

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CONTEMPT PETITION NO. 429 OF 2020
IN
SECOND APPEAL NO. 193 OF 1990**

Suresh Gopikrishna Purohit
Age: 58 years, Occu: Agriculture,
R/o. Pardeshi Galli, Bhokardan,
Tq. Bhokardan, Dist. Jalna. ... Petitioner

Versus

1. Siddeshwar Chunnilal Daubhal
Age: 60 years, Occu : Agriculturist,
R/o. Ibrahimpur, Tq. Bhokardan,
District Jalna.
2. Mahadusingh Chunnilal Daubhal
Age: 55 years, Occu : Agriculturist,
R/o. Ibrahimpur, at present Rajput
Krushi Seva Kendra , Bhokardan,
Tq. Bhokardan, District Jalna.
3. Gokul Singh Chunnilal Daubhal
Age: 52 years, Occu : Agriculturist,
R/o. Ibrahimpur, at present Rajput
Krushi Seva Kendra , Bhokardan,
Tq. Bhokardan, District Jalna.
4. Yogesh Nagare,
Talathi, Saja Ibrahimpur,
at Present Tahasil Office Ibrahimpur,
Tq. Bhokardan, District Jalna
5. The Tahasildar,
Tahasil Office Bhokardan,
Tq. Bhokardan, District Jalna. ... Respondents

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Mr. Sanjeev B. Deshpande, Advocate for the Petitioner
Mr. Gaurav L. Deshpande, Advocate for Respondent No.1
Mr. V.D. Sonawane, Advocate for Respondent Nos. 2 and 3
Mr. G.O. Wattamwar, A.G.P. for Respondent Nos. 4 and 5

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CORAM : SHRIKANT D. KULKARNI, J.

Closed for Order on : 22.07.2021

Order Pronounced on : 30.08.2021

PER COURT:-

1. It is a motion for contempt moved by the petitioner by taking aid of Section 12 of the Contempt of Courts Act, 1971.
2. It is necessary to have a glance on relevant facts for deciding this petition.
3. The motion for contempt is in respect of willful disobedience of the judgment and decree passed by this Court in second appeal no.193 of 1990. The petitioner had filed a suit bearing R.C.S. No.16 of 1977 for perpetual injunction in respect of landed property bearing old Survey no.15 and Gut no.74 admeasuring 6 Acres situated at village Ibrahimpur, Taluka Bhokardan, District Jalna before the the Civil Judge, Junior Division at Bhokardan. The suit came to be dismissed by judgment and order dated 19.09.1983. The petitioner preferred an appeal vide R.C.A. No.191 of 1983 before the District Court at Jalna. The District Court, Jalna was pleased to allow the appeal preferred by the petitioner and granted relief of perpetual injunction against the respondents and his family members restraining them from interfering into the peaceful possession of the petitioner over the suit property. The judgment and

order passed in R.C.A. No.191 of 1983 was challenged by original defendant nos. 2 and 3 from side of respondent nos. 1 to 3 by filing second appeal no. 193 of 1990 before this Court. This Court was pleased to dismiss the second appeal under its judgment and order dated 10.07.2009.

4. Respondent no.1 to 3 filed one more suit bearing R.C.A. No.62 of 2020 against the petitioner before the the Civil Judge, Junior Division at Bhokardan for declaration, which subsequently came to be withdrawn with leave of the Court.

5. According to the petitioner, respondent no.1 to 3 in collusion with the revenue authorities, attempted to change the entry of 7/12 extract. The respondents are willfully disobeying the order passed by this Court in second appeal no. 193 of 1990. Therefore, the petitioner has left with no option except to file instant contempt petition against the respondents.

6. Heard Mr. Sanjeev B. Deshpande, learned counsel for the petitioner, Mr. Gaurav L.Deshpande, learned counsel for respondent no.1, Mr. V.D. Sonawane, learned counsel for respondent nos. 2 and 3 and Mr. G.O. Wattamwar, learned AGP for respondent nos. 4 and 5, who are Talati of village Ibrahimpur and Tahasildar, Bhokardan respectively.

