombay High Court Appellate Side Rules, 1960 as to why action under the Contempt of Courts Act, 1971 (for short, 'Act') be not initiated against him. The notice was made returnable on 6.12.2018. Mr. Vyas

accepted service on behalf of the first respondent who was present in the Court. He assured that on or before 6.12.2018 he will file reply and serve copy in advance on the other side.

15. Respondent No.1 filed affidavit dated 6.12.2018 in compliance of the order dated 19.10.2018. In paragraph-2 he made reference to Criminal Misc. Application No.DV-1147 of 2009 filed by the petitioner before the learned Judicial Magistrate, First Class, Pune under the 'D.V. Act and annexed order dated 9.2.2018 in the Criminal Misc. Case No.DV-1147/2009. In paragraph-6, respondent No.1 made reference to application dated 30.8.2016 made by him at Exhibit-60 calling upon the petitioner to file documents about daughter's education and graduation. He also made application under the Right to Information Act, 2005 and obtained certificate showing that daughter Krishna completed the Bachelor of Architecture in the year 2015. Respondent No.1, therefore, prayed that the maintenance awarded to daughter Krishna may be discontinued from 1.11.2015 onwards.

16. Respondent No.1 contended that the petitioner had obtained the order of interim maintenance by practicing fraud. He contended that the daughters are not entitled to any maintenance and according to him the payment of arrears of maintenance to the petitioner an additional amount of Rs.18 Lakhs would be available. In paragraph-

17, respondent No.1 stated that IOC has given dealership in the name of his father Keshavrao Deshmukh. Said name continues even till date. IOC will not give the dealership to any person other than the original licensee. He has been working on the Petrol Pump and earning Rs.20,000/- per month. He has produced his attendance sheet in support of his claim.

17. Respondent No.1 contended that his father even had formed a Partnership Firm along with his two uncles Vishwas Deshmukh and Neelkanth Deshmukh and his brother Vijay Deshmukh. After the demise of his father, there were disputes as regards running and managing the Petrol Pump. Since 1.5.2018, as there was a dispute between the family members as regards running of the Petrol Pump, IOC has stopped the business of Petrol Pump and thereby stopped supply of petrol/HSD to the Petrol Pump. Respondent No.1 categorically stated that he is not Partner nor privy to the decision between IOC and the Partners. He also enclosed the photographs taken on various dates and various hours to show that the Petrol Pump is closed. The petitioner can also verify the same, if need be.

18. Respondent No.1 further stated that Indira Bungalow was purchased by his father. The petitioner is residing in that bungalow, admeasuring about 3000 sq. ft. built up. It is a duplex bungalow having

a huge hall admeasuring 1000 sq. ft. on the ground floor and three bedrooms with attached toilet on the first floor. The petitioner has given hall on rent to various paying guests/girls and earning Rs.7,000/- to Rs.12,000/- per month. The petitioner, on average, is earning Rs.1,00,000/- to Rs.1,50,000/- per month. In paragraph-18, he has given details of investments/properties. The matter was thereafter heard on 7.1.2019 and was adjourned to 24.1.2019 so as to enable the petitioner to file rejoinder.

19. On 24.1.2019, the petitioner filed affidavit in rejoinder to the affidavit dated 6.12.2018 filed by the first respondent in compliance of order dated 19.10.2018. Along with the affidavit, the petitioner has enclosed invoice dated 5.9.2018 showing that the Petrol Pump is in operation. The petitioner, therefore, contended that the contention of the first respondent that since 1.5.2018 IOC has stopped the business and IOC stopped supplying HSD to the Petrol Pump is incorrect. The petitioner annexed the extract from the Register of Firms, Pune in respect of the firm M/s. Shri Jagdamba Krishi Seva Kendra dated 27.1.2009 which shows that respondent No.1 joined the firm as a Partner from 1.7.1982. She enclosed a copy of the Partnership Deed of Shri Jagdamba Krishi Seva Kendra dated 25.6.1992 dealing with distribution of profits among the Partners. One of the Partners is

respondent No.1.

20. The petitioner enclosed a police complaint dated 21.2.2009 made by Shivaji Jadhav in which he stated that he has been working as a Manager in the said Petrol Pump. He looks after the day to day affairs and maintains account of the Petrol Pump as per the instructions given by respondent No.1. The petitioner has enclosed the police complaint filed by the first respondent dated 22.2.2009 where he stated that the firm has three Partners including the first respondent. Other two partners have granted him authority to conduct the business of said firm.

