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Date: 2023.09.15
11:09:01 +0530**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION****CONTEMPT PETITION NO.235 OF 2019**

Mr. Mukesh M. Doshi & Anr. ...Petitioners

V/s.

Oshiwara Land Development Co. ...Respondents
Ltd. & Ors.Mr. Parth Jasani i/by M/s Purnanand & Co. for
Petitioners.Mr. Yogesh A. Gaikwad a/w Mr. Ayaz Bilawala i/by
M/s Bilawala & Co. for Respondents.**CORAM: MADHAV J. JAMDAR, J.****DATE: 14th September 2023****P.C.:**

1. The present Contempt Petition has been filed by the Petitioners, who are the original Defendants by raising contention that the consent decree dated 5th May 2015 passed in S.C. Suit No. 341 of 2013, by the learned Judge, Bombay City Civil Court, Borivali Division at Goregaon, Dindoshi, at Bombay is violated. The said consent decree was passed in terms of the consent terms dated 3rd April 2014. In the said consent terms, following clause No.2 is agreed between the parties:

"2. The Plaintiffs agree and undertake to pay to the Defendants a sum of Rs.12/- Crores upon Plaintiffs' entering into an Agreement for sale or transfer of the suit property or any part thereof and/or any compensation including TDR that may be issued by the concerned authorities for acquiring the suit property is received whichever is earlier. If the Plaintiff fails to pay the said amount to the Defendants as above then the Plaintiffs are liable to pay interest thereon at the rate of 12% p.a. and until that time the Defendants shall have a charge over the sale proceeds/TDR/ compensation."

2. Learned Counsel appearing for the Petitioners as well as for the Respondents state that thereafter parties have further negotiated and resolved the dispute and executed the consent terms in execution proceedings pending before the learned Bombay City Civil Court at Dindoshi. Both the learned Counsel state that the said Consent Terms will be filed shortly in said execution proceedings. A copy of the said consent terms proposed to be filed in the learned Bombay City Civil Court, at Dindoshi is tendered by both the learned Counsel. The said copy is taken on record.

3. Clause Nos. 4(a) and (b) of the said consent terms proposed to be filed in the execution proceedings read as under:

4.

(a) Though the Applicants have no claim against

Respondent No.3, however, Respondent no.3 has been joined in execution of this Consent Terms as Respondent no.3, jointly owns Flat No. 3 on the 2nd floor of the building known as Usha Kiran, situated at Carmichael Road, M.L. Dhanukar Marg, Mumbai - 400 026 ("**the said flat**") alongwith Respondent No. 2 and has agreed to sell the said flat and allow the sale proceeds thereof, to be first utilised towards dues payable by Respondent Nos. 1 and 2 to the Applicants under this consent terms as provided hereinafter.

(b) The parties agree that if the Respondents pay a sum of Rs.12 Crores within a period of 9 months from the date hereof, Applicants will accept the same in full and final settlement of all its claims under the said Consent Decree dated 5.5.2015 and give up all their claims against Respondent Nos. 1 and 2 forever and the Consent Decree dated 5th May 2015 shall stand fully satisfied and the Applicants shall give full co-operation to the Respondents to get the Decree dated 5th May 2015 marked as satisfied under law."

4. Thus, as the Respondents have shown their readiness and willingness to comply with the earlier order in the manner set out hereinabove, the learned Counsel appearing for the Petitioner states that nothing survives in the Contempt Petition. The above factual position shows that the violation as alleged by the Petitioner is not willful. Accordingly the Contempt Petition is disposed of.

(MADHAV J. JAMDAR, J.)