7. Perused the documents and papers produced by the petitioner as well as the respondents. I have also gone through the reply affidavits filed by the respective respondents to contest this contempt petition.

8. Mr. Sanjeev Deshpande, learned counsel for the petitioner vehemently submitted that the judgment and decree passed in R.C.A. No.191 of 1983 came to be confirmed in second appeal no. 193 of 1990 and perpetual injunction came to be clamped against respondent nos. 1 to 3, as such, there was no reason for respondent nos. 1 to 3 to file fresh suit vide R.C.S. No.62 of 2020. This act itself amounts to contempt of order passed by this Court in the second appeal, though that suit came to be withdrawn subsequently with leave to file fresh suit. He submitted that in spite of clear order passed by this Court in second appeal, respondent nos. 1 to 3 have audacity to apply to the revenue authorities for taking entry in their favour in the column of 7/12 extract. They have hatched a conspiracy by joining hands with respondent no.4 - Talathi and other revenue officials and prepared *panchanama* to that effect stating that respondent nos. 1 to 3 are in possession of the property since last so many years. He submitted that respondent nos. 1 to 3 are politically influential persons and they have pressurized concerned police by misrepresenting that matter is subjudice. As a result, the Police Station Bhokardan could not give police protection. The act of respondent nos. 1 to 3 by joining hands with revenue officials is nothing

but an attempt to flout the order passed by this Court in second appeal no. 193 of 1990. The attempt of respondents to change the entry in 7/12 extract is willful and deliberate disobedience of the order passed by this Court.

9. Mr. Sanjeev Deshpande, learned counsel for the petitioner submitted that petitioner has pointed to respondent no.5 that petitioner has filed contempt in respect of subject matter before this Court. Respondent no.5 in spite of bringing this fact to his notice, he is bent upon for flouting order passed by this Court. Respondent no.5 passed an order on 07.09.2020 to conduct spot inspection, which amounts to clear-cut disobedience of the order passed by this Court in second appeal. Learned counsel submitted that even though execution proceedings is pending before the Civil Judge, Junior Division at Bhokardan, contempt petition can be initiated and there is no legal hurdle. He submitted that majesty of the Court of law needs to be maintained by punishing the respondents, who are willfully disobeying the order passed by this court in second appeal.

10. Mr. Sanjeev Deshpande, learned counsel for the petitioner has placed his reliance on following citations:-

- (i) ***Rama Narang Vs. Ramesh Narang and Ors.*** reported in ***(2006) 11 SCC 114.***

(ii) ***Anju Jain Vs. Sanjay Suresh Jain*** (Contempt Petition No.17 of 2019 decided on 23.02.2021 by this Court at Goa)

11. Mr. Gaurav L. Deshpande and Mr. V.D. Sonawane, learned counsel appearing for the respective respondents strenuously argued that this contempt petition is not at all maintainable. The petitioner has already filed execution petition / proceedings before the Civil Judge, Junior Division at Bhokardan and the petitioner is pursuing that execution proceedings. The petitioner is very well aware about the reliefs sought in that execution proceedings. As such, this contempt petition is not at all maintainable when the provisions of order XXI Rule 32 of the Code of Civil Procedure, 1908 availed by the petitioner to execute the decree passed by this Court in second appeal.

12. They submitted that only because respondent nos. 1 to 3 had filed one fresh suit to protect their legal rights does not amount to contempt of Court. They submitted that efficacious remedy of execution is available to the petitioner and the same is availed by him. In that background, the petitioner has no right to move this Court for contempt. The petitioner has even suppressed the fact of execution proceedings initiated by him against the respondent nos. 1 to 3. The petitioner has not come before this Court with clean hands. They submitted that respondent nos. 1 to 3 have not committed any willful contempt of the order of this Court. They have not disobeyed the order passed by this

Court in second appeal. Respondent nos. 1 to 3 are putting forward their legal rights by way of legal proceedings before the Court and it does not amount to contempt of the Court.