21. The petitioner has contended that information sheet (pg 259 to 260) records occupation of the first respondent as "Business". He was occupying bungalow No.8 on rent for the period from 1.3.2012 to 28.2.2013. She has also enclosed the photographs of said bungalow. Thus, the contention of the first respondent that he is working as Manager in the Petrol Pump since 2009, is patently false. The petitioner has enclosed the property tax bill issued by the Pune Municipal Corporation for the year 2018-2019. That bill shows that Indira bungalow stands in the name of the first respondent.

22. The petitioner has enclosed various Fixed Deposit Receipts standing in the name of the first respondent (pg 262 to 308). The petitioner has placed details of amounts lying in various accounts of

different Banks maintained by the first respondent (pg 310 to 317). The details were also filed by the petitioner before the Family Court. Respondent No.1 filed response (pg 317 to 325). The petitioner has contended that most of the accounts were closed on 6.6.2009 i.e. exactly after the petitioner filed Domestic Violence case before J.M.F.C. Court, Pune on 12.5.2009. Reliance is placed on the extract of savings account No.3434 of Raosaheb Deshmukh Urban Credit Co-operative Society Limited, Rashin, Taluka – Karjat, District – Ahmednagar, wherein respondent No.1 has mentioned his occupation as “agriculture” (pg 325 to 335). In particular reference is made to entries from 7.2.2009 to 24.2.2009. During which an amount of Rs.53 Lakhs were deposited. The petitioner has also annexed Income Certificate of respondent No.1 dated 30.6.2007 where for the year 2006-07 his annual income is shown as Rs.10 Lakhs.

23. The petitioner has annexed revenue record of numerous agricultural lands in the name of respondent No.1 and his family members (pg 337 to 361). The petitioner has relied upon 7/12 extract of Gat No.495 of village Deshmukhwadi, Taluka – Karjat, District- Ahmednagar standing in the name of the first respondent (pg 362). Earlier no encumbrance was shown. However, 7/12 extract of 23.8.2015 shows that respondent No.1 allegedly had obtained loans from Raosaheb

Deshmukh Urban Credit Co-operative Society Limited, Rashin, Taluka – Karjat, District – Ahmednagar, namely, (1) Rs.8,65,280/- dated 5.2.1998, (2) Rs.15 Lakhs dated 12.4.2002, and (3) Rs.20 Lakhs [no date is specified]. The petitioner has relied upon the letter dated 8.2.2001 of Raosaheb Deshmukh Urban Credit Co-operative Society Limited, Rashin showing that the loan of Rs.8,65,280/- taken on 6.2.1998 is repaid. The petitioner has relied upon the application dated 27.5.2002 made by respondent No.1 to Raosaheb Deshmukh Urban Credit Co-operative Society Limited, Rashin setting out therein that he has repaid all the loans of the Credit Society. The petitioner, therefore, contended that respondent No.1 has repaid all the loans and agricultural loans by May, 2002.

24. On the same day i.e. 24.1.2019, the petitioner filed affidavit-in-rejoinder to the affidavit-in-reply dated NIL filed by the first respondent, copy of which was served on the petitioner on 6.12.2018. The petitioner has given break-up of her claim of the maintenance from 27.11.2014 to 27.11.2018 @ Rs.75,000/- per month + litigation costs of Rs.20,000/- which came to Rs.36,20,000/-. Out of that, respondent No.1 paid Rs.6 Lakhs, leaving behind Rs.30,20,000/- maintenance. According to her including maintenance of December, 2018 and January, 2019 @ Rs.75,000/- per month, the total maintenance comes to Rs.31,70,000/-.

