

Nikita

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.628 OF 2022

WITH

COURT RECEIVER REPORT NO.14 OF 2023

Shaikh Amjad Ali and Anr. ... Petitioners

Vs.

M.R. Builder and Developer and Ors. ... Respondents

WITH

INTERIM APPLICATION NO.9882 OF 2024

IN

CONTEMPT PETITION NO.628 OF 2022

Mohammed Ali Quereshi ... Applicant

Vs.

Shaikh Amjad Ali ... Respondent

Ms. Bushra Sayed i/b Mr. Nitesh Aacharya, for the Petitioners.

Mr. Gireesh U. G. Menon for Respondent No.1.

Mr. S. K. Dhekale, Court Receiver a/w Ms. Charushila M. Vaidya 2nd
Assistant To Court Receiver.

Mr. D. J. Haldankar, AGP for the State-Respondent.

Mr. Rahul Pol, API, Vakola Police Station, Mumbai, present in the
Court.

CORAM : GAURI GODSE, J.

DATE : 16th JULY 2024

ORDER :

1. Today when the matter was called out in the first session, learned counsel for respondent no.1 submitted that the proprietor of respondent no.1 is unwell and hence, he is unable to attend the Court. The matter was kept back to enable the learned APP to take instructions from the concerned Police Station as to why the earlierailable warrants issued were not executed.

2. Perusal of the record indicates that the police report dated 2nd January 2024 states that the residential house of respondent no.1 was found locked. Hence, the non-bailable warrant was not executed.

3. Learned APP has tendered report dated 3rd January 2024 which states that the respondent no.1 was not found on the given address. The report further, states that son of the proprietor was present at the address and he informed that the proprietor has gone out of town. The report dated 3rd January 2024 is taken on record.

4. Learned counsel for the respondent no.1 submits that thereafter respondent no.1 has remained present before this Court on 3rd January 2024 and the same is recorded in the order dated 3rd January 2024. Learned counsel for the respondent no.1 further tenders a scanned copy of a medical certificate dated 15th July 2024

which states that the respondent no.1 is unwell and is advised to rest at home for five days.

5. Learned counsel for respondent no.1 has also tendered affidavit-cum-undertaking dated 15th July 2024 stating that he shall attend the Court on each and every date of hearing. The affidavit-cum-undertaking is taken on record. There are various orders passed in this contempt petition by recording prima facie finding that the proprietor of the respondent no.1, i.e. Mohammed Ali Quereshi has committed breach of orders passed by this Court as well as the undertaking given to this Court. By order dated 13th January 2023, a prima facie finding was recorded by this Court. Thereafter, again on 1st March 2023, this Court recorded a prima facie finding that respondent no.1 has committed contempt of this Court.

6. As recorded in the order dated 1st March 2023, respondent no.1 was not present in the Court, and a medical certificate was tendered on record. In paragraph no.6 of the order dated 1st March 2023, this Court recorded a prima facie opinion that medical certificate was forged and fabricated. Paragraph No.7 of the order recorded that respondent no.1 has prima facie committed contempt as the cheque of Rs.92,00,000/- and the cheque of Rs. 6,00,000/- were dishonoured. Hence, the respondent no.1 was directed to

remain present on 2nd March 2023.

7. On 2nd March 2023, the respondent, i.e. Mohammed Ali Quereshi, proprietor of respondent no.1 was present. In paragraph no.6 of the said order, this Court recorded undertaking of the proprietor that the balance payment of Rs.82,00,000/- will be paid to the petitioners on or before 30th April 2023.

8. On 23rd June 2023, this Court referred to the earlier orders granting time to respondent no.1 to comply with the undertaking. The relevant portions of the earlier orders were reproduced in the order. In paragraph no.7 of the order dated 23rd June 2023, this Court recorded that the various earlier orders clearly stated that proprietor of respondent no.1 i.e. Mohammed Ali Quereshi has prima facie committed contempt of this Court and further committed breach of the orders passed in the contempt petition and, therefore, prima facie, he has also aggravated the contempt.

