

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

CONTEMPT PETITION (L) NO.46 OF 2019
IN
WRIT PETITION NO.1516 OF 2013

Isthmus Multimedia Associates Pvt. Ltd. ..Petitioner
Versus
K'sara Co-operative Housing Society Ltd. & Ors. ..Respondents

Mr. Vishal Kanade a/w Ms. Ishita Advani i/by Desai & Diwanji,
Advocates for the Petitioner.

Mr. Milind Prabhune, Advocate for the Respondents.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 22nd NOVEMBER, 2019

P.C.

- 1] Heard learned counsel for the parties.
- 2] It is a case where Respondents who are the office bearers of K'sara Co-operative Housing Society Ltd. are acting under fear of the unknown and to that extent we hold that their action is not contemptuous, but simultaneously we issue necessary directions.
- 3] Phoenix ARC Pvt. Ltd. initiated proceedings under the Recovery of Debts due to Banks and Bankruptcy Act, 1993 and obtained an order followed by a warrant of attachment to realise its dues. Flat No.84, 8th Floor, in the complex of the Co-operative

Society above named was attached, and at an auction sale, was purchased by the Petitioner.

4] Eurolinen Industries Pvt. Ltd. filed a Writ Petition registered as Writ Petition No.1516 of 2013 in this Court pleading that it was interested to bid for the property and that the judgment debtor having challenged the sale confirmation, appropriate orders were prayed for. The Writ Petition was disposed of passing directions as under :-

“(I) Pending the hearing and final disposal of the proceedings adopted by the judgment debtor-respondent no.2 challenging the confirmation of the sale in favour of respondent no.1 and for a period of eight weeks thereafter, respondent no.1 shall maintain status-quo in respect of the flat in question in all respects.

(II) Pending the hearing and final disposal of the said proceedings, the petitioner herein shall keep deposited with the Debt Recovery Tribunal a sum of Rs.25,00,000/- (Rs.Twenty Five Lacs Only) and shall furnish an unconditional guarantee of a nationalized bank in a sum of Rs.2.25 crores together with interest thereon at an adhoc rate of 10% per annum. On furnishing the bank guarantee, the petitioner shall be entitled to withdraw the amount of Rs.2.25 crores deposited with the Debt Recovery Tribunal. The bank guarantee shall be kept alive pending the decision in the said proceedings and for a period of eight weeks thereafter.

(III) The society in which the flat is situated shall accept the outgoings and all other charges and expenses in

respect of the said flat from respondent no.1. The same shall be without prejudice to the rights and contentions of all parties as well as of the society. In the event of society not accepting the amounts it will not be open to the society to contend that there would have been any defaults in payments of the amounts to the society.”

5] Contempt alleged is of not complying with direction No.III. Direction (III) is clear. The society was to accept necessary charges and expenses for the flat in question from the 1st Respondent in the Writ Petition which is the Petitioner in the Contempt Petition.

6] Learned counsel for the contemnors state that third parties have written letters to the society informing that they have claims against Mr. Harish Mulchand Valecha whose flat was attached and sold. The Co-operative Society wants the Petitioner to indemnify them if third party claims are made against the society.

7] Suffice it to state that a party needs to indemnify another party if said party acts on a representation of a fact made by the person or the party from whom indemnification is sought for.

8] Thus, we dispose of the Contempt Petition directing Respondents to appropriate amounts tendered by the Petitioner and treat the money offered as satisfaction of the due payable as on the date when the amount was tendered.

9] Membership certificate would also be transferred in the

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name of the Petitioner.

10] Needless to state that since actions of the Co-operative Society would be under cover of the Order dated 23rd April 2014 passed in Writ Petition No.1516 of 2013 and the present order the Co-operative Society cannot be fastened with any liability for said acts.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE

Balaji G.
Panchal

Digitally signed by
Balaji G. Panchal
Date: 2019.11.25
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