

pdp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL CONTEMPT PETITION (C) No. 194 OF 2020
IN
WRIT PETITION (CR) NO. 6115 OF 2020
AND
ITS INTERIM APPLICATIONS

Sheetal Devang Shah .. Applicant

Vs.

Mrs. Nalini Shah & Anr. .. Contemnors

In the matter Between

Nalini Shah .. Petitioner

Vs.

The State of Maharashtra & Ors. .. Respondents

Ms. Sheetal Devang Shah, Applicant-in-person present.

Mr. Vivek Kantawala a/w Mr. Amey Patil, Mr. Sidharth Bafna i/by M/s. Vivek Kantawala & Co. for Contemnor No.1/Org. Petitioner – Mrs. Nalini Shah.

Mrs. Tauben F. Irani for Contemnor No.2 – Mr. Devang Mahendra Shah.

**CORAM: DIPANKAR DATTA, CJ. &
G. S. KULKARNI, J.**

DECEMBER 2, 2020.

P.C.

1. This is an application for contempt at the instance of Ms. Sheetal Devang Shah impleading her mother-in-law and husband as contemnors. She has prayed, *inter alia*, as follows: -

“44. The Appilcant Mrs. Sheetal D. Shah prays for the following orders to be passed expeditately.

A) This Hon’ble Bombay High Court initiate expediated Contempt Proceedings against Mrs. Nalini Shah and Mr. Devang Shah and this be applicable in all cases being heard in the Bombay High Court and its trial courts in which the Contemnors are in litigation against Mrs. Sheetal D. Shah.

B) This Hon’ble Court pass orders of the proceedings of Criminal Writ Petition No. 6115 of 2019 being declared as EX PARTE with Mrs. Nalini Shah not being allowed to be in the proceedings due to the repeated contempt shown by her towards the Hon’ble Court orders and this will ensure that the matters can be heard expeditately and orders be passed in a single hearing so as to save the precious time of the Hon’ble Judiciary which is being

uselessly burdened by the false police complaints being submitted by the Contemnors.

C) The same order of EX PARTE be applied to all proceedings for Mrs Nalini Shah and Mr Devang Shah not being allowed to appear nor be represented by their advocates in matters against Mrs Sheetal D Shah in the Hon'ble Bombay High Court and its trial courts as they have committed repeated perjury and shown open contempt towards the Hon'ble Court and have misused the platform of Law meant for Justice.

D) The previously granted Bail of Mrs. Nalini Shah and Mr. Devang Shah be immediately cancelled and they be rearrested for being repeated offenders of the Laws of our Noble Country despite being out on bail.

E) The Contemnors be given the maximum penalty of imprisonment of 6 months for committing repeated Contempt Against the Hon'ble Courts, committing perjury and not complying with Hon'ble Court orders. It is unpardonable that the Contemnors have shown such great defiance and no adherence to the Principles enshrined in our Supreme Constitution thereby repeatedly showing contempt against the Hon'ble Bombay High Court and its trial courts.

F) The Court Receiver get the Will of Late Mr Mahendra Shah and submit to this Hon'ble Bombay High Court and to Mrs Sheetal D Shah for the purpose of safeguarding the

Children's wealth bequeathed upon them by their Late Grandfather, Mr Mahendra Shah as Mrs Nailin Shah and Mr Devang Shah are already facing an order under section 340 crpc for the grave crime of forgery of signatures and by their known criminal habits, will alter the will of the Late Mr Mahendra Shah.

G) The Court Receiver get the property papers from Lonavala of all the plots under the name of Late Mr Mahendra Shah, Mrs Nalini Shah, Mr Devang Shah, Mrs Sheetal Shah and the precious children, Maahir and Veer Shah.

H) The Court receiver get the Property papers of Saprem Bungalow, plot no. 20, 3rd Road Juhu Scheme from the Navyug Society Chairman as they will show the true ownership of the Juhu Property.

I) Any other orders that the Hon'ble Court deem it appropriate to pass in the given circumstances."