13. Mr. Sonawane, learned counsel for respondent nos. 2 and 3 vehemently submitted that the judgment and order passed by this Court in second appeal no.190 of 1990 is the subject matter of the present contempt petition. In fact, the said judgment and order is the confirmation of the judgment and order passed by the District Court in the appeal and thereby, the judgment and order passed by this Court in second appeal no. 190 of 1990 is a decree of injunction passed in the civil suit by exercising its appellate jurisdiction and not as a writ by way of extra ordinary jurisdiction. He submitted that as per the provisions of Rule 32 of Order XXI, when there is a breach of decree of injunction, the remedy is in the form of execution of the decree. The procedure of filing of execution petition is prescribed in the order XXI of the Code of Civil Procedure. It also includes the procedure to hear any objections. The petitioner has rightly availed it by filing an execution petition before the executing Court. Therefore, the present contempt petition is not at all maintainable and the same is required to be dismissed with cost.

14. Mr. V.D. Sonawane, learned counsel for respondent nos. 2 and 3 has placed his reliance on following citations in support of his arguments:-

(i) ***Kanwarsing Saini Vs. High Court of Delhi*** reported in **2012 (4) SCC 307.**

(ii) ***R.N. Day and Ors. Vs. Bhagyabati Pramanik and Ors.*** reported in **(2000) 4SCC 400.**

(iii) Contempt Petition Diary No.126584 of 2018 in S.a. No.1375 of 1969 in the case of ***The Idol of Sangaalaneer Pillayar Vs. Vijayalakshmi.***

(iv) ***Mrs. Subhashini Vs. Samim Qureshi*** reported in **(2015) SCC On Line Bom 144.**

(v) ***Niaz Mohammad and others Vs. State of Haryana and other*** reported in **(1994) 6 SCC 332.**

15. Mr. Sonawane, learned counsel for respondent nos. 2 and 3 submitted that the revenue officers have right to make an enquiry, when the application is moved by an agriculturist putting forward his claim about possession of land. The provisions of Maharashtra Land Revenue Code, 1966 and Rules made thereunder bestow power to the revenue officers to conduct enquiry. It does not amount to contempt of Court.

16. Mr. G.O. Wattamwar, learned AGP for respondent nos. 4 and 5 also argued on the same lines. He submitted that respondent nos. 4 and 5 were not a party to the decree of injunction. They were not knowing

about the nature of decree passed by this Court. As per the procedure laid down in the Maharashtra Land Revenue Code, 1966 and Rules made thereunder, the revenue officers are conducting the enquiry, which is within their jurisdiction and it does not amount to contempt or willful disobedience of the order passed by this Court in second appeal.

17. Order XXI Rule 32 speaks about enforcement of injunction decree, which equally applies to prohibitory and mandatory injunction. The decree passed by this Court in second appeal no. 193 of 1990 is of perpetual injunction. The petitioner has legal right to execute the decree for perpetual injunction by knocking the doors of executing Court, when there is a breach of injunction decree passed by the Court. Even though, the petitioner has not made any reference about the filing of his execution proceedings in this contempt, respondent nos. 1 to 3 have rightly pointed out by way of their reply affidavits and documents placed on record that the petitioner has already filed execution proceedings before the executing Court at Bhokardan and execution petition is in progress. The legal question poses, whether the petitioner can invoke two legal remedies at one and the same time, (1) execution petition and (2) contempt petition.

