

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CONTEMPT PETITION NO. 322 OF 2018
IN
CIVIL APPLICATION NO. 1491 OF 2010
IN
SECOND APPEAL NO. 883 OF 2003**

Pandurang Genu Chavan & anr. ..Petitioners.

v/s.

Shri Gaffur Pathan & ors. ..Respondents.

Ms. Shilpa Gajare, advocate for petitioners.

Mr. Y.Y. Dabke, AGP for appellant in SA. No. 883/2003 and for respondent No. 5 in CP No. 332/18.

Mr. Rahul S. Kate, advocate for respondent No. 2 in CP No. 332/2018.

Mr. Milind Deshmukh, advocate for respondent No. 1 in CP No. 332/18

and for respondent No. 4 in SA No. 883 of 2003.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : MARCH 3, 2020.

P. C. :

1 Heard the learned Counsel for the petitioners, learned Counsel for the respondent Nos. 1 and 5 and the learned AGP for State.

2 The petitioners who have initiated present Contempt

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Petition in Second Appeal No. 883 of 2003 are neither party in RCS No. 249 of 1996 nor in First appeal No. 39 of 1999. Second Appeal is filed by the State of Maharashtra.

3 It is the claim of the present petitioners that they happened to be in possession of the suit property, which was a subject matter in Civil Suit No. 249 of 1996. The suit was decreed in favour of one Mr. Gaffur Pathan.

4 One Gaffur H. Pathan was the original plaintiff in RCS No. 249 of 1996 and the suit was for declaration of ownership on the basis of the Sanad issued by Raje Ratansinh Jadhavrao dated 27/10/1962. The Plaintiff had also prayed for injunction and possession of the suit property. The Civil Judge, Sr. Division, Baramati by Judgment and Order dated 9th February, 1999 had dismissed the suit with cost. Being aggrieved by the said Judgment and Order Gaffur Pathan had filed first appeal No. 39 of 1999. The appeal was allowed.

5 The Government had a claim on the said suit property and therefore, the State of Maharashtra has filed Second Appeal. It was the contention of the State of Maharashtra that the original defendant Nos. 1 and 2 i.e. Collector Pune and Sarpanch, Gram Panchayat, Malegaon, Budruk had transferred

the land to the government and mutation No. 4345 was recorded. Possession of the land was delivered to the sarpanch by mutation entry No. 4760. It appears that the original plaintiff continued to be in possession of the suit land even thereafter. It is the specific contention of the State of Maharashtra that the Sanad granted in favour of the plaintiff's father by Raje Ratansinh Jadhavrao is illegal as the sansthan was merged before 27/10/1952.

6 Be that as it may, the petitioners herein had filed Civil Application No. 139 of 2008 seeking intervention in the Second Appeal. According to the Petitioners, they were in possession of the suit property. By an order dated 25/2/2008, their application seeking impleadment as the party appellant in the appeal preferred by the State of Maharashtra was rejected by this Court as not maintainable.

7 According to the learned Counsel for the petitioners, thereafter, subsequent application was filed by the present petitioner bearing CA No. 1491 of 2010 seeking intervention. This Court had passed an order that the intervenor would be heard at the stage of final hearing. However, the application was not allowed and they were not made party to the Second Appeal.

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8 It is pertinent to note that the appeal was admitted on 16/4/2008 but on 4/4/2008 there was an interim order passed in the second appeal in favour of the government. It appears that in the meanwhile, heirs of Gaffur Pathan filed an application in Regular Darkhast No. 49 of 2005 before Civil Judge Senior Division, Baramati. It was contended that in civil application No. 139 of 2008 Pandurang Chavan has been arraigned as party, but their application is rejected. Gaffur Pathan was hence seeking possession of the property situated at City Survey No. 623 to 647. The said application was allowed and the Civil Judge Senior Division was pleased to issue warrant of possession.

9 That the petitioners herein had approached the court and had brought to the notice of the Court that there is ad-interim relief operating in favour of the State of Maharashtra vide order dated 4/4/2008. Hence, the possession warrant was recalled and darkhast has been kept pending.

10 It is pertinent to note that Civil Judge, Senior Division had also directed the heirs of Gaffur Pathan i.e. Raju Gaffur Pathan to file affidavit to the effect that there is no stay operating and on 3rd March, 2018, the applicant therein had filed an affidavit informing the court that there is no stay

operating in favour of any of the parties in Second Appeal. In view of the above circumstances, the petitioners who are not a party to the second appeal filed present contempt petition against legal heirs of Gaffur Pathan.

11 In fact, it was incumbent upon the petitioners to bring this fact to the notice of the Government and also implead the government authorities at the stage, when they had taken objection before the Civil Judge Senior Division.

12 The contempt petition is filed without all the particulars. In fact, the petitioners had no locus to file present petition. In contempt petition, the advocate who had filed application on behalf of the plaintiffs was also arraigned as a party in contempt petition. It was the contention of the petitioners that at the time when Sanad was granted in favour of Pandurang Chavan for getting plot from the Government, according to the petitioners, they had erected bungalow with the permission of the sarpanch. The lawyer who was representing the plaintiffs was a sarpanch at that relevant time and therefore, he was arraigned in contempt petition. By an order dated 26/11/2018, the advocate i.e. respondent No. 2 was deleted.

13 In the Contempt Petition, notice was issued by this Court calling upon the proposed contemnor to answer as to why he should not be held for contempt of the court. An affidavit is filed wherein the respondent No. 1a had filed unconditional apology. It is stated that on 29/8/2017 he had received a notice. He had checked on the internet with the help of his son and according to him, both the applications made by Ramesh Pandurang Chavan were rejected by this Court. He had therefore, informed the advocate appearing in Darkhast proceedings, as he could not find any order granting stay in favour of the government. After the possession warrant was recalled by the Civil Judge Senior Division, he had contacted his advocate at Bombay and had learnt that a stay is operating in favour of the Government. It is only stated that because he searched the status of the matter on internet, he had filed an application seeking execution of the order passed in the first appeal. He had set the law in motion under a wrong impression.

14 Needless to say, in the above mentioned facts, it is more than clear that a case for contempt is made out under section 2(b) and (c)(iii) of the Contempt of Courts Act. There has been obstruction in the administration of justice by the contemnor.

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15 It is no doubt a willful disobedience. The application and order passed thereon tends to obstruct the course of judicial proceeding. The CJSD had passed orders issuing warrant for possession although the High Court had stayed it. That it cannot be said that this was an innocent step taken by the contemnor. He had engaged an advocate in Second Appeal and he has also engaged an advocate to file an application in the darkhast proceedings and the lawyer without taking any instructions from the advocate representing party in second appeal had filed an application. In any case, the lawyer does not continue to be a party in the present contempt petition.

16 The petitioners who had initiated the contempt petition, in fact, has no locus. However, since the government had not filed any application and were not diligent in proceeding with the matter. The Petitioners herein have brought it to the notice of the Court, the act, committed by the respondents, in defiance to the order granting interim relief in favour of the government.

17 In view of the above observations, the unconditional apology filed by the respondent No. 1a is accepted on a

condition that he deposits a cost of Rs. 7,000/- in this Court within four weeks from today.

18 The Contempt Petition is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]