2. Having perused the averments and the prayers in the application, we enquired of the applicant (appearing in person) to let us know the particulars of the order, direction, or writ, issued by this Court of which she alleges contempt. Such query was made since the application had been registered as one alleging 'civil contempt'. Despite repeated opportunity being granted, the applicant failed to provide satisfactory answers.

3. Considering that the applicant's cause could be better advanced if an advocate were engaged to represent her, we next enquired of her whether she would be willing to either engage an advocate of her choice or we may appoint an advocate from the panel of the State Legal Services Authority to prosecute her case. The applicant responded in the negative and wished to carry on herself. We, therefore, proceeded to hear the applicant and record having heard her for a substantial length of time.

4. In course of her submission, the applicant has referred to and relied upon orders passed in other proceedings either before this Court or courts subordinate thereto, in which she is a party either as a suitor or as the defender. According to her, fake orders have been passed in such proceedings which interfere with the process of court and administration of justice and, therefore, a case of 'civil contempt' has been set up by her.

5. While hearing the applicant, we recollected that she had moved a petition for 'criminal contempt' sometime back. The papers of such 'criminal contempt' proceedings

have since been placed before us at our request. The petition for 'criminal contempt' bearing Stamp No. 1787 of 2020 was considered by us on 9th September, 2020. The prayers in such petition read as follows: -

- A) This Hon'ble Bombay High Court initiate Contempt Proceedings against Mrs Nalini Shah and Mr Devang Shah and this be applicable in all cases being heard in the Bombay High Court and its trial courts in which the Contemnors are in litigation against Mrs Sheetal D Shah.
- B) This Hon'ble Court pass orders of the proceedings of Criminal Writ Petition NO. 6115 of 2019 being declared as EX PARTE with Mrs. Nalini Shah not being allowed to be in the proceedings due to the repeated contempt shown by her towards the Hon'ble Court so that the matters can be heard expeditely and orders be passed in a single hearing so as to save the precious time of the Hon'ble Judiciary.
- C) The same order of EX PARTE be applied to all proceedings for Mrs Nalini Shah and Mr Devang Shah not being allowed to appear nor be represented by their advocates in matters against Mrs Sheetal D Shah in the Hon'ble Bombay High Court and its trial courts as they have

committed repeated perjury and shown open contempt towards the Hon'ble Court and have misused the platform of Law meant for Justice.

- D) The previously granted Bail of Mrs Nalini Shah and Mr Devang Shah immediately cancelled and they be rearrested for being repeated offenders of the Laws of our Noble Country despite being out on bail.
- E) The Contemnors be given the maximum penalty of imprisonment of 6 months for committed repeated Contempt Against the Hon'ble Courts, committing perjury and not complying with Hon'ble Court orders. It is unpardonable that the Contemnors have shown such great defiance and non adherence to the Principles enshrined in our Supreme Constitution thereby repeatedly showing contempt against the Hon'ble Bombay High Court and its trial courts.
- F) The Court Receiver get the Will of Late Mr Mahendra Shah and submit to this Hon'ble Bombay High Court and to Mrs Sheetal D Shah for the purpose of safeguarding the Children's wealth bequeathed upon them by their Late Grandfather, Mr Mahendra Shah as Mrs Nalini Shah and Mr Devang Shah are already facing an order under section 340 crpc for the grave crime of forgery of signatures and by their known criminal

habits, will alter the will of the Late Mr Mahendra Shah.

- G) Any other orders that the Hon'ble Court deem it appropriate to pass in the given circumstances.”

6. Comparison of the prayers in the instant ‘civil contempt’ application as well as the prayers in the petition for ‘criminal contempt’, which was moved by the applicant earlier, reveal near identical prayers having been made. Adoption of a ‘copy’ and ‘paste’ system while preparing the pleadings in both the proceedings cannot be ruled out.

