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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO. 153 OF 2024**

Sandeep Sadashiv Deshpande ... Petitioner

Vs.

Madhuri Ram Sabnis and others ... Respondents

Ms. Sonal a/w. Mr. Rohit Gupta, Mr. Virendra Pereira, Mr. Anagh Pradhan and Mr. Anand Iyer i/b. Divya Shah Associates for the Petitioner.

Mr. Amir Arsiwala a/w. Mr. Omprakash Jha i/b. The Law Point for the Respondents.

CORAM : GAURI GODSE, J.

DATE : 1st MARCH 2024

P.C.

1. Heard. This Contempt Petition alleges breach of the assurance/undertaking recorded on behalf of the plaintiff in the roznama dated 28th March 2023 of the City Civil Court suit. The learned counsel for the petitioner submits that though the submission made by the learned Advocate for the plaintiff was recorded in the roznama stating that an assurance was given by the plaintiff to the High Court, that the plaintiff will not carry out amendment until the

matter before the High Court is decided, the Advocate for the plaintiff proceeded to carry out amendment. It is therefore submitted that there is willful breach of the assurance given to the High Court as recorded in the roznama of the City Civil Court.

2. Learned counsel for the petitioner further submits that the assurance which was recorded on 28th March 2023 was on the basis that there was a mediation process going on between the parties, however, the mediation had failed on 13th March 2023. It is further the contention of the petitioner that the order permitting the plaintiff to carry out amendment is challenged before this court in Writ Petition No. 9127 of 2022 and the same is still pending. She thus submits that though the petition is still pending the Advocate for the plaintiff went ahead and carried out amendment on 6th September 2023. She therefore submits that there is a clear and deliberate breach of the assurance given to this court that the amendment will not be carried out till the petition is decided in the High Court. Hence, it is submitted that action for committing contempt of court has to be taken and amendment which is already carried out is required to be undone.

3. Learned counsel appearing for the respondents opposes the

contempt petition and submits that there is no breach of any assurance given to this court. He further submits that though respondents are disputing the interpretation of the assurance and/or statement recorded in the roznama of the City Civil Court, he submits that even if the said statement is accepted to have been made, there is no deliberate breach of any assurance given to this Court or the City Civil Court.

4. He submits that in the Writ Petition filed by the petitioner for challenging the order permitting the plaintiff to carry out the amendment, there was an order passed by this court on 2nd August 2022 granting ad-interim relief based on the statement made on behalf of the plaintiff i.e. respondent in the writ petition that the plaintiff shall not proceed with the suit till the next date of hearing. He states that the next date of hearing was 17th August 2022.

5. He referred to the order of 17th August 2022 and submitted that on that date the matter was simpliciter adjourned by this court and the statement made by respondent-plaintiff was not continued. He submits that in none of the subsequent orders in the writ petition, the statement made on behalf of the plaintiff was continued. He further submits that

before the City Civil Court amendment is carried out on 6th September 2023 pursuant to permission granted by City Civil Court and as recorded in the roznama dated 17th August 2023.

6. He also relied upon the entry made in the roznama before the City Civil Court permitting the respondent-plaintiff to carry out the amendment. He thus submits that in any event, the amendment that is carried out is pursuant to the permission granted by the City Civil Court. Regarding the statement recorded by the Advocate for the plaintiff is concerned, he submits that though it is disputed that any such statement was made, he relied upon further orders passed by this court in the pending writ petition where the statement made on behalf of respondent-plaintiff was never continued.

7. Learned counsel for the respondents further raises a serious objection to making the Advocate for the plaintiff as party respondent in the present petition. He submits that the contents of the contempt petition and the allegation made in the contempt petition amounts to making allegations against the learned Advocate for the plaintiff. He submits that the Advocate for the plaintiff has carried out the amendment pursuant to the permission granted by the City Civil Court.

He submits that none of the orders are challenged by the Contempt Petitioners.

8. He further submits that the Writ Petition challenging the order permitting amendment is not proceeded with by the contempt petitioners and the same is still pending. He thus submits that in the event the contempt petitioner succeeds in their challenge in the pending writ petition, the amendment that is already carried out will be undone. He thus submits that there is no deliberate or willful breach of any order passed by any court or assurance given on behalf of the plaintiff.

9. Perused the record. Considering the submissions made by both parties, it reveals that the allegation in the contempt is regarding the entry made in the roznama on 28th March 2023. The entry in the roznama only records a statement made by the learned Advocate for the plaintiff that the plaintiff has given assurance before the High Court that the amendment will not be carried out until the matter is decided by the High Court.

10. I have perused the orders passed in the Writ Petition challenging

the order allowing amendment by the City Civil Court. Except for the statement recorded on behalf of the respondent-plaintiff on 2nd August 2022, there is no interim relief granted and/or any further statement made on behalf of the respondents. In the order dated 2nd August 2022 the statement recorded on behalf of the respondents states that respondents shall not proceed with the suit till the next date of hearing. Thus, it appears that the statement as recorded in the roznama was not made before this court. It is not in dispute that the parties were referred for mediation however the mediation between the parties has failed. From the perusal of the roznama it appears that the amendment is carried out by the plaintiff according to the permission granted by the City Civil Court. The petition is still pending and hence in the event the contempt petitioner succeeds in the Writ Petition, the amendment that is already carried out will be undone. Hence, I do not see any substance in the argument of the contempt petitioner.

11. In view of the aforesaid, I am of the view that there is no deliberate or willful breach of any order passed or assurance given on behalf of the respondents warranting any action under the Contempt of Courts Act. So far as making the allegation against the learned

Advocate for the plaintiff is concerned, the learned counsel for the petitioner after arguing the petition submitted that the petitioner is willing to withdraw the contempt petition, so far as the Advocate is concerned.

12. In my view making an Advocate a party respondent in the Contempt Petition is not justified. It is unfortunate that an advocate is made a contemnor. When an Advocate makes a statement, it is on behalf of the client. Further as per the instruction of a party once a contempt petition is filed it is a matter between the court and the contemnor. The only role of the petitioner is to assist the court. Therefore, at the whims and fancies of the petitioner, a party cannot be deleted.

13. The contempt petition is devoid of any merits. Hence, for the reasons recorded above, the Contempt Petition is dismissed.

[GAURI GODSE, J.]