

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

**Contempt Petition (CP) No. 49 of 2023
in
Writ Petition No. 1132 of 2022 (D)**

**Shri Sanjay Mahadeorao Kotkar and others
Versus
Shri Bhaurao Dattuji Zade**

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri P.A. Jibhkate, Advocate for the petitioners.
Shri Madhur A. Deo, Advocate for the respondent.

**CORAM : ANIL S. KILOR, J.
DATED : 21st JULY, 2023.**

Learned counsel for the petitioners submits that there is a non-compliance of direction passed by this Court vide order dated 23rd August, 2022 and thereby the respondent shall clear off all the arrears as per the prayer clause made in Exhibit 6 within a period two months from the date of order, therefore the respondent no.1 has committed contempt.

2. He, therefore, submits that the present application is filed under Sections 10 and 12 of the Contempt of Court Act read with Article 215 of the Constitution of India.

3. On the other hand Shri Deo, learned counsel for the respondent points out that this is a misuse of jurisdiction as the power exercised by this Court in the writ petition while directing to make payment of arrears as per prayer clause made in Application Exhibit 6, was the power under Order XV-A(1) of the Code of Civil Procedure (Maharashtra Amendment). Thus, in any case of non-compliance of such directions, the Court may subject to the provisions of sub-rule (2) strike off the defence. Thus, he submits that contempt is not the remedy but the prayer for striking off the defence is the only remedy in such matter.

4. I have find substance in the submission of the learned counsel for the respondent for the simple reason that while directing to pay the arrears, the Court has categorically observed that to pay the arrears as per clause made in Exhibit 6. Admittedly, said application Exhibit 6 was moved under Order XV-A of the Code of Civil Procedure and therefore the consequences provided under Order XV-A would follow in the event of non-compliance of such directions.

5. I do not find any favour with the submissions of the learned counsel for the petitioners that the time period mentioned in the order gives

jurisdiction to this Court to entertain this petition under Article 215 of the Constitution of India. The reason for the same is that when consequences are provided under the provision for non-compliance of such directions, only because time period was mentioned in the order for making such payment of arrears, does not give jurisdiction to this Court.

6. Hence, the present matter can be termed as misused of the jurisdiction as held by the Hon'ble Supreme Court in the case of R.N.Dey and others Vs. Bhagyabati Pramanik and others¹ which read thus:

“7. We may reiterate that 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 Courts dignity and majesty of law. Further, an aggrieved party has no right to insist that Court should exercise such jurisdiction as contempt is between a contemnor and the Court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the First Appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled

1 2000(4) SCC 400

to recover the same by executing the said award wherein the State can or may contend that the award is nullity. In such a situation, as there was no willful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified.

7. In the circumstances, the contempt petition is dismissed.

[ANIL S. KILOR, J.]

SACHIDANAND
KUTTAN NAIR

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by
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