

(1991) 11 BOM CK 0011

In the Bombay High Court

Case No : Contempt Petition No. 85 of 1986

Bhagirathibai (since deceased) by the Executors of her will	APPELLANT
Vs	
Om Prakash Bodhraj Kohli and Others	RESPONDENT

Date of Decision : 14-11-1991

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 15A
Contempt of Courts Act, 1971 — Section 22

Citation : (1991) 4 BomCR 296

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : Ajit P. Shah and R.R. Pandit, for the Appellant; M.A. Rane, O.A. Kaveria and Bharat Mehta for respondent Nos. 1 and 2 and D.T. Palekar, A.G.P. for the respondent No. 3, for the Respondent

Judgement

S.M. Daud, J.—This is a petition accusing the 1st and 2nd respondents, herein after described as "judgment-debtors", of having committed contempt of Court and thereby rendered themselves liable to be dealt with in accordance with the law for that lapse.

2. The original petitioner Bhagirathibai, now represented by the executors appointed under her will, was the widow of Nagesh Prabhu. This Nagesh had allowed judgment-debtors No. 1 to use and occupy premises described with sufficient precision in para 2 of the petition. The transaction was regulated by a document dated 28-11-1964 styled as an agreement of leave and licence. Nagesh alongwith his son Pundalik filed a suit against judgment-debtor No. 1, the said suit being Suit No. 4264 for 1966 in the City Civil Court at Bombay. This was a suit for possession of the suit premises the right accruing to plaintiff on account of various breaches of the agreement having been committed by judgment-debtor No. 1. To that suit judgment-debtor No. 2 was impleaded and on 17-6-1971 parties submitted consent terms and solicited a decree in terms of the said consent terms. the salivation was acceded to by the learned Judge hearing the suit. Some of the terms constituting the decree need to be set out

and they read thus:-

"1) Agreed and declared that the defendants are the Licensees of the plaintiffs in respect of the suit premises and except that of mere licence to use and occupy the suit premises the defendants have no right, title or interest to or in the suit premises.

2) By consent decree as prayed in terms of prayer (a) of the plaint.

3) Agreed that subject to the provisions hereinafter appearing, decree not to be executed for a period of 15 (fifteen) years i.e. from the date of filing of this consent terms till 17th June, 1986.

8) The defendants agree and hereby undertake to this Honourable Court to hand over peaceful and vacant possession of the suit premises.....to the plaintiffs or to their heirs and legal representatives on the expiry of the aforesaid period of 15 (fifteen) years or earlier as per the provisions of these consent terms."

On 15th or 16th June, 1986, i.e., a day or two prior to the dead line prescribed by the compromise decree, the judgment-debtors filed a suit against Bhagirathibai and Pundalik in the Small Causes Court at Bombay. That suit was registered as Declaratory Suit No. 3020 of 1986. Shortly stated, the reliefs claimed in that suit were a declaration that the judgment-debtors were in possession and occupation of the suit premises as licensees as from 1-2-1973 and onwards, that they had attained the status of protected licensees and/or deemed tenants, that the decree passed in Suit No. 4264 of 1966 had become unexecutable and inoperative by virtue of section 15-A of the Bombay Rent Act, and, that Bhagirathibai and Pundalik had no right to execute the decree passed in Suit No. 4264 of 1966. Alongside the institution of the suit, the judgment-debtors moved an interim notice to restrain Bhagirathibai and Pundalik from executing the decree passed in the 1966 suit. The interim notice was contested by Bhagirathibai and Pundalik, their stand being that the suit instituted by the judgment-debtors was false and vexatious and a belated attempt to go behind the decree passed against them. The judgment-debtors prayer was acceded to and it was ordered that Bhagirathibai and Pundalik would not put into execution the decree in the 1966 suit. An appeal questioning the correctness of the decision in the Interim Notice bearing No. 288 of 987 is pending before the appellate Bench of the Small Causes Court at Bombay.

3. Petitioners" case in the instant petition is that the judgment-debtors had committed contempt by seeking to go back on the undertaking furnished by them and accepted by the Court in the 1966 suit. This was proved by the institution of the 1986 suit just a day or two prior to the expiry of the deadline within which the judgment-debtors had to deliver vacant possession of the suit premises. This was an abuse of the process of the court and filing of the suit was a mere camouflage to disguise dishonesty and bad-faith.. The judgment debtors deserved to be punished by being detained in civil prison and also by attachment of their properties. This stand was refuted by the judgment-debtors who

maintained that the 1986 suit was the prosecution of bona fide claim being honestly prosecuted. The consent terms themselves continued a leave and licence agreement and the said continuance attracted Maharashtra Act XVII of 1973. Judgment-debtors became protected vide section 15-A. Taking advantage of legislation designed to protect occupants could never be construed as an act of contumacy inviting retribution under the Contempt of Court Act, 1971. Judgment-debtors had no desire and never intended to disobey or commit any breach of the undertaking given to Court. In the event this court held otherwise, the judgment-debtors tendered an unconditional apology which be accepted.

