

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

**CONTEMPT PETITION NO.14 OF 2016
IN
ARBITRATION PETITION NO.233 OF 2003**

Madhowji Thakersey Sons
And Co.

... Petitioner

Versus

Narayandas Mathuradas

... Respondent

.....

Mr. Jagdeep Trivedi a/w Mr. Sanjeev Hariakar and Ms. Archana Patil i/b
Mr. Sanjeev Hariakar for the Petitioner.

Mr. Chaitanya Jadhav a/w Mr. Vinayak Palande for the Respondent.

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CORAM : S.C. GUPTE, J.

DATE : 22 APRIL 2019

P. C. :

. Heard learned Counsel for the Petitioner and the Respondent.

2 This contempt petition alleges a willful breach or disobedience of an order passed by this Court in an arbitration petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("Act"). The Respondent-contemnor was original Petitioner No.1 in the arbitration petition. It was his case that the property listed in Exhibit 'X' to the arbitration petition belonged to a partnership firm, of which he was a partner along with the respondents to his petition (one of whom, i.e. Respondent No.5, is the Petitioner in the present contempt petition). His apprehension expressed in the arbitration petition was that the respondents to his petition (including the Petitioner herein) had unauthorizedly dealt with the partnership

property. He accordingly sought an interim restraint against his respondents from encumbering, parting with possession or creating third party interests in respect of the assets. One of the assets was the tenancy of the partnership firm of a unit on the second floor of Mehta Estate, Andheri-Kurla Road, Andheri (East), Mumbai-400 093 (described at Sr.No.15 of Exhibit 'X' to the arbitration petition). This Court, by its order dated 18 August 2003, granted interim relief in terms of prayer Clause -(b) of the arbitration petition, which restrained the respondents to the petition (including the Petitioner herein) *inter alia* from parting with possession or creating any third party rights in respect of properties described at Sr.Nos. 1 to 6 and 12 to 15 in Exhibit 'X' . It is the grievance of the Petitioner herein that the Respondent-contemnor (i.e. the Petitioner in the arbitration petition) has surrendered the tenancy in respect of the premises at Mehta Estate (described at Sr. No.15 of Exhibit 'X') to the landlord. It is submitted that surrender of the tenancy and delivery of possession of the tenanted premises to the landlord amounts to a willful breach or disobedience of the injunction order passed by this Court on 18 August 2003.

3 It is difficult to see how a restraint order passed in favour of the Respondent-contemnor in his arbitration petition under Section 9 of the Act, applied as injunction against himself. The order contained an embargo on the respondents to the arbitration petition (including the Petitioner herein) and not a restriction on the petitioner himself. Learned Counsel for the Petitioner in the present petition submits that since all parties were co-owners of the concerned property in their capacity as partners of the firm of M/s MTS & Co., each of the individuals including the Petitioner herein had a share in the property. That may be so. But that

would only be an argument in support of any plea for a similar restraint on the Respondent-contemnor herein in his arbitration petition. By citing the principle of co-ownership, the Petitioner could well have pressed for a similar restraint as sought in the arbitration petition against the petitioner in that petition himself. The fact of the matter is that no such restriction was actually sought and none was ordered. Any dealing with the property by the Respondent-contemnor, assuming that it was actually indulged in, in the premises, cannot be termed as a willful breach or disobedience of the injunction order passed by this Court on the application of the Respondent herein against his respondents.

4 There is, accordingly, no merit in the contempt petition. The contempt petition is dismissed.

5 It is, however, clarified that the Petitioner in this contempt petition may have liberty to file any application for suitable interim reliefs based on his argument of co-ownership, either in the disposed of arbitration petition or by way of a fresh petition. All rights and contentions of the parties on merits in that behalf are kept open.

(S.C. GUPTE, J.)