

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

CONTEMPT PETITION NO.332 OF 2018

James Scaria Kochuputhenparampil .. Petitioner

V/s.

Ganesh A. Harne and Anr. .. Respondents

Mr.Manoj S. Mhambrey for the petitioner
Mr.Santosh Parab for the BMC

CORAM: K.K. TATED, J.

DATED : JANUARY 4, 2019

P.C. :

1 Heard.

2 By this Contempt Petition Petitioner alleges that the Respondent issued notice dated 29.01.2018 under section 351 of the Mumbai Municipal Corporation Act, 1888 contrary to the judgment and decree passed by Bombay City Civil Court in L.C.Suit No.3275 of 2007.

3 It is the case of the Petitioner that initially the Respondent Corporation issued show cause notice under section 351 and 354A of the said Act to the Petitioner in respect of construction of structure with Brick Masonry Wall, A.C.Sheet Roof and Rolling Shutter, admeasuring 34'.2" x 25'.2" and height 9'.9" and 8'x7", opposite to Natasha Tower, Juhu Versova Link Road, Seven Bunglow, Andheri (West). That was challenged by the Petitioner in L.C.Suit No.3275 of 2007 before the Bombay City Civil Court at

Dindoshi. He submits that the said Suit was decreed by the Trial Court by passing judgment and decree dated 31.03.2017. Operative part of the said order reads thus:

“ORDER

The Suit is decreed as under:

i) It is hereby declared that the Notice under Section 354-A of the MMC Act, bearing Notice No.KW/BF/354-A/20161/SEBII dated 26/2/2008 is illegal, unlawful, bad in law. So also, impugned order No.KW/9360/BF dated 26.3.2008 is illegal, unlawful and bad in law.

ii) It is further declared that the Notice issued u/s.351 of the MMC Act, bearing No.KW/BF/351/3678/SEBI dated 4.4.2007 and A.M.C. order No.ACKW/BF/351/3678/SEB-I dated 25.8.2007 are illegal, unlawful and bad in law.

iii) Both the impugned notices and orders are hereby set aside.

iv) The defendant/Corporation, their servants, agents, persons claiming through or under them are perpetually restrained from enforcing, executing and implementing both the above referred impugned notices and impugned orders in any manner, demolishing or removing the suit premises admeasuring 25' x 34' constructed with BM walls and AC sheet roof on CTS no.1410, survey no.141, Near Kamgar Nagar, Opp. Natasha Towers, Seven Bunglow, Andheri Versova Link road, Andheri (West), Mumbai or any part thereof.

v) In the circumstances, parties are left to bear their own costs.

vi) Decree be drawn accordingly.

vii) Suit No.3275/07 is disposed of.”

4 The learned counsel for the petitioner submits that Trial Court restrained Respondent from taking any action on the basis of 351 notice dated 04.04.2007 and order dated 25.08.2007 and also as per notice under section 354(A) dated 26.02.2008. In spite of that, Respondent issued fresh notice under section 351 of the Mumbai Municipal Corporation Act, 1888 on 29.01.2018. Hence, they committed contempt and they may be punished as per the Contempt of Court Act. He further submits that they already filed the suit challenging the fresh notice dated 29.01.2018 under section 351 of the said Act and in that Suit Trial Court has already granted stay.

5 On the other hand, the learned counsel for the Respondent Corporation vehemently opposed the present Contempt Petition. He submits that Corporation after considering the facts and circumstances of the present case, issued fresh notice under section 351 of the Mumbai Municipal Corporation Act, 1888 dated 29.01.2018. He further submits that there is no restraining order from the Trial Court from issuing any fresh notice in respect of unauthorised construction if any carried out by the Petitioner in respect of the same suit premises. Therefore, there is no question of taking any action against them under the Contempt of Court Act. Hence, Contempt Petition is required to be dismissed with costs.

6 Heard.

7 It is to be noted that bare reading of the judgment dated 31.03.2017 passed by Trial Court in L.C.Suit No.3275 of 2007 shows that Trial Court restrained Respondent from taking any action against the Petitioner pursuant to the notice dated 04.04.2007 under section 351 of the Mumbai Municipal Corporation Act, 1888 and notice dated 26.02.2008 under section 354(A) of the said Act. There is no restraining order against the Corporation from issuing a fresh notice in case they find that Petitioner's structure is unauthorised. Apart from that, Petitioner already filed a Suit challenging the notice dated 29.01.2018 issued by the Corporation under section 351 of the said Act.

8 It is to be noted that Contempt Petition is filed just to bring pressure on the other side and nothing more than that. In view of these facts, there is no question of taking any action against the Corporation under the Contempt of Court Act. It is to be noted that Contempt Petition is filed just to bring pressure on the other side. Nothing more than that.

9 Hence, Contempt Petition stands rejected with cost of Rs.10,000/-.

10. Cost to be paid to the Respondent Corporation on or before 31.01.2019.

(K.K. TATED, J.)