4. Mr. Shah representing petitioners contends that consent terms make it clear that the judgment-debtors were to be subject to a decree for eviction but that the said decree was not to be executed till 17-6-1986- subject of course to the observance of certain liabilities imposed upon them by the said terms. Read as a whole, the consent terms made it clear that judgment debtors were in occupation of the suit premises without possessing any right or interest therein. On the expiry of stipulated 15 years, they had undertaken to hand over peaceful and vacant possession of the premises. It was only when the dead-line was to expire that they came forth with the frivolous 1986 suit. On merits they had no claim whatsoever and to fortify this permission Nagji Vallabhji and Company Vs. Meghji Vijpar and Company and Another, ; and Narendra v. Jethalal 80 Bom.L.R. 196. Mr. Rane answers this by stating that the merits of the claim incorporated in the 1986 suit is something which will have to be appraised by the Court seized of that litigation. It will not be open to this Court dealing with the contempt petition to go into the correctness or otherwise. Of course Mr. Rane does not concede that the authorities relied upon by Mr. Shah demonstrate the non-maintainability of the 1986 suit. I agree that the better and perhaps the more appropriate forum for ruling upon the maintainability or otherwise of the claim incorporated in the 1986 suit is the court dealing with the matter. That however does mean that the Court dealing with the contempt petition is entirely stripped of the jurisdiction to look into the tenability aspect so as to rule upon the issue of contumacy or otherwise. The mere fact that the suit has been filed and has been entertained by the court having jurisdiction does not conclude the issue of tenability. I will therefore, look into the issue of the maintainability of the 1986 suit and this, for the limited purpose of finding out whether the filing of such a suit is enough to save the judgment-debtors from the stigma of having committed contempt of Court. The judgment-debtors in the 1986 suit take the stand that Maharashtra Act XVII of 1973 has conferred upon them a protection which is embodied in section 15-A of the Rent Act. They were given 15 years under the consent terms to deliver vacant and peaceful possession of the premises to the decree-holders. An intervening legislation broadened their rights and instead of being in occupation at sufferance, they became occupants with a statutory right. Mr. Shah says that this stand of the judgment-debtors is unacceptable to the decision in Narendra's case (supra) to fortify his submission. The relevant observations in that case, quoted from the head-notes, read as follows:--

"In order to claim protection as tenants u/s 15-A of the Bombay Rent Act, the appellants must be licensees under a subsisting licence on February 1, 1973 in respect of "premises" as defined in the ActTo be considered as a "licensee", it must be established that the person in occupation was in such occupation under a subsisting agreement or licence.....The provisions of section 15-A are prospective as from February 1, 1973. On the plain terms of section 15-A, there is nothing to show that it was intended to override any decree for possession which might have been passed prior to its coming into force.... A compromise decree between parties is something more than contract. Although certain consequences which may result from a contract might also result from a consent decree, nevertheless a consent decree passed by a Court on the basis of a compromise between the parties cannot be equated with a contract, but must be regarded as something more than a contract. The mere use of the word "contract" in the non-obstante clause in section 15-A of the Bombay Rent Act is not enough to override a consent decree which provides for possession being handed over. The operative part of section 15-A of the Bombay Rent Act read apart from the non-obstante clause does affect the execution of the decree for possession passed before the provisions of section 15-A came into force..... Once a decree for possession is passed in favour of the respondents they acquire a vested right to recover possession under it and an intention to interfere with such a vested right cannot be inferred except if the words of section 15-A clearly show an intention to override the provisions of a decree or order of a Court."

These observations clearly support the stand taken by Mr. Shah, and, if applied to the facts of the present case, leave no manner of doubt that there is no substance whatsoever in 1986 suit instituted by the judgment-debtors. Faced with this position, Mr. Rane took the stand that quite a number of observations relied upon by Mr. Shah are misleading vis-a-vis the ratio of the case or are in any case obiter. It is not possible to agree with this submission. The Appellant before the Division Bench had come up against the dismissal of a Chamber Summons taken out for being relieved of certain undertakings given by him under a consent decree and for stay of all proceedings in execution of the said consent decree. The judgment-debtors are doing that precisely though they have availed of a suit for that purpose. Next, the appellant had relied upon section 15-A read in conjunction with the consent terms as nullifying the effect of the consent decree. In the present case, the judgment-debtors also take the same stand viz., that the consent terms continued a leave and licence agreement which have attracted the statutory protection conferred upon licensees vide Maharashtra Act XVII of 1973. Therefore, what fell for consideration before the appellate Court in Narendra's case (supra) was the stand taken by the appellant there which stands are identical to those advanced by the judgment-debtors in the 1986 suit. All these stands taken by the appellants were considered and answered by the appellate Court. It cannot therefore be correct to say that the appeal was disposed of on the basis of a finding recorded on one particular issue. True, the Division Bench did observe that the "premises" figuring in the appeal

before them were not "premises" within the meaning of that expression occurring in the Bombay Rent Act. But other issues such as the meaning and scope of the consent terms plus the applicability or otherwise of section 15A were also in issue. On these contentions the parties argued at length and the arguments were considered in detail and found against the appellants. Therefore, all the findings on the issues raised before the appellate Court would constitute the ratio decidendi.. Thus considered, it has to be held that the decision in Narendra's case establishes the untenability of the claim incorporated by the judgment-debtors in the 1986 suit. Indeed not go into the decisions for Narendra's case concluded the issue vis-a-vis substance or otherwise of the claim put forth by the judgment-debtors in the 1986 suit.

