

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.276 OF 2023

Ramesh @ Ramakant Shivajirao Ghadge ...Petitioner

Versus

Satish Shivaji Ghadge ...Respondent

Mr. Vipul Dada Patil for the Petitioner.

Mr. Joel D'Souza i/b Mr. Suresh M. Kamble for Respondent No. 1.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : FEBRUARY 9, 2024

P. C. :

1. Contempt has been alleged of the order dated 10th April, 2014 passed by this Court in Civil Application No. 565 of 2014 in Second Appeal No. 734 of 2012 by the Respondent No 1.

2. By the order dated 10th April 2014, this Court recorded the statement of the parties that they will not create third party rights in respect of the suit property without leave of the Court.

3. Heard Mr. Patil, learned counsel for the Petitioner and Mr. D'souza, learned counsel for Respondent No. 1.

4. Learned counsel for the Petitioner submits that the Petitioner herein is one of the Respondents in the Second Appeal No. 734 of 2012 and the power of attorney holder on behalf of other Respondents

including Respondent No 1. He submits that on the strength of the power of attorney, statement was made by him which was recorded in the order dated 10th April, 2014. Pointing out to page No. 19 of the Petition, which is sale deed dated 22nd November, 2022 executed by Respondent No 1 in favour of third party, he submits that Respondent No. 1 herein has sold one of the suit properties to third party despite the order of this Court dated 10th April, 2014. He submits that the Respondent No 1 was aware of the pending Second Appeal which is evident from the pleadings in Special Civil Suit No. 21 of 2015 filed by one Sahebrao Ghatge in which the present Petitioner as well as Respondent No. 1 are party Defendants and points out Page No. 138 of the Affidavit in rejoinder.

5. Per contra, learned counsel for Respondent No. 1 would submit admittedly, the litigation was being looked after by the Petitioner to whom Power of Attorney had been given by the Respondents and the statement has been made by the Petitioner on the strength of Power of Attorney. He further submits that the said order was not to the knowledge of Respondent No. 1 and as such, the sale deed has been executed. He further tenders an unconditional apology to this Court in event there is any violation of the order. However, he submits that the same was not intentional and the sale deed has been executed as he was not aware of the statement made by the Petitioner which has been recorded in the order of

10th April, 2014.

6. Considered the submissions and perused the record.

7. Having perused the record, I am of the firm view that the present Contempt Petition is an abuse of process of law and has been initiated by the Petitioner to protect himself from any proceedings being initiated against him for violation of order dated 10th April, 2014. The order of which contempt is alleged records the statement of the Petitioner himself who was acting under a Power of Attorney given by all the Respondents. The order does not indicate that the parties were present before the Court or that the statement was made by the Petitioner based on instructions given to him by the Respondents including Respondent No. 1. Pertinently, by order dated 10th April, 2014 the statements were recorded, however, the same were not accepted as an undertaking given to the Court. There is nothing to show that after the order dated 10th April, 2014 was passed, the same was brought to the knowledge of the Respondent No. 1 by the Petitioner.

8. Learned counsel for Respondent No. 1 makes a categorical statement that the order was not communicated to him and as such, not being in his knowledge no contempt could be alleged of the order. It is the Petitioner who was prosecuting the appeal on behalf of all the Respondents and instructing the counsel representing the Respondents. It

appears that to protect himself as the statement made by him has now been violated, the present Contempt proceedings have been filed. The reliance placed on the Special Civil Suit would indicate that the same refers to the order of 5th March, 2012 and not even the order of which contempt has been alleged. There is no material to demonstrate that the Respondent No. 1 was aware of the order dated 10th April, 2014 and despite thereof has violated the said order. It is well settled that the violation is required to be wilful and deliberate and the conduct must be contumacious. In the instant case, as the order itself was not to the knowledge of the Respondent No 1, it cannot be said that there was any wilful, deliberate and intentional violation of the order of this Court.

9. Having regard to the discussion above, in my view, the present proceedings are nothing but an abuse of process of law. Considering the conduct of the Petitioner, who on the basis of a Power of Attorney makes a statement before the Court and thereafter without communicating the said order to the other Respondents now alleges contempt of the order, the Petition is liable to be dismissed.

10. Resultantly, the Contempt Petition stands dismissed with cost of Rs. 10,000/- to be paid to the Respondent No. 1 within a period of two weeks from today.

(SHARMILA U. DESHMUKH, J.)