

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CONTEMPT PETITION (C) NO. 344 OF 1998 IN SLP(C) 20861/1997

M/S. DEVI CONSTRUCTION CO. Petitioner(s)

VERSUS

M/S. JILANI HOUSING & ANR. Respondent(s)
(Office report for direction)
(For final disposal)

Date: 26/08/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE P. SATHASIVAM
HON'BLE DR. JUSTICE B.S. CHAUHAN

For Petitioner(s) Mr.S.D. Singh,Adv.
Mr. Vijay Kumar,Adv.
Mr. Vishwajit Singh,Adv.

For Respondent(s) Mr.Ashok Srivastav,Sr.Adv.
Mr.Satyajit A. Desai,Adv.
Ms. Anagha S.Desai,Adv.

Mr. M.J. Paul,Adv.

UPON hearing counsel the Court made the following
O R D E R

The contempt petition is disposed of in terms
of the signed order.

[Madhu Bala] [Savita Sainani]
Sr.PA Court Master
(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION (CIVIL)NO. 344 OF 1998
IN
SPECIAL LEAVE PETITION(C) NO. 20861 OF 1997

M/S. DEVI CONSTRUCTION CO. ...PETITIONER

VERSUS

M/S. JILANI HOUSING & ANR. ...RESPONDENT/(S)

O R D E R

In order to ascertain whether the first respondent
has violated the order of this Court passed on 24th
November, 1997, it is useful to refer the said order:

"Learned counsel for the respondent states that the respondent shall disclose to those who have already bought and will hereafter buy flats/units on the property in suit that this litigation is pending in respect of the property in suit.

The SLP is disposed of accordingly".

It is the grievance of the petitioner that, in spite of the statement made before this Court and based on the same, the special leave petition came to be disposed of, the first respondent has not informed the pendency of the suit/litigation either to the persons who bought

...2/-

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flats/units or to the intending purchasers. Based on the said assertion, this Court issued notice on the contempt petition on 4th September, 1998. Since the first respondent/contemnor did not appear pursuant to the notice by this Court on 9th February, 1999, this Court, issued non-bailable warrant for production of the contemnor before this Court. After prolonged delay, finally, the contemnor appeared before us on 6th July, 2010 and after recording his presence this Court issued various directions.

Heard learned counsel for the petitioner as well as first respondent/contemnor.

Learned senior counsel appearing for the first respondent has brought to our notice that an affidavit was filed by the contemnor on 20th October, 1998 and according to him, he fully complied with the Undertaking for which he brought to our notice the averments made in the affidavit dated 20th October, 1998. Among the details mentioned, the following information in paragraphs 2 and 3 are relevant:

"I say that pursuant to the said statement made before this Honourable Court I have immediately taken steps by informing telephonically as well as by personal communication to all the 54 purchasers of the 40 units that the litigation between the Petitioner and respondents in respect of the suit property is pending in the Court of Civil Judge, Senior Division, Satara. the

same was also communicated to the purchasers

...3/-

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namely Shri Munawwar Shamim Bhagat and Mrs. Hena Mahendra Shah on whose affidavits the Petitioner is relying in the present contempt proceedings.

I further say that thereafter I also forwarded letter dated 10.01.1998 to all the 54 purchasers who had purchased the 40 units which were being constructed on the suit property. I say that although the units are 40 some of them have been split as a result of which the number of purchasers comes to 54. I say that vide the said letter all the purchasers were informed about the pending litigation between Petitioner and Respondents and the said purchasers were also informed that if they wish to inspect the papers in respect of the same, then they can do so by visiting the office of respondents at any time during office hours. Annexed hereto and marked as Exhibit R-I is the copy of the said letter dated 10th January, 1998".

Apart from the above assertion in the form of an affidavit, the counsel has also brought to our notice a circular letter dated 10th January, 1998 as well as the list of purchasers in the Silver Valley Project and intimation to those persons. Those particulars are available in the Paper Book from page 93 to 143.

In addition to the above information, the first respondent has also filed another reply affidavit on 16th July, 2010 wherein he offered unconditional and unequivocal apology for inadvertent default, if any, unknowingly or unintentionally committed by him and requested this Court to accept the same. After making such undertaking, he also

...4/-

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highlighted the details regarding compliance of the earlier order dated 24th November, 1997. We have perused all the details. He has also mentioned the particulars regarding intimation to those persons as agreed to before this Court.

Regarding his absence for a considerable time, he has asserted that :

"Furthermore, in October 1998 the answering respondent/contemnor and his

family were victimized by some underworld elements with life threatening consequences. Further in November, 1998 the younger son of Mr. Moinuddin Bijlikhan aged 8 years was kidnapped and released for a ransom. These two incidents completely shattered the confidence of the family members who decided to leave the country for protecting itself from the underworld. After this episode the entire family was forced to leave India for US on December 4, 1998. However, by then the order of this Hon'ble Court was fully complied with".

Apart from this, he also informed this Court that for a period of one week from 19.8.2007 to 26.8.2007, he visited India to meet his ailing and aged grandmother.

In addition to the above information, learned senior counsel appearing for the first respondent/contemnor has brought to our notice an agreement/settlement dated 24th December, 1999 arrived among all the parties. Clause III of the Terms of Agreement is relevant, which reads as under:

"It is specifically agreed between the consenting parties that the Applicant society or its member will have no claim against plaintiff for unfinished and incomplete work in their tenements and/or

...5/-

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specifications of work and amenities provided by M/s. Jilani Housing. (The plaintiff will not be liable in any way deficiency in services and/or work carried out by M/s. Jilani Housing in variance with sanctioned plans and the Applicant would be accepting the conveyance on "as is where is basis".

Though the petitioner has filed a rejoinder affidavit disputing these averments made in the reply affidavit filed by the contemnor, on perusal of all the materials we accept his explanation. It is also relevant to note that when the contemnor appeared before us on 6th July, 2010, this Court imposed certain conditions upon him. They are:

1. The contemnor has to execute a personal bond for a value of Rs. 1 lakh to the satisfaction of the Registrar(Judicial) of this Court;
2. In the same document he has to undertake that he will not encumber or alienate

all his properties which were under attachment by order of this Court;

3. Within three days he has to hand over his passport to Police Station Kurvai, District Videsha, Madhya Pradesh;
4. He shall report at the said Police Station every day at 10.00 a.m. commencing from 08.07.2010 until further orders.;
5. In addition to the same he will present himself before this Court on 23rd July, 2010"

...6/-

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It is brought to our notice that all the conditions have been duly complied with. In fact it is pointed out to our notice that insofar as the direction to execute personal bond for a sum of Rs. 1 lakh to the satisfaction of the Registrar(Judicial) of this Court is concerned, the contemnor has deposited the sum of Rs. 1 lakh and the said amount is lying with the Registrar (Judicial) of this Court. He has also complied with the other conditions, including handing over his passport to Station House Officer, Police Station, Kurvai, District Videsha, Madhya Pradesh.

Taking note of all these materials, we accept the explanation offered by the contemnor and discharge him from the contempt proceedings. In view of the same, we direct the Station House Officer, Police Station, Kurvai, District Videsha, Madhya Pradesh to return the passport to him. Insofar as the amount of Rs. 1 lakh deposited with the Registrar (Judicial), we direct the Registrar (Judicial) to transfer the entire amount to the credit of the Supreme Court Legal Services Committee.

The contempt petition is disposed of on the above terms.

.....J.
[P. SATHASIVAM]

NEW DELHI
26TH AUGUST, 2010

.....J.
[DR.B.S. CHAUHAN]