The maintenance of Radhika from 27.11.2014 to 2.8.2016 (20 months) @ Rs.50,000/- per month comes to Rs.10 Lakhs. Maintenance of Krishna from 27.11.2014 to 30.8.2016 (21 months) @ Rs.50,000/- per month comes to Rs.10,50,000/-. Thus, according to the petitioner, the arrears of maintenance for herself and her daughters comes to Rs.52,20,000/-. The petitioner has also annexed the order dated 10.12.2018 passed by the learned trial Judge rejecting the application dated 2.11.2017 at Exhibit-88 filed by the first respondent for attachment of Indira Bungalow. The petitioner has annexed the order dated 10.12.2018 passed by the learned trial Judge on application Exhibit-58 filed by respondent No.1 for setting aside the order of maintenance passed in favour of younger daughter Krishna. The learned allowed application Exhibit-58 and cancelled the interim maintenance of daughter Krishna from the date of the application i.e. 30.8.2016.

25. The matter was heard on 31.1.2019 and by consent it was adjourned to 7.2.2019. On 7.2.2019 the matter was adjourned to 21.2.2019. On 21.2.2019, the learned Counsel for the parties were heard at length. Arguments were concluded and the order was reserved. The learned counsel for the parties submitted that they will again try to explore the possibility of settlement by giving proposal in writing for the settlement of the entire controversy between the parties. The matter

was therefore adjourned till 28.2.2019 only for the purpose of considering settlement proposal. On 28.2.2019, the petitioner submitted proposal dated 25.2.2019 which was taken on record and marked 'A' for identification. Respondent No.1 also gave proposal in writing which was taken on record and marked 'B' for identification. The learned Counsel for the parties were heard on the proposals and it transpired that the settlement is not possible. In view thereof, the order is reserved in the Contempt Petition and the date of pronouncement of the order was ordered to be notified later on.

26. Ms. Sarnaik submitted that respondent No.1 has not paid the maintenance as per the order dated 30.9.2015 passed by the learned trial Judge. In the order dated 1.2.2016, this Court noted that as on date, there was no ad-interim order. Respondent No.1 was directed to deposit entire arrears of maintenance as per the order dated 30.9.2015 with the Family Court, Pune. Respondent No.1 has not complied said order till date. While admitting the Writ Petitions on 2.8.2016, this Court directed respondent No.1 to continue to pay maintenance to the petitioner @ Rs.75,000/- per month and Rs.50,000/- per month to daughter Krishna. As on 31.1.2019, respondent No.1 is in arrears of Rs.52,20,000/- towards maintenance of the petitioner and her daughters. She submitted that though the financial position of

respondent No.1 is extremely sound, still he has not complied the order of maintenance. Respondent No.1 is one of the Partners of M/s. Jagdamba Krishi Seva Kendra, which is running a petrol pump. Respondent No.1, however, falsely claims that he is working as a Manager in the said Petrol Pump. There are several immovable properties standing in the name of respondent No.1 and the joint family. Respondent No.1 even filed application in the trial Court for selling the bungalow which is presently in occupation of the petitioner and her two daughters. Ms. Sarnaik has advanced the submissions consistent with the stand taken by the petitioner in this Petition, affidavit dated 7.9.2016 and affidavits dated 24.1.2019. She, therefore, submitted that this is an imminent case for taking action against the first respondent under the Contempt of Courts Act, 1971.

27. On the other hand, Mr. Hitesh Vyas and Mr. Abhijeet Sarwate strenuously contended that respondent No.1 has no capacity to pay the maintenance as ordered by the Family Court and this Court. They reiterated that respondent No.1 is an employee of the petrol pump (Manager) and is drawing salary of Rs.20,000/- per month. They submitted that in fact the petitioner is earning huge amount by inducting paying guests in Indira bungalow. The petitioner has obtained the order of maintenance by practicing fraud on the Court. They submitted that

the petitioner has suppressed the fact that daughter Krishna completed Bachelor of Architecture in the year 2015 and, therefore, she is not entitled to maintenance w.e.f. 1.11.2015 onwards. The petitioner should have brought this fact before the Court. Instead of that by suppressing said fact, the petitioner has obtained the order of maintenance. They have advanced the submissions consistent with the stand taken by the first respondent in affidavits dated 4.4.2018, 17.10.2018 and 6.12.2018. It was, therefore, contended that respondent No.1 has not deliberately and willfully committed breach of the orders dated 30.9.2015, 1.2.2016 and 2.8.2016. It was submitted that the notice issued by this Court may be discharged.

28. On behalf of the first respondent, it was submitted that respondent No.1 is ready and willing to settle entire controversy. Respondent No.1 has accordingly submitted various options for settlement of the entire controversy. The petitioner has also submitted proposal for settlement. After considering the proposals and after due deliberation, it is evident that settlement is not possible.

29. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The petitioner has alleged that respondent No.1 has willfully disobeyed the order dated 30.9.2015 passed by the learned trial

Judge as also the orders dated 1.2.2016 and 2.8.2016 passed by this Court in W.P. No.12834/2015. By the order dated 30.9.2015, the learned trial Judge allowed application Exhibit-19 filed by the petitioner herein and directed the first respondent herein to pay interim maintenance of Rs.75,000/- per month to the petitioner and Rs.50,000/- per month to each daughter namely Radhika and Krishna (i.e. in aggregate Rs.1,00,000/-), in all Rs.1,75,000/- per month from the date of the application i.e. from 27.11.2014. Respondent No.1 was further directed to pay litigation cost of Rs.20,000/- to the petitioner. By order dated 2.8.2016, Writ Petitions filed by the petitioner and respondent No.1 were admitted. Respondent No.1 was directed to continue to pay maintenance to the petitioner @ Rs.75,000/- per month and Rs.50,000/- per month to daughter Krishna. It is not in dispute that respondent No.1 has not carried the matter further. Thus as on date respondent No.1 is bound to comply these orders.

30. The petitioner has asserted that respondent No.1 is running a petrol pump in name and style of “M/s. Jagdamba Krishi Seva Kendra” at Rashin, Taluka – Karjat, District – Ahmednagar. Respondent No.1 hails from a very elite and high profile family. The father of the first respondent Keshavrao @ Bapusaheb Raosaheb Deshmukh was an eminent political personality. Respondent No.1 owns huge agricultural

land of around 600 Acres along with his other family members at Rashin and other places. Respondent No.1 is a member of a joint family who has constructed a house over five acres of land at Rashin. Respondent No.1 has invested various amounts in Fixed Deposits and receives interest from the same. The lifestyle of the first respondent is elite and luxurious lifestyle of the families coming from very rich class. The petitioner further contended that respondent No.1 was living in the rented two storied bungalow at Pashan, where the rent would be approximately Rs.20,000/- per month. According to the petitioner, first respondent earns about at least Rs.10 Lakhs per month from the Petrol Pump and his earnings from other sources are around Rs.5 Lakhs per month.

31. The petitioner has filed additional affidavit dated 7.9.2016. In paragraph-3, it is stated that the contempt at present is restricted to non-compliance of maintenance orders in respect of the petitioner and daughter Krishna. On 2.8.2016, respondent No.1 had paid Rs.6 Lakhs by way of Demand Drafts. Upto August, 2018 he was in arrears of Rs.21,70,000/-. The petitioner has filed affidavit-in-rejoinder on 24.1.2019 to the affidavit in compliance dated 17.10.2018 of the first respondent. The petitioner has also filed affidavit-in-rejoinder on 24.1.2019 to the affidavit-in-reply dated NIL of the first respondent,

copy whereof was served on the petitioner on 6.12.2018.

32. Respondent No.1 has filed affidavit dated 4.4.2018, affidavit dated 17.10.2018 in compliance of the order dated 4.4.2018 and affidavit dated 6.12.2018 in compliance of the order dated 19.10.2018.

33. Respondent No.2 – IOC has filed affidavit dated 30.7.2018. In the earlier part of the order, I have already dealt with these affidavits.

34. The following position emerges from the affidavits filed by the petitioner, respondent No.1 and respondent No.2 IOC :

- i. Respondent No.1 is not working as a Manager in the Petrol Pump run by M/s. Jagdamba Krishi Seva Kendra. He is also not drawing a salary of Rs.20,000/- per month as claimed by him.
- ii. Respondent No.1 is one of the Partners of M/s. Jagdamba Krishi Seva Kendra. This is evident from extract of Register of Firms of M/s.Jagdamba Krishi Seva Kendra. Respondent No.1 joined as a Partner on 1.7.1982. Clause-8 of the Partnership deals with remunerations. The yearly remuneration is to be distributed to the Partners in each financial year as the percentage of book profit of the organization. Respondent No.1 is entitled to 30% in book profit upto Rs.75,000/-. He is entitled to 20% in case the book profit is between Rs.75,000/- and Rs.1,50,000/- and 13% if it is above Rs.1,50,000/-. Clause-10

deals with 'Partner's profit or loss'. Net profit of the organization after deducting all types of expenses, rent, salary, other management expenses, remuneration paid or payable to the partners after making changes in the Partnership Deed are to be distributed among all three Partners. Each Partner, including respondent No.1, has 33.33% share. Supplementary Partnership Deed shows that respondent No.1 is entitled to 70% if the book profit is upto Rs.75,000/-, 45% in case it is beyond Rs.75,000/- and Rs.1,50,000/- and 30% if it is above Rs.1,50,000/-.

