



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 174 OF 2023

Balasaheb Genaba Kingare

.....Petitioner

Vs.

Vikram Kumar, Municipal Commissioner
and Ors

.....Respondents

Ms. Kejeshri Thakar a/w Mr. Aadil Parsurampururia a/w Adv. Aalam
Parsurampururia i/b Mr. Aalam Parsurampururia for Respondent Nos. 7
and 8

Mr. Balasaheb Genaba Kingare Party in person
Ms. S. S. Bhende, AGP for the State

CORAM : GAURI GODSE, J.

DATE : 6th FEBRUARY 2024.

P.C.

1. Learned counsel appearing for Respondent Nos. 7 and 8 raise a preliminary objection stating that the Contempt is alleged by the Petitioner of an Order passed in a suit where the said Respondents are not party to the proceedings. The contempt is alleged of an order dated 9th March 2017 passed in Regular Civil Suit No. 442 of 2017.

2. Perusal of the papers indicates that the said order is passed below Exhibit 5 on an application filed in RCS No. 442/2017. The title of the Application at Exhibit 5 is on page 87 which does not reflect that the said Respondents are party to the said proceedings. Copy of the plaint is not annexed to the petition. However, the petitioner who appears in person does not dispute that Respondent Nos. 7 and 8 are not made parties to the Suit. He further states that in the Suit except Municipal Corporation, no other private parties are added as party defendants.

3. In view of the aforesaid, learned counsel for Respondent Nos. 7 and 8 is right in submitting that the Petition will not be maintainable against the said Respondents. Even otherwise the order of which contempt is alleged is passed under the provisions of Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 ('CPC'). Hence, it is always open for the Petitioner to file an appropriate application under Order XXXIX Rule 2A of CPC for the alleged breach of the said order, if any.

4. The Petitioner in person submitted that even though the private

respondents herein are not a party to the suit, the order is binding upon them, and hence, the contempt petition is maintainable. In support of his submissions, he relies upon the following decisions:

- (i) Indra Pasricha Vs. Deepika Chauhan and Ors¹**
- (ii) Priya Gupta and Anr Vs. Addl. Secy., Ministry of Health and Family Welfare and Ors²**
- (iii) Ramada International, INC Vs. La-Ramada World Private Limited and Anr³**
- (iv) Amit Kumar Das, Joint Secretary, Baitanik, a registered society Vs. Shrimati Hutheesingh Tagore Charitable Trust⁴**
- (v) Mary Pushpam Vs. Telvi Curusumary and Ors⁵**

5. By relying upon the aforesaid decisions, he submits that it is a well-settled principle of law in the aforesaid decisions that even if an alternate remedy is available, the Contempt Jurisdiction can be invoked by this Court. He further submits that the parties are making

¹ Cont.Cas@ 768/2018 Delhi High Court

² 2013 AIR SCW 268

³ CS (COMM) 470/2021 Delhi High Court

⁴ Civil Appeal No. 1405 of 2024 Supreme Court

⁵ Civil Appeal No. 9941/2016 Supreme Court

an attempt to affect the order of status-quo granted by the Trial Court in his favour. He therefore submits that in view of the decision of the Hon'ble Supreme Court in the case of ***Amit Kumar Das***, necessary directions be issued to the Trial Court that the status quo should not be affected.

6. So far as the prayers in the petition are concerned, the same is for taking action against the Respondents for committing contempt of order passed in Regular Civil Suit No. 442/2017 on 9th March 2017. The said order is annexed on page 93 of the Petition. By the said order, the parties to the suit were directed to maintain the status quo till the next date. The Petitioner submits that the application for interim relief is pending and the order of status quo is continued from time to time. Petitioner does not dispute that except for Municipal Corporation, no other parties in the present Petition are party Defendants in the Suit. In such circumstances, learned counsel for Respondent Nos. 7 and 8 is right in raising a preliminary objection that the Contempt is misconceived and should not be entertained.

7. Even otherwise, the application for interim relief is still pending in

the trial court for final adjudication. It is always open for the petitioner to invoke the provisions of Order XXXIX Rule 2A of CPC by filing an appropriate Application before the Trial Court where the application for an interim injunction, as well as the Suit, is pending.

8. Though the powers under the Contempt of Courts Act can be invoked, normally this Court should not entertain a Contempt Petition, if there is a remedy available to the party for approaching the Trial Court. In view of the aforesaid facts of the case, the propositions of law laid down in the aforesaid decisions are of no assistance to the petitioner.

9. The Petition is devoid of any merits. However, it is clarified that the Petitioner will always be at liberty to agitate his grievance by filing an appropriate application before the Trial Court where the Interim Application as well as Suit is still pending.

10. For the reasons recorded above the Contempt Petition is dismissed.

[GAURI GODSE, J.]