7. We place on record that while hearing the petition for ‘criminal contempt’, we had noticed that the same had been filed by the applicant without obtaining the consent of the learned Advocate General for the State of Maharashtra in terms of the statutory mandate in section 15(1)(b) of the Contempt of Courts Act, 1971 (hereafter the said Act) and rule 5(c) of Chapter XXXIV of the Bombay High Court Appellate Side Rules, 1960 titled “Rules to Regulate Proceedings for Contempt under Article 215 of the Constitution of India and the Contempt of Courts Act, 1971” (hereafter the said Rules). We

disposed of the petition for 'criminal contempt' granting liberty to the petitioner (applicant herein) to apply for consent of the learned Advocate General in accordance with law and to move afresh if such consent were obtained. Admittedly, she has not obtained any such consent.

8. Surprisingly, the instant application for contempt is dated 4th September, 2020. It also shows the date 5th November, 2020, but we are informed that on such date objections were removed by the applicant. The fact that the applicant had applied for 'civil contempt' too raising more or less identical allegations was not disclosed to us when the petition for 'criminal contempt' was considered on 9th September, 2020. It is, therefore, apparent that based on identical set of allegations, the applicant was pursuing parallel proceedings for contempt, both civil and criminal, suggesting that she herself was unsure as to which proceeding was the appropriate course.

9. Be that as it may, for ascertaining whether any action for contempt based on the instant application ought to be taken, we re-looked at the definition of 'civil contempt' in section 2(b) of the said Act. It is attracted

when willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court is established. Thus read, 'civil contempt' appears to us to be a wrong to a party or person who is entitled to the benefit of an order of the court but is deprived of the same. There is no difficulty in understanding wilful disobedience to judgment, decree, direction, order, writ or undertaking as referred to in section 2(b) of the said Act. What remains for us is to construe the expression "or other process of court". Such expression though not defined in the said Act is referable to procedural notices or commands calling upon a party or person to appear in Court for some purpose, like summons or subpoenas. Simply put, 'civil contempt' could also arise if there be a disobedience, willful in nature, to any process of court that were intended to secure the presence of a party or person for a legitimate purpose in connection with proceedings in court.

10. Let us now consider the pleaded case. We have searched in vain to trace any pleading which, with some degree of clarity, points to contumacious conduct of the contemnors attracting section 2(b) of the said Act. The

bare minimum required for urging the Court to initiate action for contempt is to precisely reveal the nature of contumacious conduct, answering the definition of 'civil contempt' in section 2(b) of the said Act, with reference to any particular judgment, decree, order, direction, writ or other process of a court. The same, unfortunately, is lacking here. Proceedings for contempt being quasi-criminal in nature, the charges of contempt levelled against the contemnors have to be clear and distinct so that as and when called upon, they may understand what they are charged for and thereby afford a reasonable opportunity to them to raise an effective defence to counter the charge in compliance with due process and the principles of natural justice.

11. We have noticed that rule 24 of the said Rules does require that in an application for civil contempt the applicant must allege willful disobedience of any ad-interim/interim or final order passed by the High Court, which shall be heard and disposed of by the concerned Division Bench or Single Judge, as the case may be, before which/whom the main matter is pending or before which/whom the main matter would lie, if it were pending. There being no reference in the averments as

well as the prayers to any particular writ, direction or order passed by this Court which, in the perception of the applicant, is alleged to have been disobeyed by the contemnors willfully, we are of the view that the instant application for 'civil contempt' does not deserve to be entertained for the purpose of initiating contempt action. That apart, there are prayers in the application which are beyond the purview of contempt powers exercisable by us.

12. In such view of the matter, we are of the considered opinion that the application for 'civil contempt' is liable to be dismissed *in limine* which we do order hereby.

13. The conduct of the applicant in abusing the process of law as well as that of the court is such that we would have been justified in imposing costs, but we refrain from so imposing. There shall be no order as to costs.

G. S. KULKARNI, J.

CHIEF JUSTICE

Pravin D.
Pandit

Digitally signed by
Pravin D. Pandit
Date: 2020.12.03
16:52:05 +0530