

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

Contempt Petition No. 278/2019 in W.P. No.3515/2016
Vasantmala Khobragade Vs. Abhayjit Sukare & Anr.

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

Court's or Judge's orders

Mr. Ram Khobragade, Advocate for petitioner
Mr. S.O. Ahmed, Advocate for respondents

CORAM : MANISH PITALE, J.

DATED : NOVEMBER 25, 2019

Heard learned counsel for the petitioner.
By this contempt petition, the petitioner claims that the respondents have committed contempt of this Court. While issuing notice, this Court restricted the notice to respondent No.1, while the question as to whether notice could be issued to respondent No.2 was to be considered on the next date of hearing.

2. The claim of the petitioner in the present case is that the respondent No.1 has committed contempt of this Court on the basis of following facts.

3. The respondent No.1 had filed a suit for declaration and permanent injunction before the Court of Civil Judge (Senior Division), Chandrapur, claiming that he was in possession of the entire suit property. The petitioner herein, who was a defendant No.2 in the said suit had claimed that the petitioner and

respondent No.1 herein were in possession of half of the suit property each. The respondent No.1 had also filed an application for temporary injunction in the said suit. The Trial Court dismissed the application, which was confirmed in appeal by the District Court and eventually the writ petition filed by the respondent No.1 challenging the said orders was also dismissed. This Court found that no interference was warranted in the view taken by the two Courts below while considering the case for grant or refusal of temporary injunction.

4. It is contended on behalf of the petitioner that when findings were rendered by the two Courts below and also this Court, regarding failure on the part of the petitioner to show his possession in the entire suit property, issuance of legal notice on 04/09/2019, through his Advocate i.e. respondent No.2, again claiming that he was in possession thereof and seeking to dissuade to the petitioner from dealing with the portion of the property in her possession, amounted to contempt of this Court. It was claimed that subsequent dismissal of the suit was also a crucial aspect in the present case.

5. On the other hand, the learned counsel appearing for the respondent No.1 submitted that findings rendered by the two Courts below and this Court were *prima facie* findings concerning the

question of grant or refusal of temporary injunction. It was submitted that eventually the suit was decided and dismissed not on merits, but, it was dismissed on technicalities in as much as the suit was not held to be maintainable in absence of permission of the competent authority under the provisions of the Maharashtra Public Trusts Act, 1950. On this basis, it was submitted that there was absence of any findings on merits against the respondent No.1 in the said proceedings and the present case could not be categorized as a case of willful disobedience, by the respondent No.1, of the order of this Court. It was further submitted that making an Advocate as a party respondent No.2 was shocking and that the petitioner ought not to have filed the present contempt petition.

6. The entire basis of filing the present contempt petition is the judgment of this Court dated 14/07/2016 in Writ Petition No. 3515/2016, whereby orders passed by the two Courts below rejecting the application for temporary injunction filed by the respondent No.1, was made subject matter of challenge. In the said order, this Court agreed with the findings rendered by the two Courts below. A perusal of the reasoning in the orders passed by the two Courts below show that whatever findings were rendered were only *prima facie* findings, limited to the question as to whether the respondent No.1 or the plaintiff had made out a case for grant of temporary injunction. Considering the material that was on record at that

point in time, at the time of consideration of the application for temporary injunction, the two Courts below came to a *prima facie* finding against the respondent No.1 and accordingly, rejected the application for temporary injunction.

7. This Court dismissed the writ petition and agreed with the findings rendered by the two Courts below. It is crucial that subsequently, the suit did not travel its full length and it was rejected on the primary issue of maintainability. It was found that the suit filed by the respondent was not maintainable for want of permission from the Charity Commissioner for institution of the suit as per the provisions of the Maharashtra Public Trust Act, 1950 and undisputedly there was no finding on merits by the competent Civil Court, regarding the claim made by respondent No.1.

8. In this situation, it becomes obvious that the claim made by the respondent No.1 while issuing notice through his Advocate on 04/09/2019, can be said to be an act which would constitute contumacious conduct. In the said notice, it was claimed by the respondent No.1 that the petitioner ought not to deal with the property in question. This was suitably replied on behalf of the petitioner through his Advocate.

9. Therefore, it becomes clear that if at all any legal proceedings are eventually initiated by the

respondent No.1, the petitioner herein could take advantage of the orders passed by the Court in the aforementioned proceedings regarding temporary injunction, if so permitted in law. Till there is another proceedings between the parties on their *inter-se* right in the property in question, it is difficult to understand how mere issuance of notice on the part of the respondent No.1 through his counsel could be said to be contumacious conduct, inviting the wrath of this Court under contempt jurisdiction. Hence, the present petition is found to be without any substance and accordingly, the contempt petition is dismissed.

JUDGE

MP Deshpande