

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT APPEAL NO.2 OF 2018
IN
CONTEMPT PETITION NO.488 OF 2014

Shirish Ratilal Shah & Anr. ...Appellants

Versus

Smt. Padmavati Shantilal Shah
Alias Smt. Padmavati Rasiklal Shah ...Respondent

WITH
INTERIM APPLICATION NO.7676 OF 2024
IN
CONTEMPT APPEAL NO.2 OF 2018

Aashish Ratilal Shah ...Applicant

IN THE MATTER BETWEEN:-

Shirish Shah (Since Deceased through Lrs.)
Kalpana Shirish Shah & Ors. ...Appellants

Versus

Smt. Padmavati Shantilal Shah
(Since Deceased through Legal Heirs)
Santosh Rashiklal Shah ...Respondent

Adv. Kayval P. Shah, for the Appellants.
None for the Respondent.

CORAM : SUMAN SHYAM &
SHYAM C. CHANDAK, JJ.
DATED : 21st APRIL, 2026

P.C. :-

1) Heard Mr. Shah, learned Counsel for the Appellants. None has appeared for the Respondent.

2) This Contempt Appeal has been filed under Section 19 of The Contempt of Courts Act, 1971 against the Order dated 14th February, 2018

passed by the learned Single Judge in Contempt Petition No.488 of 2014 whereby, the contempt proceeding was disposed of by imposing a fine of Rs.1000/- on the Original Respondent viz. Smt. Padmavati Shantilal Shah @ Smt. Padmavati Rasiklal Shah (since deceased).

3) The brief factual backdrop of the case, as projected through record of this case, is that the Appellants herein and Padmavati Shantilal Shah, along with some others, were involved in a property dispute pertaining to contested claims of undivided shares in the property in question leading to institution of Special Civil Suit No.547 of 1993. Aggrieved by an Order passed in the Special Civil Suit No.547 of 1993, Appeal No.776 of 1994 was preferred by the aggrieved party. However, the matter was amicably settled by and between the parties based on the Consent Terms filed in the Appeal which resulted in the Minutes of Order dated 26th July, 1994. As per the projections made by the Appellants, Smt. Padmavati Shantilal Shah, during her lifetime, was also one of the signatory to the Minutes of Order dated 26th July, 1994, although she was not represented by her counsel at the relevant point of time. While accepting the Minutes of the Order and the undertaking given by the parties, an Order of injunction was passed by this Court restraining the parties from encumbering or in any manner, alienating the properties involved in Special Civil Suit No.547 of 1993 including the properties mentioned in Schedule 8 of the written statement filed by the Defendant No.1 till passing of Award

except the properties enumerated in Schedule I and II of the Regular Civil Suit No.46 of 1946. However, according to the Appellants, despite the undertaking given by the parties, as recorded in the Minutes of Order dated 26th July 1994, Smt. Padmavati Shantilal Shah @ Padmavati Rasiklal Shah, sold her two properties bearing Survey Nos.3282A and 3283B by executing registered Deeds of Sale on 22nd April, 2013, thus, acting in breach of the Order of injunction operating in the case. As such, the present Appellants had instituted Contempt proceeding before the learned Single Judge which was numbered and registered as Contempt Petition No.488 of 2014. After hearing the parties, the learned Single Judge, by the Order dated 14th February 2018, had disposed of the contempt case by imposing fine of Rs.1000/-upon the Respondent. The operative part of the Order dated 14th February, 2018 would be relevant and therefore, it is being reproduced hereinbelow for ready reference:-

