

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Cont. Petition NO. 221 OF 2024

M/s Haribhai B. Desai ...Petitioner
Versus
Nareshkumar Chhaganlal Rathod ...Respondent

Mr. Pradeep Thorat a/w. Mr. Rushikesh Kekane, Advocate for the Petitioner.

Mr. Nimay Dave a/w. Shiva i/b. Mrinal Mandhawe, Advocate for Respondent No.3.

Mr. Rakesh Singh a/w. Ms. Heena Shikh i/b. M. V. Kini & Co., Advocate for the Air India Engineering Services.

Mr. K. S. Satyavira (Executive Engineer of the Air India Engineering Services)

CORAM RAJESH S. PATIL, J.
DATED: 10 MAY 2024

PC:-

1. This Court on 17 April 2024 has passed following order in this Contempt Petition. The order dated 17 April 2024 reads as under :-

“1. This Contempt Petition is filed by the original landlord thereby submitting that there is willful and deliberate breach of the order dated 8 August 2023

passed by this Court in Civil Revision Application No.232 of 2023 by Respondent No.1.

2. Respondent No.1 Naresh Chhaganlal Rathod is present in Court along with his wife. Pursuant to the order passed by this Court in Civil Revision Application No.232 of 2023 on 8 August 2023, Respondent No.1 along with all adult members of his family viz. his wife and daughter have given an undertaking to this Court that they will vacate the suit premises on or before 31 December 2023.

3. Mr.Thorat appearing for the Petitioners submits that Respondent No.1 did not take any steps till 31 December 2023 and after 31 December 2023, Respondent No.1 filed a Special Leave Petition (SLP) (Civil) No.9296 of 2024, on 27 February 2024, challenging the order passed by this Court on 8 August 2023. The said SLP was dismissed by the Supreme Court on 12 March 2024. However, time to vacate was further extended till 31 March 2024. As of 31 December 2023, Respondent No.1 chose not to vacate the suit premises. Hence, the original landlord has filed the present Contempt Petition.

4. This Contempt Petition was before me on 2 April 2024 and on 5 April 2024. Since Respondent No.1 appeared in person on these dates and submitted that he has already filed Review Petition before the Supreme Court, hence in order to allow Respondent No.1 to pursue his Revision Petition, this Court adjourned the present Contempt Petition to 17 April 2024 i.e. today.

5. Today again Respondent No.1 has appeared in person and submitted to this Court that he has filed Review Petition on 3 April 2024, however, the same has not come upon board. He submits that as per the new policy of the Supreme Court, the Review Petition will automatically come up on board. He submits that since the matter has not come up, this Court should grant him short adjournment. He further submits that

he does not have accommodation to stay in the city of Mumbai and therefore, requires some time to vacate the suit premises. The Contempt Petition is filed on 16 February 2024.

6. According to me, taking into consideration the submissions made by Respondent No.1 and after going through the proceedings, which are before me, I am satisfied that the contempt notice is required to be issued against Respondent No.1. Respondent No.1 is present in Court.

7. Issue show cause notice to Respondent No.1 as to why action should not be taken against Respondent No.1 under the provisions of Contempt of Courts Act, 1971 for willful disobedience of the order dated 8 August 2023. 8. Respondent No.1 is hereby directed to file reply to the contempt notice within one week from today.

9. Stand over to 24 April 2024. The matter to come up on the supplementary board.”

2. Thereafter on 30 April 2024 Mr.Nareshkumar Chhaganlal Rathod Respondent No.1 whose present in the Court. On his submission made by Mr. Nareshkumar Rathod an order was passed by this Court. The order dated 30 April 2024 reads as under :

“Mr.Nareshkumar Rathod, who is present in Court seeks liberty from this Court that he be permitted to reside in the suit premises till the morning of 10 May, 2024. Mr.Rathod has given

an oral undertaking to this Court that on 10 May, 2024, he and his family will vacate the suit flat and will handover the keys of the suit flat to the petitioners (through their advocates).

2. The undertaking given by Mr.Rathod is accepted as an undertaking given to this Court.

3. Matter to come up on Supplementary Board on 10 May, 2024.

4. Mr. Dave, learned counsel appearing for the respondent no.2 (Air India International) submits that Mr.Rathod was employee of Air India Engineering Services Limited. Therefore, his retirement dues will be considered and cleared only by Air India Engineering Services Limited and not by the respondent no.2.

5. Mr.Nareshkumar Rathod submits that he has already made an application and handed over the concerned papers to the Air India Engineering Services Limited. He submits that he has been informed by the Air India Engineering Services Limited that since he has not vacated the suit premises, they are not ready to process his application for retirement dues.

6. The respondent no.1 is permitted to furnish a copy of this order to the Air India Engineering Services Limited.

7. The responsible officer of the Air India Engineering Services Limited to remain present in this Court on 10 May, 2024.”

3. Mr.Singh, learned counsel appearing on behalf of the Air India Engineer Service Limited, (who were the

employers of Mr. Nareshkumar Chhaganlal Rathod) submits that dues of any employees can be cleared as per rules by the employer if the relevant papers and application is made by the retired employee.

4. Mr. Singh submits that as of date Mr. Nareshkumar Chhaganlal Rathod has not taken any steps as needed. Mr. Nareshkumar Chhaganlal Rathod however, disputes this position.

5. Mr. Nareshkumar Chhaganlal Rathod is free to submit the relevant papers to the employer for receiving his retirement benefits. The said documents on the application made by Mr. Rathod, can be considered by employer as per their own service rules and if the said papers are in order then dues can be cleared as early as possible.

6. In the meantime, the suit premises which is Flat No.10, 2nd Floor, Shanti Kunj Building, 15 Road, Khar (w) Bombay-52 should be immediately vacated by the Respondent

No.1 (Nareshkumar Chhaganlal Rathod) along with his family members. If the said flat is not vacated today, the petitioners are permitted to approach the Khar Police Station tomorrow morning and the Senior Police Inspector of Khar Police Station will fully cooperate with the Petitioner in order to push on the respondent No.1 and his family members to vacate from the said premises.

7. Mr. Singh on instructions of Mr. K. S. Satyavira, who is present in the Court and who is executive Director of Air India Engineering Service Limited submits that the retirement benefit of Mr. Rathod in total is Rs.54,00,000/-. Out the said Rs.54,00,000/- a sum of Rs.21,00,000/- towards gratuity and employees contribution to the Provident Fund has already been paid to Mr. Rathod. The balance amount would be processed and as per rules they will be clear it as soon as possible.

8. Stand over to 10 June 2024.

9. All parties to act on authenticated copy of this order.

(RAJESH S. PATIL, J)