- iii. The statement dated 24.2.2009 of Shivaji Babasaheb Jadhav shows that he is working as a Manager in the Petrol Pump since 25.6.2007. He looks after the daily affairs and maintains accounts of the said Petrol Pump as per the instructions given by the first respondent.
- iv. Even the complaint made by the first respondent on 22.2.2009 to Karjat police station shows that respondent No.1 stated that M/s. Jagdamba Krishi Seva Kendra is the dealer of IOC. Said firm has three Partners including the first respondent. The remaining Partners granted him authority to conduct the business of the said firm.

- v. Respondent No.2 in its affidavit dated 30.7.2018 has contended that it is not aware whether the first respondent is working as a Manager in M/s. Jagdamba Krishi Seva Kendra and drawing a salary of Rs.20,000/-. IOC is not paying any amount either by way of commission or salary to the first respondent. It is contended that the statement of the first respondent is false in that regard.
- vi. Respondent No.1 has reiterated that he is working as a Manager in the said Petrol Pump and that his salary is Rs.20,000/- per month. Thus, the contention of the first respondent in that regard is false to his knowledge and made solely with a view to depriving the petitioner and her daughters of their legal dues as per the maintenance orders.
- vii. Affidavit filed by the petitioner also depicts the properties standing in the name of respondent No.1 and other members of the joint family. It also shows that the Petrol Pump is in operation though respondent No.1 tried to contend that it is not operating after 1.5.2018. Not only that respondent No.1 filed application Exhibit-88 in P.A. No.309/2014 for attachment of Indira Bungalow which is in possession of the petitioner and two daughters. By order dated 10.12.2018, the learned trial

Judge has rejected that application. Thus, respondent No.1 has also even attempted to sell Indira bungalow where presently the petitioner and her daughters are residing.

35. From perusal of record, it is evident that various Fixed Deposit Receipts are standing in the name of the first respondent (pg. 262 to 308). Respondent No.1 is maintaining various accounts in different banks. The petitioner has placed details of amounts lying in these accounts (pg. 310 to 316). It is interesting to note that after the petitioner filed D.V. Case on 12.5.2009 before the J.M.F.C. Court, Pune, respondent No.1 closed these accounts on 6.6.2009.

36. It has come on record that respondent No.1 has repaid all the agricultural loans raised by him. It has also come on record that respondent No.1 hails from a very elite and high profile family. The father of the first respondent Keshavrao @ Bapusaheb Raosaheb Deshmukh was an eminent political personality. Respondent No.1 owns huge agricultural land of around 600 Acres along with his other family members at Rashin and other places. Respondent No.1 is a member of a joint family who has constructed a house over five acres of land at Rashin. The lifestyle of the first respondent is elite and luxurious lifestyle of the families coming from very rich class. Respondent No.1 was living in the rented two storied bungalow at Pashan. Thus,

respondent No.1 has substantial means to comply the order of maintenance. Respondent No.1 has expressed his inability to pay the maintenance by falsely contending that he is working as a Manager in the Petrol Pump and is drawing salary of Rs.20,000/- per month. Thus, respondent No.1 has tried to mislead this Court by suppressing the material facts. Respondent No.1 is in fact a Partner in M/s. Jagdamba Krishi Seva Kendra which is operating that Petrol Pump.

37. Section 2(b) of the Contempt of Courts Act, 1971 (for short, 'Act') defines the expression Civil Contempt. It reads thus :

“2. Definitions .-- In this Act, unless the context otherwise requires,--

(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court; ”

38. Section 12 of the Act deals with punishment of Contempt of Court and lays down that a contempt of Court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to Rs.2,000/- or with both. Proviso thereto lays down that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court. Explanation thereto lays down that an apology shall not be rejected

merely on the ground that it is qualified or conditional if the accused makes it *bona fide*. Sub-section (2) thereof lays down that notwithstanding anything contained in any other law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it. Sub-section (3) thereof lays down that notwithstanding anything contained in the section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

39. Section 13 of the Act lays down that notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under the Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice.

