

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6530/2017

Smt. Anjanadevi W/o Mahendrakumar Jain,
..VS..
Chandrashekhar S/o Gulabrao Gulhane,

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M. R. Joharapurkar, Advocate for the petitioner.
Mr. Anand Deshpande, Advocate for the respondent.

CORAM : Z.A.HAQ, J.

DATED : 11th September, 2019

Heard.

Prima facie, the dispute raised by the petitioner appears to be with malafide intention. The petitioner has filed an application under Section 12 of the Contempt of Courts Act, 1971 against the Chief Officer of Municipal Council, Tumsar, Dist. Bhandara before the civil Court contending that the Chief Officer of the Municipal Council is liable for punishment for committing contempt of the order passed by the trial Court on 06th May 2013, and the order passed by the learned Sessions Court on 01st July 2015. In the application filed under Section 12 of the Contempt of Courts Act, it is prayed that reference be made to this Court accordingly. In the proceedings before trial Court, the petitioner had filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, praying that the Chief Officer of the Municipal Council be directed to unlock the premises. This application was dismissed by the trial Court. The petitioner had filed an appeal before the District Court

under Order 43 Rule 1(r) of the Code of Civil Procedure which is also dismissed. The petitioner has challenged these orders passed by the sub-ordinate Courts in this petition.

I find that filing of the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure was an abuse of process of law. There were no proceedings before the trial Court in the eye of law in which the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure could have been filed. The application filed by the petitioner under Section 12 of the Contempt of the Courts Act, cannot be said to be proceedings before the trial Court in which the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure could have been filed and entertained by the trial Court.

Hence, the petition is **dismissed** with costs quantified at Rs.20,000/- to be paid by the petitioner to the respondent.

The amount of costs shall be deposited before the trial Court till 30th November 2019, failing which the trial Court shall recover the amount of costs from the petitioner and pay it to the respondent.

By order dated 22nd February 2018, looking to the nature and controversy, this Court had directed the respondent to provisionally unlock the premises of the petitioner subject to deposit of Rs.1,50,000/- by the petitioner. It is submitted that the petitioner has deposited the amount of Rs.1,50,000/- and lock which was put by the respondent is removed.

The respondent shall not again put the lock on the premises because of dismissal of this writ petition.

The respondent will be at liberty to issue fresh notice of demand of property tax, if recoverable from the petitioner. In such situation, the respondent will be at liberty to take coercive action including putting lock on the premises in question, as per law. The petitioner will be at liberty to approach appropriate forum for seeking redressal of his grievance if occasion arises.

The amount of Rs.1,50,000/- deposited by the petitioner with the Registry of this Court be given to the respondent (Municipal Council Tumsar, Dist.Bhandara) alongwith interest on it, if any.

It is submitted on behalf of the respondent (Municipal Council Tumsar, Dist.Bhandara) that the amount will be adjusted while issuing bill for taxes payable by the petitioner.

JUDGE