

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**CONTEMPT PETITION NO.35 OF 2016**

**IN**

**ARBITRATION PETITION NO.829 OF 2015**

Prajita Developers Pvt. Ltd. ... Petitioner

Vs.

Yusuf Khan alias

Dilip Kumar & Anr. ... Respondents

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Mr. Zal Andhyarujina, a/w. Mr. Rakesh Reddy and Mr. Aurup Dasgupta,  
i/b. Jhangiani Narula & Associates, for the Petitioner.

Mr. Atul Damle, Senior Advocate, i/b. Mr. Rushil Mehta, for Respondent-  
Contemnor No.1.

Mr. Karl Shroff, i/b. Mr. Jayesh Patel, for Respondent-Contemnor No.2.

Mr. A.Y. Sakhare, Senior Advocate, i/b. Mr. Altamash Shaik, for  
Respondent-Contemnor Nos. 3 to 6.

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**CORAM : S.C. GUPTE, J.**

**DATED : 12 APRIL, 2019**

**P.C. :**

. Heard learned Counsel for the parties. This contempt petition alleges breach or disobedience of an interim order passed by this Court on 8 May 2015 in an arbitration petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("Act"). This order was passed at the instance of the Petitioner herein, who was applying for interim reliefs in respect of a development agreement dated 23 June 2006, and who, at that stage, was anticipating creation of third party

rights by the Respondent and its own dispossession in the process. In the premises, proposing to invoke the arbitration clause contained in the development agreement, the Petitioner applied for interim protection pending an arbitration reference in its petition under Section 9. The order dated 8 May 2015 granted status-quo in respect of possession of the suit property. It is the Petitioner's case that contrary to this status-quo order, the Respondent-contemnors have dealt with the suit property, entered into a rival agreement for development and even parted with possession of the property.

2. It is not in dispute that the status-quo order was last extended by two weeks by an order passed by a Division Bench of this Court on 4 March 2016. The status-quo, thus, continued only upto 18 March 2016; continuation of the status-quo thereafter was refused by a learned Single Judge; that order was challenged by the Petitioner first before the Division Bench and then before the Supreme Court. The challenge was repelled by both the Division Bench and the Supreme Court. The SLP was dismissed on 16 March 2016. The agreement, which is annexed to the contempt petition, has been executed and registered by the parties on 21 March 2016, that is to say, after the status-quo order was vacated and after the Petitioner's challenge was finally repelled by the Supreme Court by dismissing the SLP. Learned Counsel for the Petitioner takes me through some of the clauses and statements made in the development agreement of 21 March 2016. Learned Counsel submits that having regard to these clauses or statements, it is not possible to believe that the agreement was executed on 21 March 2016. In particular, learned Counsel submits that the payment reflected in the

agreement was made admittedly during the period when the status-quo order was in operation. None of the statements made in the agreement or the payment made during the subsistence of the status-quo order suggests, with any assurance, that the agreement was actually executed and, more importantly, possession of the suit property was parted with at any time before 21 March 2016. There is, thus, no case to proceed against the Respondents under the contempt jurisdiction of this Court. In the first place, one has to go behind the date of the agreement to find a breach or disobedience on the part of the Respondents. Considering the fact that the agreement is a registered document shown as executed as of 21 March 2016, it is not possible to believe that the agreement was actually executed at any earlier date. Secondly, and at any rate, any such disobedience, assuming that we are in fact able to go behind the date of the agreement, would be a mere technical breach, since, anyway, the Petitioner has not been able to get such status-quo extended in its favour.

3. Not only has the Petitioner already withdrawn its application for appointment of arbitrator under Section 11 of the Act, but when that matter was carried by Respondent No.1 herein before the Supreme Court in a special leave petition, and the SLP was converted into a civil appeal (Civil Appeal No.11093 of 2017), at its hearing, the Supreme Court passed an order on 30 August 2017, noting *inter alia* that there was no justification for demand of specific performance of the agreement dated 23 June 2006. The Court was of the view that, in the circumstances, permitting the continuance of the suit for specific performance of an agreement, which was more than a decade old, would be unjust. In the

background of these facts and circumstances, the Supreme Court directed Respondent No.1 to deposit an amount of Rs.20 crores and permitted the Petitioner to withdraw all the security personnel deployed by it and handover possession of the property and also withdraw the amount of Rs.20 crores deposited by Respondent No.1. The Court was of the view that the question as to whether the Petitioner would be entitled to any damages apart from the sum of Rs.20 crores ordered by the Court, was a matter, which would require examination. The Court deemed it appropriate to refer this question to arbitration between the Petitioner and Respondent No.1. This order has been further clarified by the Supreme Court to indicate that it would be open to the Petitioner to plead and establish before the arbitrator that there was a breach of contract on the part of Respondent No.1 herein only for the limited purpose for examining the question of entitlement to damages and the quantum thereof. Respondent No.1 herein, for his part, was also allowed to raise any claim against the Petitioner herein.

4. In the premises, there is no merit in the contempt petition. The contempt petition is dismissed.

( S.C. GUPTE, J. )