9. Paragraph No.8 of order dated 23rd June 2023 referred to an affidavit-cum-undertaking dated 23rd June 2023 which provided the details of the unsold flats in the building constructed by respondent no.1. This Court therefore, for ensuring compliance of the orders passed by this Court, appointed Court Receiver for taking possession of six flats as recorded in the said order dated 23rd June

2023. The Court Receiver was directed to take possession of the said flats.

10. The Court Receiver's Report No.14 of 2023, is placed on record. The said report records that physical possession of the flat nos.101, 102, and 103 on the first floor is taken and a board is affixed on the said flats. The report further records that flat nos. 201, 202, 203 on the second floor of A-1 "Emperor Court" were under construction. Since, there were no walls and there was only slab on third floor, physical possession of the said flats could not be taken. The said report further seeks directions for further steps to be taken for flat nos. 201, 202, and 203.

11. On 5th July 2023, respondent no.1 had requested for time to file reply to the Court Receiver's Report. On 10th July 2023. submissions were made on behalf of respondent no.1 that the deficiencies pointed out in the Court Receiver's Report with respect to flats shall be complied with within one week.

12. Thereafter on 17th July 2023, submissions made on behalf of respondent no.1 were recorded stating that the balance construction with respect to all the flats mentioned in paragraph no.8 of order dated 23rd June 2023 shall be completed on or before 24th July 2023.

13. Thereafter, on 25th July 2023, it was recorded that respondent no.1 had filed an affidavit dated 25th July 2023 seeking 10 days extension to comply with the deficiencies pointed out by the Court Receiver in report dated 28th June 2023. The said order further recorded that in the affidavit, respondent no.1 also stated that he has handed over a Banker's cheque dated 24th July 2023 for an amount of Rs.8,00,000/- to the petitioners. Learned counsel for the petitioners had submitted that the said cheque would be accepted without prejudice to the rights and contentions of the petitioner.

14. Thereafter, on 8th August 2023, the statement was made on behalf of respondent no.1 that he would make payment of Rs.15,00,000/- by way of cheque dated 7th August 2023. The said cheque was accepted by the petitioner without prejudice to the rights and contentions. On 8th August 2023, time was sought on behalf of respondent no.1 for further 10 days for complying with the deficiencies in the flats as recorded in the Court Receiver's Report dated 28th June 2023. Accordingly, by order 8th August 2023, 10 days time was granted to comply with the said deficiencies.

15. On 30th October 2023, this Court recorded that in spite of extending the time to pay the balance amount, respondent no.1 had not paid the balance amount. It was thus, recorded that the

respondent no.1 has committed breach of the undertaking given in paragraph 6(d). Hence, by way of last indulgence and final opportunity, one week time was granted to pay the balance amount.

16. On 6th November 2023, respondent No.1 had handed over a cheque for an amount of Rs.9,50,000/- and placed on record a schedule of payment of the balance amount. As per the scheduled placed on record, respondent no.1 had agreed to pay Rs.5,50,000/-. On 7th November 2023 a statement was recorded that an amount of Rs.5,50,000/- was transferred to the account of the petitioner no. 1.

17. By order dated 4th December 2023, the statement made in the form of an undertaking of respondent No.1 was accepted that he would pay the balance amount within two weeks from the date of the order. This Court accepted the statement made on behalf of respondent no.1 and directed respondent no.1 to remain present in this Court on 18th December 2023. Order dated 4th December 2023 further recorded that if the contemnor i.e. respondent no.1 failed to pay the entire amount before the next date, the same would be considered as aggravated contempt and appropriate orders would be passed on the next date.

18. On 18th December 2023, respondent no.1 had failed to remain present. Hence, non-bailable warrant was issued and the matter

was posted on 22nd December 2023. Since, the non-bailable warrant was not executed, this Court had issued a fresh non-bailable warrant on 22nd December 2023 and made it returnable on 2nd January 2024.

19. On 3rd January 2024, respondent no.1 remained personally present before the Court. The order passed on 3rd January 2024 reads as under:

“1. The Contempt Petition is moved today at the instance of Respondent No.1.

