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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO. 430 OF 2017**

Smt. Anusaya Laxman Phadake ... Petitioner

vs.

M/s. Krishna Enterprises through its Partner ... Respondents
Shailesh Ratibhai Patel and Ors

Mr. Saurabh Oka a/w. Mr. Rohit P. Jain, Mr. Govindsingh Rajpurohit
for the Petitioner.

Mr. Suresh Sabrad a/w. Mr. Amey Sawant, Mr. Pratik Sabrad a/w.

Ms. Neha Parte for Respondent No.1.

CORAM : GAURI GODSE, J.

DATED : 26th FEBRUARY 2026

ORDER:

1. This contempt petition is filed alleging breach of the order dated 4th August 2016, passed by the trial court. By the said order, the trial court had restrained respondent no. 1, a partnership firm, from creating third-party rights in respect of the suit property without the leave of the court.

2. The suit property is described in the plaint in paragraph no.1, i.e. the survey numbers belonging to the joint family property of the plaintiff, which was acquired. In paragraph no. 9, the plaintiff has

described plot no. 9, allotted in lieu of the acquisition under the 12.5% scheme of CIDCO. The petitioner, i.e. the original plaintiff, contends that the particulars of the execution of the agreements were produced on record in the writ petition, pursuant to the order passed by this court. From the particulars of the registered agreements produced before this court, the petitioner learnt that respondent no. 1 created third-party rights by executing two agreements in respect of two flats in breach of the order passed by the trial court.

3. I have perused the papers of the petition. The injunction granted by the trial court after hearing respondent no.1 is not in dispute. The copies of the two agreements are annexed to the contempt petition. The petitioner has mentioned the particulars of the agreements in paragraph no. 8 of the contempt petition. The agreements were executed on 24th August 2016 and 23rd September 2016. The trial court passed an injunction order on 4th August 2016. The injunction order was reversed by the appeal court on 21st January 2017; however, its effect was stayed and the order of stay was continued by this court.

4. There is no dispute that the execution and registration of the agreements is during the subsistence of the order of injunction. This

court vide order dated 26th February 2020, recorded a prima facie observation on the petitioner's allegations that respondent no.1 created third-party rights in respect of two flats without the leave of the court. Hence, this court issued notice to respondent no.1, calling upon respondent no.1 to explain as to why the contempt action should not be initiated against him.

5. In response to the notice issued to respondent no.1, affidavit-in-reply is filed on behalf of respondent no.1 through its partner. It is contended by respondent no.1 that the consideration amount was received much prior to the passing of the order, and only the agreement was executed after the injunction order was passed. Hence, according to respondent no.1, there is no breach of the injunction granted by the trial court. Thus, according to respondent no.1 no action of contempt can be initiated against respondent no.1. Respondent no.1 has sought to explain that since part of the earnest money was received before the injunction order, mere execution of the registered agreements would not amount to creating third-party rights which were already created by accepting the consideration amount.

6. The agreements are executed by respondent no.1, under the provisions of the Maharashtra Ownership Flats (Regulation of the

promotion of construction, sale, management and transfer) Act, 1963. The injunction order passed by the trial court restrains respondent no. 1 from creating a third-party interest in the suit property without the leave of the court. Thus, even if the part consideration amount was accepted, the actual execution of the registered agreements under MOFA would definitely constitute the creation of a third-party interest in the suit property. Thus, I am satisfied that respondent no.1 has deliberately committed a breach of the order of injunction passed by the trial court. It is necessary to record that despite reversing the trial court's injunction, the appeal court stayed its own order. This protection was continued by this court. Thus, the purpose of staying the order of reversal of the injunction clearly shows that the object was to protect the petitioner's interest in the suit property.

7. The petitioner has filed this contempt petition against respondent no. 1 (defendant no. 18) through its partner, who represented defendant no.18 in the trial court. Respondent nos. 2 to 9 are the other partners of respondent nos. 1. Respondent Nos. 10 and 11 are purchasers of the flats. Since respondent no.1 was represented only through one partner, it would be necessary to issue notice to respondent nos. 2 to 9, calling upon them to show cause as to why contempt action should not be initiated. Hence,

office is directed to issue notice before admission of the contempt petition against respondent nos. 2 to 9, returnable after six weeks.

8. So far as respondent no.1, represented through its partner, who also appeared in the trial court, I am satisfied that there is a deliberate and willful breach of the order passed by the trial court by respondent no.1 through its partner, Mr. Shailesh Ratibhai Patel. Hence, office is directed to issue notice in terms of Rule 8 read with Rule 9 of the Contempt of Courts (Bombay High Court) Rules, 1994. Notice is made returnable after six weeks.

9. Since this court has passed a separate order in the writ petition granting interim injunction during the pendency of the petition, respondent no.1, in addition to the affidavit in response to the contempt notice, shall also file an affidavit placing on record further third-party rights created till date.

10. Office is directed to prepare the notice of respondent no.1 and hand it over to the learned advocate who appears for respondent no.1, who shall hand over the same to respondent no.1.

(GAURI GODSE, J.)