

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
(SUO MOTU) CONTEMPT PETITION NO.305 OF 2011

High Court on its own motion	]	Petitioner
Vs.		
Namdeo Baburao Kakade	]	
(since deceased)	]	
Dnyandeo Baburao Kakade and others.	]	Respondents

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Mr. Jaydeep Deo appointed as *Amicus Curiae* for the Petitioner.
 Mr. S.S. Patwardhan, for Respondents No.3 to 6, 8 to 10, 12 and 13.

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CORAM : R.G. KETKAR, J.

DATE : 29TH JANUARY, 2019.

P.C:

Heard Mr. Deo, learned *Amicus Curiae* for the petitioner and Mr. Patwardhan, learned Counsel for respondents No.3 to 6, 8 to 10, 12 and 13.

2. The respondents are owners of City Survey No.7 and 8, Raviwar Peth, Pune. One Suresh Veghram Sharma (for short 'Suresh') was tenant in respect of Shop admeasuring 6'x13' and one room admeasuring 10'x10' on the ground floor of City Survey No.8. Suresh filed Civil Suit No.420 of 1997 for declaration of his tenancy rights and for injunction restraining the respondents from dispossessing him forcibly without following due process of law. The suit was disposed of on 21st August, 1997 in terms of consent terms. The respondents agreed to give one room and shop in CTS No.7, Raviwar Peth, Pune admeasuring about 240 square feet (built up) and common toilet on ownership basis subject to payment @ Rs.350/- per square feet. The respondents agreed to handover possession of the premises within 36 months.

3. As the respondents did not comply the consent terms, Misc. Application No.112 of 2006 was filed by Suresh before the Small Causes Judge, Pune for initiating the proceedings under the Contempts of Courts Act, 1971 (for short 'Act'). By order dated 1st July, 2010, the learned trial Judge made reference to this Court and transmitted the record for initiating proceedings against the respondents under the Act. In pursuance thereof, notice under Rule 9(1) of Chapter XXXIV in Form-I of the Bombay (Appellate Side) Rules, 1960 was issued on 17th October, 2011. The Contempt Petition was heard from time to time. On 12th June, 2018, I requested Mr. Jaydeep Deo to act as an *Amicus Curiae*. He has graciously accepted the request. Accordingly, he was appointed as *Amicus Curiae*. He drafted the Contempt Petition.

4. Mr. Patwardhan has tendered affidavit of Nitin Sopanrao Kakade dated 28th January, 2019. In paragraph 1 of the Affidavit, it is stated that they had accommodated Suresh (since deceased) in property at C.T.S. No.1194, Raviwar Peth, Pune in terms of clause 2 of the consent terms dated 10th July, 1997 filed in Regular Civil Suit No.420 of 1997. In paragraph 2 it is stated that property at C.T.S No.1194, Raviwar Peth, Pune is gutted in fire entirely. In paragraph 3, it is stated that the respondents are not aware about the heirs and legal representatives of Suresh, who would inherit his tenancy rights under section 7 (11) (d) of the Maharashtra Rent Control Act, 1999 or the consent decree. In paragraph 4, it is stated that in property at CTS No.7, Raviwar Peth, Pune, there are 3 rooms on 1st floor which are owned and are in possession of the respondents. Two rooms out of the said 3 rooms (admeasuring about 285 square feet) can be kept separate in case any of the heirs of the deceased Suresh makes a claim under section 7 (11) (d) of the Maharashtra Rent Control Act, 1999 or under the consent decree. In paragraph 5, it is stated that 2 rooms in CTS No.7, Raviwar Peth, Pune may be permitted to be earmarked

for the aforesaid purpose. The respondents have given undertaking to this Court to keep the said rooms available if such need arises. Undertaking given by the respondents in paragraph 5 of the affidavit dated 28th January, 2019 is accepted.

5. It is common ground between the parties that during pendency of this contempt proceedings suresh has expired and despite making sincere efforts, his legal representatives could not be brought on record.

6. In view of acceptance of the undertaking, I am of the opinion that no fruitful purpose will be served by continuing with the contempt proceedings. Contempt Petition is disposed of with direction to the learned trial Judge to take steps for bringing on record the legal representatives of deceased Suresh and thereafter will proceed for handing over possession of two rooms as stated in paragraph 5 of the affidavit dated 28th January, 2019. The record be transmitted to the trial Court forthwith. Mr. Patwardhan assures that the respondents will appear before the trial Court on 25th February, 2019 and for that purpose, no fresh notice be issued to them. The learned trial Judge will fix a suitable date and thereafter will proceed with the matter in the light of the observations made in this order.

7. Before parting, this Court places on record appreciation of the assistance rendered by Mr. Deo.

8. All the parties including the trial Court to act upon the authenticated copy of this order.

[R.G. KETKAR, J.]