2. The learned Counsel appearing for Respondent No.1 would submit that Respondent No.1 is personally present before the Court and that the non-bailable warrant be not executed.

3. Upon being enquired as to whether Respondent No.1 has paid the balance amount to the Petitioner as agreed before this Court repeatedly, the learned Counsel appearing for Respondent No.1 would admit that the balance amount has not yet been paid. Thus breach of order of this Court is virtually admitted.

4. List the Contempt Petition for taking further necessary action against Respondent No.1 on 18 January 2024.”

20. A perusal of the above referred orders, clearly records that respondent no.1 has committed breach of the orders passed by this

Court.

21. On 27th February 2024, the matter was adjourned at the request of the respondent. On the adjourned date of 7th March 2024, the matter did not reach and the next date was assigned as 26th April 2024.

22. Thereafter, the matter was called out on 2nd July 2024, however, none appeared for the respondent. Hence, contempt petition was directed to be listed on 15th July 2024.

23. On 15th July 2024, following order was passed:

“1. This contempt petition was kept back today to enable the respondent to remain present.

2. Learned counsel for the respondent No.1 submitted that the proprietor of respondent No.1 was present, however he had to leave the Court as he is unwell.

3. Hence, list the contempt petition on 16th July 2024, at 11.00 a.m.”

24. Today, the respondent no.1 is again not present on the ground that he is unwell. In the aforesaid events, prima facie, I am of the opinion that the respondent no.1 has committed the contempt of order dated 24th September 2021 by which the second appeal was disposed of in terms of the consent terms dated 24th September

2021. In view of the aforesaid, I am also of the prima facie opinion that respondent no.1 i.e. Mohammed Ali Quereshi has committed breach of orders dated 2nd March 2023, 23rd June 2023, 17th July 2023, 8th August 2023 and 4th December 2023.

25. Learned counsel for the respondent no.1 submits that following is the residential as well as office address and telephone number of respondent no.1.

1) Residential Address :

Room No. 7/8, Fatima Manzil Building, Near Kalina zama Masjid, Kolaveri Village Road, Kalina, Santacruz (West).

2) Office Address :

M.R. Builders and Developer, Fatima Manzil, Kolaveri Village Road, Kalina, Santacruz (E), Mumbai, 400098.

3) Mobile No:- 9920711313

26. Learned APP on instructions of the concerned Police Officer present in Court submits that both the aforesaid address of respondent no.1 are correct.

27. Office is directed to issue notice to respondent no.1 i.e. Mohammed Ali Quereshi as per Rule 9 of the Contempt of Courts (Bombay High Court) Rules, 1994. The notice is made returnable on **20th August 2024**. The contempt petition shall be listed High on

board.

28. As per the consent terms, respondent no.1 had agreed to pay an amount of Rs.92,00,000/- on or before 10th February 2022. However, till the date, respondent No.1 has paid only an amount to the tune of Rs.48,00,000/-.

29. As per the affidavit filed by respondent no.1, six flats were said to have been unsold. However, as per the Court Receiver's Report possession of only three flats on the first floor could be taken as the three flats on the second floor are under construction. The Court Receiver's Report dated **20th June 2023** records that only slab of third floor was constructed. The flats on the second floor could not be identified for taking physical possession.

30. Learned counsel for the respondent no.1 submits that on 18th July 2024 an affidavit shall be filed placing on record the status report of the A, A-1 of Emperor Court Building. The respondent no.1 shall also disclose the assets standing in the name of respondent no.1 and its proprietor, including the status of property with regard to aforesaid residential address and office address provided by learned counsel for respondent no.1.

31. List the contempt petition on 18th July 2024 at 2.30 p.m. for passing further directions on the Court Receivers Report.

32. Since, the respondent no.1 has failed to remain present, the non-bailable warrant issued earlier which is still not executed shall be executed to secure the presence of respondent no.1 on 18th July 2024.

[GAURI GODSE, J.]