

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO. 28 OF 2012

IN

SUIT NO. 4923 OF 1999

Chandrakant P Mirani

...Petitioner

Versus

Vishal Constructions & Ors

...Respondents

Mr Suresh Dubey, for the Petitioner.

**Mr Ajit Tamhane, with Mr Amit Potnis & Ms Priyanka Rane, i/b
Tamhane & Company, for Respondent No.1.**

**Mr Karl Tamboly, i/b Hariani & Company, for Respondents Nos. 11
and 12.**

CORAM: G.S. PATEL, J

DATED: 31st January 2019

PC:-

1. Heard. The Petitioner is the original 1st Defendant. In this Contempt Petition he alleges contempt by the Plaintiff of an order of SS Nijjar J (as he then was) passed on 20th August 1999 (pages 94 and 95).

2. The context of this order is that the Plaintiff in Suit No. 4923 of 1999 claimed to be the owner of a property at Malad (West) as described in Exhibit "A" to the Plaint. The suit itself seeks a decree for a declaration that an oral agreement or contract between the Plaintiff and the 1st Defendant, under which the 1st Defendant was

appointed the Plaintiff's contractor, has been validly terminated, and for other reliefs on that basis. The 1st Defendant's contention was that he was the developer.

3. On 20th August 1999, the advocates for the parties agreed to maintain status quo "with regard to the suit premises" and agreed that the matter would be adjourned. On behalf of the Plaintiff, it was stated that the Plaintiff is in possession. It was the Plaintiff who sought the appointment of a Commissioner to verify the factual position in regard to possession. Nijjar J made an order accordingly. It seems that a Commissioner was in fact appointed pursuant to this order and made a report dated 26th August 1999, a copy of which is at Exhibit "2" to the Affidavit in Reply. The report by Mr KK Trivedi of 26th August 1999 was in respect of all the flats in the building.

4. At this stage the 1st Defendant (the present Petitioner) had filed no suit of his own.

5. Then there is an order of 22nd March 2004 of SC Dharmadhikari J on Notice of Motion No. 1866 of 2002 (apparently filed by the 1st Defendant). This notes a subsequent Commissioner's report of 31st August 2002. That report noted that there were no articles belonging to the 1st Defendant in a particular cupboard. The Notice of Motion was disposed of with no orders.

6. The suit itself was transferred to the City Civil Court, Mumbai, and along with it so was the Contempt Petition. The

Contempt Petition was obviously wrongly transferred and has since been transferred back to this Court. The suit itself has also been returned to this Court for final disposal. It appears that the Plaintiff's original Notice of Motion is as yet pending.

7. What the Petitioner alleges is that in violation of this "status quo" order of 20th August 1999, in 2011 the Plaintiff has created rights in favour of Respondents Nos. 11 and 12 to the Contempt Petition. Mr Tamhane for the Plaintiff in fact states that there is a registered conveyance from the Plaintiff to Respondents Nos. 11 and 12.

8. The 1st Defendant/Petitioner did not file his own suit until 2013. This was well after the alleged act of contempt.

9. It is difficult to conclude that the Plaintiff can be said to have been in contempt of the order of 20th August 1999. This argument proceeds on the footing that the order of status quo was a stand-alone order that continued till the final disposal of the Notice of Motion. The order itself does not contain any such explicit wording. It is equally possible to read that status quo order as operative until a future specified date of 30th August 1999, a date mentioned in Nijjar J's order, given the fact that in the meantime parties agreed on a Commissioner's visit as well. As we have seen there is a Commissioner's report just a few days later on 26th August 1999. Mr Tamhane also points out that the roznama shows that on several dates in 1999 between August to September the Notice of Motion appeared and was adjourned. The status quo continued until 27th

September 1999 when the matter was simply adjourned for two weeks but there was no order continuing the status quo.

10. There is a reference to the correspondence prior to the Contempt Petition by which the Contempt Petitioner pointed to the status quo order. A copy of this notice is at page 100 of the Contempt Petition. The notice itself is dated 2011. That in itself will not assist the Petitioner. The reply from the Plaintiff at page 102 claimed that the suit itself had been dismissed on 10th December 2008. It is true that it was dismissed only against the 2nd Defendant. But neither of these letters have any material bearing on the consideration before me today. What parties say in their correspondence will not make a particular act one in violation of the order of the Court. The Petitioner must show that there was a governing order and he must show it unambiguously.

11. The question is not of the rightness or wrongness of these subsequent orders, but simply whether there is a case to be made out that there is contempt allegedly committed by the Plaintiff of the order of 20th August 1999. The exercise of Court's special jurisdiction in contempt can never be one that involves such conjecture or surmise as to what must have happened or might have been. This is not a fit case for the exercise of Court's jurisdiction in contempt.

12. The Contempt Petition is dismissed.

(G. S. PATEL, J)