

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

**CONTEMPT PETITION NO. 693 OF 2022 IN
CIVIL APPLICATION NO. 6114 OF 2017 IN
SECOND APPEAL NO. 359 OF 2017**

Lalitmohan s/o Dattuprasad Mishra Petitioner

Versus

Prakash s/o Dattuprasad Mishra
and others Respondents

Mr. T. M. Venjane, advocate for the Petitioner
Mr. B. R. Kedar, advocate for Respondent No.1.

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 09th March, 2023.

PC :

Heard rival submissions.

The petitioner is claiming that respondents no.2 and 3 have committed breach of order dated 13th September, 2022, passed by this Court in Civil Application No.6114 of 2017 in Second Appeal No. 359 of 2017, whereby the decree holder i.e. present respondent no.1 was restrained from proceeding with the execution of decree in RCS No. 276 of 1981.

It appears that the said prohibiting order was in force till 04th October, 2022. However, the petitioner is claiming that despite bringing the said order to the notice of respondents no.2 and 3 vide communication dated 06.10.2022, the respondents no.2 and 3 issued notice for handing over the possession as per the proposed partition and map drawn to that effect. However, the communication dated 06.10.2022 does not reflect as to which order was annexed with it, whether it was 13.09.2022 or the subsequent order at page no.61 under which the interim reliefs, granted by this Court, were supposed to remain in operation till 10.10.2022.

It is significant to note that both the respondents , respondent no.2 and 3 have filed their reply and they have specifically stated that since the interim relief dated 13.09.2022 was in force till 04.10.2022 and there was no further continuation, they had issued notice dated 06.10.2022. Further, it is clarified by them that when they received copies of order dated 10.10.2022 and 12.10.2022 from the petitioner before the day of execution i.e. 18.10.2022,

the notice dated 06.10.2022 was not acted upon. Thus, a strong doubt has been created as to whether the respondents no.2 and 3 were having knowledge of the stay order of this Court, by which the interim reliefs were extended from 04.10.2022 to 10.10.2022. Further, it appears that after getting the said knowledge, they had stopped further proceedings of handing over possession. Thus, there is no willful disobedience on the part of respondents no.2 and 3. Moreover, there appears no role of respondent no.1 in the alleged disobedience.

Thus, I find no merit in the petition, which accordingly stands dismissed.

(SANDIPKUMAR C. MORE)
JUDGE

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