

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO.43 OF 2019
IN
NOTICE OF MOTION NO.1571 OF 2018
IN
SUIT NO.871 OF 2018**

Raaju Naraindas Amarnaani ..Plaintiff
Vs.
Prem Naraindas Amarnani & Ors ..Defendants

Mr. Mukul Taly a/w Mr. Aziz Shaikh I/b S. Mahomedbhai and Co. for
Petitioner
Mr. Zubin Behramkamdin a/w Mr. Vyom Shah, Mr. Jimish Shah, Mr. Anagh
Pradhan and Ms. Priyanka Shah I/b Divya Shah Associates for Respondents

**CORAM : K.R.SHRIRAM, J.
DATE : 21st JUNE 2019**

P.C.:

1 This is a dispute between six brothers. When the court suggested that as it is a family dispute they should amicably resolve the disputes and live together happily, Mr. Taly and Mr. Behramkamdin were in agreement with the court. Pursuant to the consent terms dated 31-10-2018, which was also taken on record on the same day, M/s Shetgiri and Associates were appointed as Architect to over see the continuation and completion of construction of the building Narayan Dhan.

2 Mr.Taly states that he was compelled to move this court by this petition because there was no progress in the construction for the last almost 10 months and petitioner had addressed communications to M/s Shetgiri and Associates, to which no reply was received. Copies of those communications are also part of this petition. Mr. Behramkamdin states

that his clients received an email today from M/s Shetgiri and Associates with an attachment which is an undated message addressed to Hon'ble Respected Lordship, in which M/s Shetgiri and Associates have listed the hiccups in the execution of the project. A copy of the printout given by Mr. Behramkamdin is taken on record and marked "X" for identification and for ease of reference the same is scanned and reproduced below:

Hon'ble Respected Lordship,

We are the Court appointed Consultants for the said project of "Development of Property.....".

In the interest, various terms were filed by the parties to the suit with regards to the completion of the said project. In this regard, we acted in accordance with the steps taken so far as appearing in the various terms as follows:

1. Opening of the Bank Account - Granted

As per the consent terms, the Bank Account was to be opened in the name of the Court appointed Consultants. However, after obtaining necessary consent from all the parties to the suit during the interlocutory meeting on site, it was deliberated and decided that the bank account would be opened in the name of the contributing parties duly authorized by the Hon'ble Court to coordinate the day-to-day operations of the project.

2. Contribution of Rs. 4 Crores into the account so opened - Granted

As per the consent terms, Rs. 4 Crores were to be contributed by the contributing parties to the suit. When although not taken, some additional time, in view of some financial constraints of one of the contributing parties was allowed. However, same was complied with.

3. Settlement of the outstanding amounts of the creditors - Granted

The outstanding amounts of all the creditors has been settled and no dues contribution has been claimed except the settlement of Rs. 4 Crores out of the Rs. 4 Crores. The Architect and his associate Structural Consultant, despite of follow up and requests made to come forward for the discussions along with the supporting documents, the agency has failed to produce any supporting documents and also refused to have any interaction in presence of the Court appointed Consultants, which is as such beyond control.

4. Commencement of Construction activities on site - Granted

Notwithstanding to some of the most important and basic documents like "Drawing Register" Court

We would hereby like to state on record that the project was to start in the month of the previous month to see the results. This is one of the most important and mandatory requirements of the project and has been duly complied with.

Understanding the present work, the terms were entered to finish off the parties to the suit.

However, the necessary paper work, including documents and follow up has not been done so as to ensure the progress of the project under estimated. Considering the present set of technical problems raised by the department, we hereby request for the intervention of the Hon'ble Court in the said important matter.

The project execution also has been given and other resolution of the above mentioned issues. The construction works could commence on site when in time. However, considering the above facts and technical difficulties, we are raising certain questions in writing under the assignment and along with the kind intervention of the Hon'ble Court, which may be considered resolution of all the requests within mutually possible framework.

Thanking you

Yours faithfully

Amal Shetgiri

For M/s SHETGIRI & ASSOCIATES

3 Though, I wonder why M/s Shetgiri and Associates did not reply to petitioner but strangely chose to address the communication to respondents and attach thereto a message addressed to Hon'ble Respected Lordship, I am not commenting on the method adopted or the contents of the said letter.

4 On the suggestion made by the court, Mr. Taly and Mr. Behramkamdin, who between them are representing 5 out of 6 brothers, suggested that Mr. Rashmin Khandekar, an Advocate practising in this court, be appointed as mediator. Mr. Taly states that 6th brother Mr. Prakash Amarnani, who he is not represented, will also be persuaded by his client Mr. Raju Amarnani to consent for this mediation and to participate in the mediation. By participating in the medication, Mr. Prakash Amarnani would be deemed to have consented to this mediation and appointment of Mr. Rashmin Khandekar as mediator. Copy of this order, Mr. Taly states will be forwarded to Mr. Prakash Amarnani and his advocate.

5 Scope of mediation is to see how the contents of consent terms are complied with by all parties including M/s Shetgiri and Associates in its letter and spirit. M/s Shetgiri and Associates shall also send their representatives to the mediator's office at the time and date fixed, so that the project can be completed at the earliest. Mr. Taly and Mr.

Behramkamdin state that their respective clients and, Mr. Taly is certain, Mr. Prakash Amarnani will also co-operate with the mediator and with M/s Shetgiri and Associates. Statement accepted as an undertaking to this court.

6 The fees and administrative expenses of the mediator be divided by 6 and to be shared equally by the 6 brothers. As this will be an on going project, I am not giving a deadline for the mediator to submit a report. Mediator needs to give a report, only if he finds that the parties or any of the party is not co-operating and creating a hindrance, in which case he may submit a failure report.

7 Mr. Taly seeks leave to withdraw the petition with liberty to approach this court with appropriate proceedings including contempt proceedings, should the need arise.

8 Contempt petition accordingly disposed with liberty as prayed for. I must clarify I have not considered the merits of the petition.

(K.R. SHRIRAM, J.)