



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CONTEMPT PETITION NO. 295 OF 2024
IN
APPEAL AGAINST ORDER NO. 47 OF 2017 (D)

Rajendra s/o Rahtoomal Jain

Vs.

Smt. Preeti w/o Pankaj Bhansali and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Ms. Anu Monga, Advocate a/w Mr. Shobhit Sharma & Mr.
Parth Malviya, Advocate for petitioner.
Mr. M.G. Bhangde, Senior Advocate a/by Mr. A.G. Baheti,
Advocate for respondent Nos.1 & 2.

CORAM : N.R. BORKAR, J.

DATE : 28.11.2024.

The petitioner herein has filed the suit
inter alia for declaration and injunction. The trial
Court by order dated 02.01.2017 granted temporary
injunction in favour of the petitioner in following
terms:

*"1) Application (Exh. 5) is allowed in following
terms :*

*(i) Defendants are hereby restrained
temporarily till the disposal of the suit from
creating any sort of third party interest in the
suit property.*

(ii) Defendants are further restrained temporarily till the disposal of the suit from causing any sort of obstruction in ingress and egress of the plaintiff to the common area to the second floor of the suit property.

(iii) Defendants are also restrained temporarily till the disposal of the suit from causing any sort of damage to the structure standing on the suit property.

2) Costs in cause.”

2. Being aggrieved by the order passed by the trial Court, the appeal was filed before this Court. This Court by order dated 13.03.2019 party allowed the said appeal in the following terms:

“10. Hence, for aforesaid reasons, Direction No.(i) in the impugned order dated 02.01.2017 passed below Exhibit 5 is set aside. Direction Nos.(ii) and (iii) in the impugned order shall continue to operate. Any third party rights created by the defendants during the pendency of the suit would be subject to final outcome of the suit and the defendants shall not claim any equities in that regard. Needless to state that observations made are prima faice in nature and the suit would be adjudicated on its own merits uninfluenced by the same.”

3. The present petition is filed alleging the willful disobedience of the above orders by the respondents/contemnors.

4. The respondents/contemnors are not the party to the suit. The present contempt petition is filed against them on the basis of the following allegations :

“i) That somewhere in May of 2024, the petitioner came to know that the Defendants in Civil Suit are intending to create third party interest in the Suit Property premises to subsequent purchase/transferee viz. Contemnors herein. In that regard, the Contemnors got issued a public notice dated 15.05.2024 through their advocate namely ‘Dipen S. Jagyasi” stating that they are intending to purchase the first floor and ground floor of the Suit Property (from Defendant Nos.1-3 in the Civil Suit) and sought the objection if any, from general public with respect to the same.

j) In view of the afore-mentioned notice dated 15.05.2024, the Petitioner sent a Reply to public notice raising the objection against transfer of Suit Property and also brought to the notice of the Contemnors about the pending Civil Suit with respect to the ownership of the Suit Property.

k) That surprisingly the Defendant Nos.1-3 in Civil Suit entered into an agreement to sale with Contemnors and subsequently transferred the Suit Property by way of a sale deed dated 07.06.2024. Copy of the Sale Deed dated 07.06.2024 executed

*in favour of Contemnors is annexed here with as **Annexure P-7.***

l) On the strength of above sale deed, the Contemnors started carrying out structural changes/demolition/construction alteration activity in the Suit Property in utter disregard to the Appeal Order and the Injunction Order. The Contemnors has caused various alterations to the structure of the Suit Property such as demolished the common well & Petitioner's garage, demolition of Petitioner's Portico, demolition of internal walls, fresh encroachment/new construction in front of the common area thereby completely damaging the structure of the Suit Property.

m. When it came to the knowledge of the Petitioner that the Contemnors have started carrying out structural changes/damaging the Suit Property, the Petitioner, (through its counsel) sent a Legal Notice dated 12.09.2024 (through WhatsApp on 24.09.2024) and also through Speed Post as well as Courier (to their addresses mentioned in their Aadhar Card as well as in the Sale Deed dated 07.06.2024. It is submitted that the Contemnors intentionally tried to avoid service even when the same was sent to the correct address and also refused to take delivery of the courier sent to them. However, the said Legal Notice was duly served on Contemnors through the WhatsApp on 24.09.2024 and therefore, the continuing demolition activity/structural changes being carried out by Contemnors is clearly in willful breach and willful disobedience of the Appeal Order as well as Injunction Order. Screenshots of WhatsApp dated 24.09.2024 showing service of Legal Notice done on

*Contemnors are Annexed hereto as **Annexure P-8 Colly.***

5. In respect of the above allegation, the respondents/contemnors in their affidavit-in-reply stated thus :

“II. The respondents have purchased the ground floor and first floor of the suit building with 83.23% undivided interest in the land on which the suit building is standing by registered sale deed dated 07.06.2024 from its owners for a total sum of Rs.7,35,00,000/- and have been put in possession of the property purchased on the same day. The suit property is more than 60 years old. The respondents therefore decided to renovate ground floor and first floor of the suit property which they have purchased. Accordingly, on and from 15.06.2024, the respondents have started the work of renovation. The respondents have removed wooden partitions on the ground as well as first floor. They have constructed one wall vertically dividing the ground floor and first floor into two parts. The front wall on the ground floor as well as the first floor has been demolished and it is replaced by two rolling shutters. Some minor changes have been done both on ground floor and first floor. In this process, the porch (only slab resting on two pillars) hanging between ground floor and first floor that had become dilapidated has been removed. However, no column or beam has even been touched. No structural change has been made. In this process of renovation, the respondents have not caused any damage whatsoever, to the suit property. The respondents submit that, there was no common well

and no garage. So the question of demolition thereof does not arise. The portico which the petitioner has referred to is in existence and it has access from the staircase. Apart from the above, the respondents have repaired and plastered the parapet wall on the terrace. All these activities have been carried on by the respondents on and from 15.06.2024 till 24.09.2024 when they came to know about the injunction order for the first time, as stated above. On and from 25.09.2024, except some minor internal work, no other activity has been undertaken on the suit property by the respondents. Further, after receipt of private notice, of the instant contempt petition, on 11.10.2024, the respondents have totally stopped the activities which they were carrying on the suit property.”

6. By order dated 10.10.2024, this Court directed the respondents/contemnors to maintain *status-quo*.

7. During the course of hearing of the present petition, the respondents/contemnors showed their willingness to file application before the trial Court seeking appropriate relief.

8. Considering the overall facts and circumstances, the following order is passed :

ORDER

(i) The petitioner shall implead the respondents/contemnors as party defendants to the Suit.

(ii) The respondents/contemnors shall file the application before the trial Court seeking appropriate relief within a period of one week from today.

(iii) If such an application is filed, the trial Court shall decide it on its own merits, without being influenced by the order passed by this Court dated 10.10.2024 or the fact that order of *status quo* was passed.

(iv) The trial Court shall endeavour to decide the application within four weeks from the date of filing of such application and if needed shall prepone the date in the suit.

(v) The order of *status quo* passed by this Court dated 10.10.2024 shall remain in operation till the decision of the application.

9. The contempt petition is disposed of in the aforesaid terms.

(N.R. BORKAR, J.)