18. Mr. Sanjeev Deshpande, learned counsel for the petitioner has heavily relied upon on the citation of *Rama Narang Vs. Ramesh Narang* (supra), wherein it is held by the Hon'ble Supreme Court as under:-

“All decrees and orders are executable under the Code of Civil Procedure. Consent decrees or orders are of course also executable. But merely because an order or decree is executable, would not take away the Courts jurisdiction to deal with a matter under the Act provided the Court is satisfied that the violation of the order or decree is such, that if proved, it would warrant punishment under Section 13 of the Act on the ground that the contempt substantially interferes or tends substantially to interfere with the due course of justice.”

19. In the said decision in para no. 27, the Hon'ble Supreme Court has observed as under:-

“27. This decision reinforces our view of the law. It does not in any way run contrary to our opinion as expressed earlier on the interpretation to be put on Section 2(b) of the Act. On the other hand the Court repelled the submission of the respondents that the petitioners remedy lay in executing the decree in the following words:-

"The fact that the petitioner can execute the decree can have no bearing on the contempt committed by the respondents."

20. In case of *R.N. Day and Anr. Vs. Bhagyabati Pramanik and Ors.* (supra), referred by Mr. Sonwane, learned counsel for respondent nos. 2 and 3, the Hon'ble Supreme Court has said as under:-

"... the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law."

Furthermore, it has also said that:-

"... the decree-holder, who does not take steps to execute the decree in accordance with the procedure prescribed by law, should not be encouraged to invoke contempt jurisdiction of the court for non-satisfaction of the money decree."

21. In view of legal position made clear by the Hon'ble Supreme Court in case of *Rama Narang and Ramesh Narang and Ors.* (supra), merely because orders or decrees are executable, it would not take away the Court's jurisdiction to deal with the petition under the Contempt of Courts Act, 1971. But in recent citation, in case of *Kanwarsing Saini Vs. High Court of Delhi* (supra), the Hon'ble Supreme has held that, "in case there is a grievance of non-compliance of the terms of the decree passed in the civil suit, the remedy available to the aggrieved person is to

approach the execution court under Order 21 Rule 32 CPC which provides for elaborate proceedings in which the parties can adduce their evidence and can examine and cross examine the witness as opposed to the proceedings in contempt which are summary in nature. It has further held that the law does not permit to skip the remedy available under Order 21 Rule 32 CPC and resort to the contempt proceedings for the reason that the court has to exercise its discretion under the Act of 1971 when an effective and alternative remedy is available to the person concerned”.

22. It is rightly pointed by the learned counsel for respondent nos. 1 to 3 that the petitioner has already initiated execution proceedings vide R.D. No.3 of 2020 in the Court of Civil Judge, Junior Division at Bhokardan, which is in progress. It is also brought to my notice that the petitioner had also applied for police protection. The police machinery could not provide the same, due to certain reasons

23. Be that as it may, the fact remains that the petitioner has already availed legal remedy for execution of decree of perpetual injunction against respondent nos. 1 to 3, which is in progress. The petitioner can raise all the points before the executing Court including action taken by the revenue officers on the basis of application submitted by respondent nos. 1 to 3. The revenue officers are vested powers in view of provisions of the Maharashtra Land Revenue Code, 1966 and rules made

thereunder. All the points can be raised before the executing Court in execution proceedings and the petitioner has already put the law in motion.

24. No one would dispute that Court's dignity and majesty of law must be maintained. But the procedural law needs to be followed for execution of a decree for injunction.

25. Having regard to the above reasons and discussion, I am of the considered view that it would not be appropriate to initiate the contempt proceedings against the respondents in view of peculiar facts of the case in hand. The petitioner may raise all the points before the executing Court including action taken by the revenue officers for spot inspection and changes in 7/12 extract. The decree for perpetual injunction can be executed in view of the provisions of Order XXI Rule 32 of the Code of Civil Procedure Code, which is a efficacious remedy for execution of the decree. No case is made out to initiate contempt proceedings against the respondents.

ORDER

(i) The contempt proceedings initiated against the respondents stands purged.

(SHRIKANT D. KULKARNI)
JUDGE

S.P Rane