

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

**CONTEMPT PETITION NO.44 OF 2017
IN
ARBITRATION PETITION NO.1318 OF 2014**

Mehfuza wd/o. Yakoob Patrawala

Ad Another

... Petitioners

Versus

Kadir Yakoob Patrawala

And Others

... Respondents

.....

Mr. Swapnil Bangur a/w Mr. Deepak Shukla I/b Vinod Mistry & Co. for the Petitioners.

Ms. Sneha Prabhu a/w Mr. Som Sinha I/b Som Sinha & Associates for Respondent Nos.5 to 7.

Mr. Ashish Kamat a/w Mr. Kunal Mehta, Mrs. Aakanksha Agrawal I/b Jayakar & Partners for Respondent Nos.8, 9, 10, and 13 to 19.

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CORAM : S.C. GUPTE, J.

DATE : 22 APRIL 2019

P. C. :

. Heard learned Counsel for the parties.

2 This contempt petition alleges breach or wilful disobedience of an order passed by this Court on 11 February 2014 read with order dated 20 February 2014. The controversy concerns the liability of Respondent No.8 herein (Respondent No.6 to the arbitration petition, wherein the two

orders referred to above were passed) to pay arrears of rent as well as future rent under an Indenture of Lease ("IoL") dated 29 June 2006. In her original application, the Petitioner herein had sought payment of undisputed arrears of rent for the period between August 2012 to December 2013 in the sum of Rs.2,04,34,680 and also continuous payment of future rent of Rs.12,02,040. The orders of this Court passed on 11 February 2014, read with the order dated 20 February 2014, required Respondent No.8 herein to deposit half of the arrears of rent within a period of four weeks from 20 February 2014 and balance arrears within a period of four weeks thereafter. The order further required Respondent No.8 to pay future rent from time to time.

3 It is not in dispute that arrears of rent referred to in these orders have been duly paid by Respondent No.8 to the Petitioner herein. What is disputed is that the future rent has not been paid in accordance with the IoL. Learned Counsel for the Petitioner draws my attention to Clause No.4 of the IoL, particularly the definition therein. Clause-4 provides for escalation in the lease rent at the rate of 12% after the expiry of every three years from the date of commencement of the lease over and above the gross lease rent applicable for the preceding three years. Learned Counsel submits that there has been no payment of escalated rent on the part of Respondent No.8. Learned Counsel, secondly, submits that even the original rent of Rs.12,02,040 per month has not been paid for the period between January 2016 till May 2017. In the premises, learned Counsel invokes the contempt jurisdiction of this Court against Respondent No.8, and persons responsible for its management, for having committed wilful breach or disobedience of the two orders passed by this Court, which

are referred to above.

4 So far as the enhanced rent is concerned, that is clearly a matter of dispute between the parties. What Petitioner No.1 had sought in her original application and what was granted to her, as noted above, was deposit of arrears of rent and continued payment of future rent at the rate of Rs.12,02,040. The court cannot be said to have applied its mind to the question of enhancement or escalation of rent under Clause-4 of definition clause referred to above. That being a matter of dispute, which needs to be adjudicated by a competent court in an appropriate proceeding, it cannot be said that Respondent No.8, by means of non-payment of enhanced rent, has breached or disobeyed the orders passed by this Court, referred to above.

5 Coming now to the case of non-payment of future rent at the rate of Rs.12,02,240 after January 2016, it is the case of Respondent No.8 herein that it has already paid not only arrears of rent as of the date of the two orders referred to above, but also future rent between March 2014 and February 2016. Respondent No.8 has given particulars of this payment in paragraph 6.1 of his affidavit-in-reply. So far as the rent payable from March 2016 to July 2016 is concerned, it is the case of Respondent No.8 that this rent has been adjusted from the security deposit of Rs.71,55,000 lying with the Petitioner herein. It is the case of Respondent No.8 that in that manner the arrears of lease rent till 31 July 2016 have been fully paid and accounts between the parties have been settled as of 31 July 2016. It is the specific case of Respondent No.8 that the parties treated the IoL cancelled as of 31 July 2016 and Respondent No.8, in fact addressed a

communication in that behalf claiming to have kept the premises ready for delivery of possession to the Petitioner herein as of that date. It is submitted by Respondent No.8 that the Petitioner herein has defaulted in taking over of such possession and in the premises, Respondent No.8 is not liable to pay any rent after 31 July 2016. The Respondent's letter dated 31 July 2016 and further communication addressed in this behalf to the Petitioner are placed on record along with the affidavit in reply.

6 If one has regard to these particulars and documents, it is not possible to come to a conclusion that Respondent No.8 has wilfully breached or disobeyed the orders of this Court passed on 11 February 2014 and 20 February 2014. The date upto which future rent is payable by Respondent No.8 to the Petitioner is a matter of contest. It will have to adjudicated, if at all, by a competent Court. Unless that is done, merely on the basis of the two orders referred to above, it cannot be said that Respondent No.8 is in wilful default or breach of any order of this Court.

7 Accordingly, there is no merit in the contempt petition. The petition is dismissed.

(S.C. GUPTE, J.)