40. The matter was heard earlier on 19.10.2018. In paragraph-9 of that order, it was observed that *prima facie* respondent No.1 is in contempt of the order dated 30.9.2015 passed by the trial Court, order

dated 1.2.2016 passed by this Court declining him ad-interim order and order dated 2.8.2016 passed by this Court in W.P. Nos.1563/2016 & 12834/2015. The notice was, therefore, issued to respondent No.1 under Rule 9 of Chapter XXXIV of the Bombay High Court Appellate Side Rules, 1960 as to why action under the Act be not initiated against him.

41. Respondent No.1 has filed affidavits referred hereinabove. Instead of showing his readiness and willingness to comply these orders, he has falsely contended that he is working as a Manager and drawing meager salary of Rs.20,000/- per month. In fact, respondent No.1 is a Partner in M/s. Jagdamba Krishi Seva Kendra and is having share in the profits of said firm. Thus, respondent No.1 is neither employee nor drawing salary of Rs.20,000/- per month in that Petrol Pump.

42. Before convicting and sentencing respondent No.1, opportunity was given to the first respondent to settle the controversy amicably even after conclusion of the arguments in the present Contempt Petition. The parties were permitted to exchange the proposals in writing without prejudice to their rights and contentions in present proceedings. Accordingly, the parties exchanged the consent terms. On 28.2.2019, the parties were heard on the proposals filed by them and it transpired that the settlement is not possible. Thus, even after giving several opportunities to respondent No.1, he has deliberately

and willfully not complied the order dated 30.9.2015 passed by the learned trial Judge as also the orders dated 1.2.2016 and 2.8.2016 passed by this Court in W.P. Nos.1563/2016 & 12834/2015. The arrears of maintenance for the petitioner and her daughters comes to Rs.52,20,000/- as on 31.1.2019.

43. In view thereof, I am satisfied that respondent No.1 has committed civil contempt within the meaning of Section 2(b) of the Act. Respondent No.1 was also heard on the question of quantum of punishment. After considering the entire material on record, I am satisfied that this is not a fit case for discharging the first respondent or remitting the punishment by accepting apology. As respondent No.1 has deliberately and consistently contended falsely about his status. He has misled the Court. There is a clear and overwhelming case of contumacious defiance of the order of this Court dated 2.8.2016. There is no attenuating circumstance, no offer to undo the wrong, to allow the Court to take a lenient view. Respondent No.1 is given full opportunity to show cause. Respondent No.1 has filed affidavits dated 4.4.2018, 17.10.2018 and 6.12.2018. The parties were heard extensively by this Court. Respondent No.1 has not shown any reason whatsoever why he should not be held guilty of willful breach or disobedience of the order of this Court. It is, therefore, a fit case for sentencing him under the Act.

In my opinion, having regard to overall complexion of the matter, respondent No.1 deserves to be punished with simple imprisonment for a term of three months with fine of Rs.1,000/-. Hence, the following order :

- i. Contempt Petition is disposed of by sentencing respondent No.1 Vitthalrao Keshavrao Deshmukh with simple imprisonment for three months and pay fine of Rs.1,000/- (Rupees One Thousand Only).
- ii. In default of payment of fine, respondent No.1 shall further undergo simple imprisonment for one month. Payment of fine to be made within one month from today.
- iii. It is made clear that this will not absolve respondent No.1 from paying the amount of maintenance as per the order of this Court dated 2.8.2016.
- iv. Respondent No.1 is further given opportunity to pay the arrears of Rs.52,20,000/- towards maintenance of the petitioner and daughter Krishna as on 31.1.2019 within three months from today. In case, respondent No.1 does not pay this amount within three months from today, he will undergo simple imprisonment for three months and pay fine of Rs.1,000/-. In default of payment of fine respondent No.1 shall further undergo simple imprisonment for one month and payment of fine to be made within one month from today.
- v. Order accordingly.

(R. G. KETKAR, J.)