

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CONTEMPT PETITION NO. 86 OF 2019

IN

SUIT NO. 1526 OF 2002

M/s. Abhishek Enterprises ... Petitioner/Orig. Plaintiff
Versus
Mathuradas Gordhandas Trust & Ors. ... Respondents

Mr. D.D. Madon, Senior Advocate a/w Dr. Birendra Saraf a/w Mr. Sharan Jagtiani, Mr. Rajeev Carvalho, Ms. Sheetal Mehta i/b Mr. Yogesh N. Adhia for the Petitioner.

Mr. A.G. Damle, Senior Advocate a/w Mr. Sumit Vitthal Khaire for Respondent No.9.

Mr. Ashwin V. Ranjane a/w Mr. Sameer Pendse for Defendant Nos.11(a), 11(c), 11(d), 12(d).

Mr. Chirag Balsara i/b Mr. Ajay Subash Patil for Respondent Nos.16 to 21.

Mr. S.M. Oka a/w Mr. Nilesh Mohan Wable for Respondent Nos.22 and 23.

CORAM : R.I. CHAGLA, J.

DATED : 11th OCTOBER, 2019.

P.C. :

1 At the outset, the learned Senior Counsel appearing for the Petitioner seeks permission to carry out amendment in the Contempt Petition by deleting Respondent Nos.11(a) to 11(d), 12(a) and 12(b) as parties to the Contempt Petition as well as their reference in paragraph 1 of

the Contempt Petition. The Petitioners are permitted to carry out the said amendment to the Contempt Petition which shall be carried out forthwith.

2 This Contempt Petition has been filed alleging contempt on the part of the Respondent Nos.9 to 12(b), 14(a) to 14(d) and 16 to 23 who have been referred to as the contemnors and have been alleged to have committed contemptuous acts complained of in the Contempt Petition as well as having committed criminal acts of forgery which is already pending before this Court. It is mentioned in the Contempt Petition that Respondent Nos.1 to 8, 13 and 15 are joined in the Contempt Petition as proforma parties since they are parties to the Suit and no reliefs in the present Petition are sought against them. The contempt which has been alleged in the Petition concerns certain interim orders passed by this Court on 03.05.2002 which had granted ad-interim relief against Respondent Nos.1 to 13 in Notice of Motion No.1324 of 2002 taken out by the Petitioner and which Notice of Motion was finally disposed of by an order of the Court dated 26.08.2005 whereby a Court Receiver of this Court had been appointed as Receiver of the suit property. It has further being stated in the Contempt Petition that pursuant to the order dated 26.08.2005, the receiver had taken possession of the suit property. The Petitioner has stated that in or about January, 2015 they had come across a letter dated 15.07.2009 purportedly addressed by the Receiver to the First Respondent

purporting to inform them that the Suit has been dismissed for non-compliance of Rule 87 of the High Court (Original Side) Rules, and that the first Respondent was at liberty to deal with the suit property as they found suitable. It appears that after the purported letter dated 15.07.2009, the matter appeared before the Receiver on various occasions and the parties appeared before the Receiver. The statement made in the Contempt Petition is that the letter was forged and fabricated. It is thereafter stated in the Contempt Petition that the Petitioner had come across a proceeding filed by Respondent Nos.9 and 16 to 21, being Trust Petition No.1 of 2010. The Petitioner applied for certified copy of the proceeding in the Trust Petition which was furnished to the Petitioner and upon so being furnished, the Petitioner were shocked to learn that Respondent Nos.9 and 16 to 21 had executed memorandum of understanding (MOU) dated 05.08.2009 with one M/s. Mahavir Developers i.e. Respondent No.15 for sale of the suit property for consideration of Rs.1,10,00,000/-. It was alleged in the MOU that the Receiver had been discharged and the Receiver had handed over possession of the suit property to Respondent Nos.9 and 16 to 21. It is also alleged in the MOU that the suit had been dismissed and Respondent No.1 was at liberty to sell the suit property. Thereafter, orders came to be passed by this Court upon the Suit having been transferred from the City Civil Court to this Court. This Court came to a conclusion that the

purported letter dated 15.07.2009 was not addressed by the Court Receiver. This Court directed Respondent No.15 to deposit the original of the purported MOU dated 05.08.2009 in this Court. It appears that Respondent No.15 only produced a certified copy of the purported MOU and stated that the original was in possession of Respondent Nos.9 and 16 to 21. This Court also granted liberty to the Petitioner to launch criminal prosecution in respect of the purported letter dated 15.07.2009. The orders which have been referred to by the Petitioner are orders dated 27.04.2018, 04.05.2018 and 12.06.2018 in this context.