5. The next question is whether the prosecution of a claim can by itself constitute contempt. In the Contempt of Courts Act, 1971, "civil contempt" has been defined as "willful disobedience to any judgment, decree, direction, order writ or other process of a Court or wilful breach of an undertaking given to a Court." The core issue is whether the judgment-debtors by filing the 1986 suit or by not vacating the premises as stipulated by the undertaking have committed a "wilful breach." Mr. Shah wants me to answer this issue in the affirmative. He relies upon the decisions reported in *Gour Gopal Dutt and Others Vs. Sm. Shantilata Mitra and Others*, and *Bajranglal Gangadhar Khemka v. Kapurchand* 52 Bom. L.R. 363. In *Bajranglal's* case (supra) it was held that an undertaking given to a Court can be enforced by the court by proper committal, proceedings. The matter was considered at greater length in the Calcutta decision and there the distinction between the rights of the parties as distinct from the obligations of litigants to courts were dilated upon. Said the learned Judge:--

"Now the execution of a decree is between the parties, that is, between the judgment creditor and the judgment-debtor. But an undertaking to Court is a matter between the Court and the person who gives the undertaking to Court and they are entirely different and separate."

Mr. Rane content that there is some substance in the claim put forth by the judgment-debtors for otherwise they could not have obtained the interim injunction in the Interim Notice No. 3758 of 1986. To fortify his stand, learned Counsel relies upon *K.J. Pathare v. S.J. Pathare* 73 Bom.L.R. 616. That case arose out of a breach of an undertaking to pay or deposit money. A breach having taken place, proceedings for contempt were initiated and the contemnor pleaded lack of money to comply with the undertaking given by him. It was in this context that the Division Bench held that breach of an undertaking to pay or deposit money did not amount to contempt of Court per se. What had further to be established was that the alleged contemnor at the time of the undertaking's being carried out, had the means to pay the amount in question, but had wilfully or contumaciously refused to pay the same. Here there was no law forbidding the judgment-debtors from honestly complying with the undertaking given by them in the 1986 suit. The 1986 suit filed by them was merely to take advantage of

what they believed to be a legislative change in their favour. That is the maximum that can be said in favour of the judgment-debtors. Even that would be an ideal pretence having regard to the binding decision of this Court in Narendra's case (supra). That was a decision given on 30-10-1974 and reported in the year 1978. Therefore, in the year 1986 the judgment-debtors had no justification for pretending that they had a legitimate claim which could be the subject of a bona fide suit. Another indication pointing to the lack of bona fides is the date chosen for the presentation of the plaint. They enjoyed the full 15 years period though the statutory enactment said to favour the stand taken by them had come into existence as far back as on 1st February, 1973. Had they taken any steps at that time, the Prabhu would have taken immediate steps to get them evicted from the premises. Advantage was sought to be taken of the Maharashtra Act XVII of 1973 just at a day or two prior to 17-6-1986. Therefore, the Prabhu were lured into the false sense of security and the judgment debtors chose about the pen-ultimate date of the dead line to spring a surprise. In this context, it cannot be said that the judgment-debtors were doing no more than exercising their statutory rights. The non-existence of the right pleaded by them was or should have been known to them and the least that could have been done by them was to make amends by withdrawing the suit after the initiation of the contempt proceedings in this Court. That they have not chosen to do so is proof of their acting wilfully in breach of the undertaking given by them to the Court.

6. The question surviving is to what should be done. There is of course an apology offered by the judgment-debtors. In the circumstances of the case that apology is the last ditch attempt to get out of a tight corner; but the judgment-debtors have this excuse, viz., that they acted upon legal advice. Legal advice is not a panacea for wilful contempt of Court. But added to legal advice is the pitiful situation which people face in this city when they have to give up premises they have been doing business or residing for long periods. People faced with such a situation cling to any straw and that includes the fabrication of any plausible device for clinging on possession without any right to do so. Having regard to this aspect to the matter, the solution I devise is to give the judgment-debtors 3 months time to honour the undertaking given by them, failing which they shall be dealt with in accordance with penal provisions of the Contempt of Court Act, 1971. Costs in this proceedings shall be borne and paid by the judgment-debtors. Petition to be put up again after expiry of 3 months to be computed as from to day for further orders. Rule in the above terms is made absolute.