

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 39 OF 2024

Sanjay Ramdaras Bhagat

...Petitioner

Versus

Hira Panchanan Fadikar & Ors

...Respondents

Mr Mohan B Jadhav, with Pratibha Kharat, for the Petitioner.

Ms Sumandevi Yadav, for Respondents Nos. 1 and 2

CORAM: ARIF S. DOCTOR, J

DATED: 4th December 2024

PC:-

SHEPHALI
SANJAY
MORMARE

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SHEPHALI SANJAY
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Date: 2024.12.05
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1. By the present Contempt Petition, the Petitioner who is the Plaintiff in Sit No 1143 of 20211 alleges a contempt of an order dated 4th December 2023.

2. It is the contention of the Learned Counsel for the Petitioner that the Respondent has acted in willful breach and defiance of the said order by carrying out the construction to the Suit premises, which is Room No. 1, Yusuf Chowksi Compound, Milan Sevasangh Society, Opp Khodiya Mata Temple, Bachani Nagar, Near Children Academy School, Malad (East), Mumbai 400 097. To support of his contention of contempt, Learned Counsel for the Petitioner has first invited my attention to a Commissioner's Report dated 5th November 2011 and pointed out that the same records the Suit structure admeasures 10x23 sq.ft . He then invited my attention to photographs annexed at Exhibit

“K” to the Petition, which are to be found at pages 128 to 131, which he submits are of the Suit structure. The date appearing on some of the photographs is 4th December 2023, 5th December 2023 and on the other is 6th December 2023. It is basis this he submits that the Respondents have committed a contempt of the order of this Court.

3. A perusal of the Affidavit in Reply shows that the Respondents have categorically denied that the photographs pertain to the Suit structure in question. Therefore, I put the Learned Counsel for the Petitioner as to what basis the Court would be able to ascertain (i) that the photographs in fact reflected were of the Suit structure and (ii) on what basis would the Court cannot come to a finding that this construction had taken place after the order, since in the photographs that were shown to the Court, the construction/work appears to have been virtually completed on the dates reflected in the photographs. There was no reply forthcoming other than the fact that the Commissioner in his report had noted the area of Suit structure in question and that the Respondent had only denied the photographs at page 128.

4. Basis what is before me, I find that it is not discernible for the Court in these facts to arrive at a determination that there has been willful breach/defiance of the order dated 4th December 2023.

5. Hence, I find no merit in this Contempt Petition and the same is dismissed. No costs.

(ARIF S. DOCTOR, J)