3 A criminal complaint has also been filed by the Petitioners against Respondent Nos.9 and 15 to 21 and the Police authorities have registered F.I.R. under various Sections of the Indian Penal Code on 19.09.2018. The Petitioner has also stated that upon the police authorities checking the computer at the office of the Advocate Mr. Ravi, it came to the knowledge of the police that the purported letter dated 15.07.2009 was made and prepared on the computer of the said Advocate.

4 A certain proceeding had been initiated by Respondent No.22 i.e. Notice of Motion (L) No.2516 of 2018 which had been listed before the Prothonotary and Senior Master for rejection for non-removal of office objections. The Petitioners applied for certified copy of the Notice of

Motion along with the affidavit in support. On 15.02.2019, the Petitioner received a certified copy of the said Notice of Motion taken out by the Respondent No.22. It appears that from the proceeding that the Petitioners came to learn that during the pendency of said Notice of Motion No.1551 of 2016, Respondent Nos.9 and 16 to 21 along with Respondent Nos.10 to 12(b) and the deceased Respondent No.14 had entered into an agreement dated 06.02.2016 purporting to grant development rights in respect of the suit property in favour of Respondent No.22. It appears that Respondent Nos.9 and 16 to 21 along with Respondent Nos.10 to 12(b) and 14(a) to 14(d) used the same forged and fabricated letter dated 15.07.2009 purported to have been issued by the Court Receiver, to show that the Suit filed by the Petitioner was dismissed. Accordingly, the Petitioner has taken out this Contempt Petition for this Court to take strict view of the conduct of these Respondents claiming that the conduct is nothing but interference in the possession of the Court Receiver of the suit property amounting to contempt of this Court.

5 At the outset, before going into the merits of the Contempt Petition, an opportunity was given to these Respondents to file affidavits of these Respondents for cancellation of the agreement dated 06.02.2016 which has been entered into between these Respondents and which appears to amount to an interference in the possession of the Receiver of

the suit property as the permission of this Court was not taken when the agreement dated 06.02.2016 had been executed between these Respondents. It is very clear that the property was custodia legis and as the Court Receiver had been appointed by an order of this Court dated 26.08.2005, the Court Receiver continues in possession of the suit property.

6 These Respondents have filed their respective affidavits which are similar and all dated 09.10.2019. In the respective affidavits these Respondents i.e. Respondent No.9, Respondent No.16 to 21/Original Defendant Nos.16 to 21 as well as Respondent Nos.22 and 23 have tendered an unconditional apology to this Court and stated that these Respondents were informed by the said Advocate Mr. Ravi that the Suit had been dismissed and was convinced by Mr. K. Ravi to enter into the said agreement. They were further advised that the said agreement creates no interest in property in favour of the said Respondent No.22. It is further stated in the said affidavits that after filing of the Contempt Petition, these Respondents have discovered that the said transaction could not have been entered into. They have undertaken not to further act upon the said transaction entered into in favour of Danaboi Construction Company/Respondent No.22. and have unanimously decided to cancel the said agreement and the same has been accepted by the Respondent No.22. These Respondents have also cancelled paragraph 3 in the said affidavits of

Respondent No.9 and Original Defendant Nos.16 to 21 and paragraph 8 in the Affidavit of Respondent Nos.22 and 23 upon being directed by this Court. It would be appropriate to accept the said affidavits dated 09.10.2019 and accordingly they are taken on record. These affidavits have been affirmed by the respective Defendants/Respondents.

7 Although the said agreement entered into between these Defendants/Respondents appear to be an interference in the possession of the Court Receiver of the suit property, the unconditional apology which has been tendered by these Defendants/Respondents is accepted. Considering that these Defendants/Respondents have undertaken in the said affidavits to have the said agreement dated 06.02.2016 executed between the Respondent Nos.9, 16 to 21 and Respondent Nos.22, 23 cancelled and have further undertaken that they shall not act upon the said agreement executed between them, which undertaking is accepted by this Court, it would be appropriate to dispose of the Contempt Petition. It is made clear that by acceptance of the said affidavits and undertakings therein, this Court has not gone into merits of the Contempt Petition.

8 Accordingly, the Contempt Petition stands disposed of.

(R.I. CHAGLA, J.)