

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

**CONTEMPT PETITION NO.48 OF 2008
WITH
CHAMBER SUMMONS NO.967 OF 2007
IN
MISC. PETITION NO.1695 OF 1977**

Abdul Majid Aboobhai BannulalPetitioner

Vs.

Mr. Anil Nair and Ors.Respondents

Mr. Vishal Kanade I/b. Mr. Jayesh Ramesh Vyas for petitioner in contempt petition.

Mr. Shanay Shah a/w. Ms. Sapana Rachure and Ms. Kalyani Wagle I/b. T.N. Tripathi and Company for respondent no.1.

CORAM : K.R.SHRIRAM, J.

DATE : 11th JANUARY 2019

P.C.:

1 This petition is filed alleging contempt against respondents of an order dated 27th January 1999 passed in the misc. petition.

2 According to petitioner, respondent no.1 some time in or about June 2007 filed chamber summons no.967 of 2007 in this misc. petition seeking impleadment as petitioner no.2. According to respondent no.1, on 23rd January 2007 respondent no.1 had purchased vide a Transfer of Mortgage all rights of Khatijabai, original petitioner for valuable consideration and as a result of the said Transfer of Mortgage, all rights, title and interest in the mortgage vested with the said Khatijabai stood transferred in favour of respondent no.1. The Transfer of Mortgage Deed was entered into by original respondent nos.2,3,4 and 5 as the legal heirs of

original Khatijabai. The allegation against respondent nos.6 and 7 is that despite being aware of the order of 27th January 1999 they entered into an MOU dated 8th September 2007 and 16th September 2007 whereby respondent nos.6 and 7 have allegedly transferred their right, title and interest in the immovable property to respondent no.1. Respondent nos.5 and 6 have since expired and their legal heirs are brought on record. Therefore, the petition abates as against respondent nos.5 and 6.

3 Coming to the alleged contempt, according to petitioner in this petition, original petitioner had advanced to petitioner in this petition against two Mortgage Deeds dated 9th December 1967 and 9th November 1971 a sum of Rs.15,000/- and Rs.10,000/-, respectively. As petitioner herein failed to repay the amount and discharge their liabilities in accordance with the Mortgage Deeds, original petitioner has filed the above petition. On an application by original petitioner, the Court was pleased to appoint the Court Receiver, High Court, Bombay to receive the rent income and profits of the mortgaged property described in Exhibit "A" to the petition with all powers under Section 69 (A) of the Transfer of Property Act, 1883. The Court Receiver was to take formal or symbolic possession of the property and furnish accounts as per the rules.

4 It has to be noted that the owner of the property is petitioner herein and the property is still in the possession of petitioner though in the

connected proceedings, petitioner has been appointed as the Agent of the Court Receiver.

5 As noted in the order of 27th January 1999, original petitioner was a very old widow crying for justice. The Court had also observed that the matter has chequered history. It has to be noted that the amount lent was on 9th December 1967 and 9th November 1971 and the order of this Court in the misc. petition, which was filed in 1977, came to be passed only on 27th January 1999. So therefore, for 32 years petitioner herein had not repaid the amount and original petitioner had to wait for 22 years to get the order dated 27th January 1999. In that background, the Court, in my opinion, passed the order whereof the Court Receiver was appointed to collect the rent from the tenants living in the building that was mortgaged and for that purpose only the Court Receiver was appointed to take a formal or symbolic possession and furnish accounts as per the rules.

6 Mr. Kanade, counsel for petitioner herein submitted, relying upon *ICICI Limited V/s. Alpine Industries Limited and Ors.*¹, that though mere appointment of Receiver by itself does not vest the property in him, possession has to be taken. But even if possession is not taken, defendants would be prohibited from dealing with property and in so far as third parties are concerned, until possession is taken, they are free to move against the property in law. Admittedly, the possession was not taken until much later

1. 1999 (2) Mh. L.J. 683

and the assignment of rights under the Mortgage Deed was entered into before possession was taken. Apart from other grounds, on this ground alone respondent no.1 will be absolved of any alleged contempt. Mr. Kanade relying upon another judgment of this Court in ***Bank of India V/s. M/s. Senior Travels Pvt. Ltd. and Ors.***² submitted that if the stranger concerned, i.e., respondent no.1, was not aware of the property being *custodia legis*, such stranger may not be punished if he purges the contempt immediately on coming to know that the property is *custodia legis*. This judgment is of no help to Mr. Kanade since as noted earlier as possession was not taken by the Receiver, the third party, viz., respondent no.1 was free to do what he wanted. Therefore, there can be no contempt against respondent no.1 and consequently, the question of purging any contempt does not arise.

7 Coming to respondent nos.2 to 6 and my findings below will enure to the benefit of respondent no.1 as well, what is being alleged is that once Court Receiver is appointed, no party can deal with the property. If one reads the order of 27th January 1999, though under that order it is mentioned that Court Receiver shall take formal or symbolic possession of the property, the Court Receiver was primarily appointed to receive rent income and profits of the mortgaged property. Moreover, there was no order against original petitioner. By the said order, I cannot come to a conclusion that there was any bar on original petitioner or her legal heirs from

2. 1991 (4) Bom. C.R. 261

assigning their rights under the Mortgage Deeds. Even if we take a step further by assigning the Mortgage Deeds, no prejudice will be caused to petitioner herein because the possession of the property is still with petitioner though as an Agent of the Court Receiver.

8 In the circumstances, in my view, no case for contempt is made out. Petition dismissed.

9 It is clarified that the observations above should not come in the way of the suits which are pending between the parties.

(K.R. SHRIRAM, J.)