“9. The learned counsel for the respondent has submitted that the contemnor is 94 years old lady and therefore, she was not aware of such proceeding. Her affidavit dated 9th February, 2017 shows her age as 94 years so as on today, as per the affidavit, she is 95 years old. However, in her will, which was executed on 21st January, 2009, she has stated her age as 80 years, so considering that, as on today, she might be 89 to 90 years old. In the said affidavit, she repeated that she was not aware of the contents in the Minutes of Order and the interim order was passed in the suit and she never appeared in the Appeal and was not aware of the proceedings in the High Court and before the trial Court. However, all these submissions appear false. The contemnor though is a party to the earlier suit and so

also she has sold the property of her share, her son appears to be the one who in fact is responsible for the breach of the order of this Court. He brought his old mother in the court before me. The lady is in the position to stand or walk but was taking all the commands of her son. I have no doubt that her son, who is hiding behind her, sold the property for his own benefit which is objectionable, as sold the property for his own benefit which is objectionable, as the order of the Court is in force. However, he was never a party to the suit and in proceedings, therefore, no order can be passed against him. The fact of selling of suit land for Rs.46 lakhs on 22nd April, 2013 to one Amrut builders is admitted. There is no evidence to show that in 2013 she was mentally unfit to understand that she has committed breach of the order of this Court of which she was not aware at least since 2009. Therefore, I hold that the respondent has committed contempt and hence liable to pay fine of Rs.1,000/- which is to be deposited within two weeks from today.”

4) After the disposal of the Contempt Petition, the present Appeal has been filed by the Contempt Petitioners alleging that although the son of the Respondent was held to be the actual contemnor and notwithstanding the fact that the learned Single Judge has held that the Respondent was guilty of committing contempt of court, thereby imposed a fine of Rs.1000/-, yet, the sale deeds executed by the Respondent on 22nd April, 2013 in violation of the Order of injunction, have not been set aside by the learned Single Judge. Aggrieved thereby, the present Appeal has been instituted by the original Contempt Petitioners.

5) It has been brought to our notice that during the pendency of the Contempt Appeal, the original Respondent namely Smt. Padmavati

Shantilal Shah @ Padmavati Rasiklal Shah has expired. Therefore, there is also an Application for substituting the deceased Respondent by bringing on record her legal heir i.e. her son.

6) Mr. Shah, learned Counsel for the Appellants submits that in view of the findings recorded in the Order dated 14th February 2018, it was incumbent upon the learned Single Judge to set aside the registered Deeds of Sale. However, since the learned Single Judge has failed to do so, the Appellants have been compelled to approach this Court by filing the present Appeal.

7) At the outset, it must be noted herein that an Appeal under Section 19 of the Contempt of Courts Act, 1971 would lie only against an Order passed by the Single Judge imposing penalty/punishment for contempt and not otherwise. In the present case, although some penalty was imposed by the learned Single Judge upon the original Respondent/Contemnor, yet, the said party has not preferred any Appeal. Rather, it is the Petitioners in the Contempt Petition who have preferred this Appeal, that too, seeking reliefs which in our view, would clearly lie within the domain of the Civil Court. In other words, since the Order dated 14th February, 2018 was passed in the contempt proceeding imposing penalty on the respondent, it is not permissible for the present Appellants to institute the present Appeal under Section 19 of The Contempt of Courts Act, 1971 since no adverse Order was passed against them by the learned Single

Judge. As such, this Appeal is held to be not maintainable in law.

8) Besides, it must also be noted herein that even assuming that there was willful violation of the Order of injunction passed by the learned Civil Court, even then, the said aspect of the matter, in our opinion, would clearly fall within the domain of Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 wherein adequate remedial measures are provided under the code for breach of an Order of injunction. However, instead of availing such remedy, the Appellants have instituted the Appeal under the Contempt of Courts Act, 1971 although the civil suit is admittedly pending before the Civil Court.

9) Since the grievance of the Appellants is with regard to the execution of the registered Deeds of Sale, there was nothing preventing them from making such a prayer before the Civil Court for setting aside these Sale Deeds. However, the same has not been done. Instead, the present Appeal has been filed.

10) In view of the above, we are of the view that this Contempt Appeal is not maintainable in the eyes of law. The same is accordingly dismissed. The Appellants would, however, be at liberty to avail appropriate legal remedy in the matter, as may be permissible under the law. Consequently, the Application for substitution of legal heir of the Respondent also stands disposed of.

(SHYAM C. CHANDAK, J.)

(SUMAN SHYAM, J.)