

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****MISC.CIVIL APPLICATION - FOR CONTEMPT No. 2166 of 2007****In****FIRST APPEAL No. 458 of 1984****For Approval and Signature:****HONOURABLE MR.JUSTICE R.P.DHOLAKIA****HONOURABLE MR.JUSTICE DN PATEL**

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1 Whether Reporters of Local Papers may be allowed  
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy  
of the judgment ?

4 Whether this case involves a substantial question  
of law as to the interpretation of the  
constitution of India, 1950 or any order made  
thereunder ?

5 Whether it is to be circulated to the civil judge  
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**AMIRUNNISHA YAKUBKHAN PATHAN & 3 - Applicant(s)****Versus****MEHMOODMIYA SUBAMIYA SHAIKH & 4 - Opponent(s)**

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**Appearance :**

MR PC MASTER for the Applicants.

MR M.A.Bukhari for the Opponents.

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**CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA****and****HONOURABLE MR.JUSTICE DN PATEL****Date :24 /10/2008****CAV JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE D.N.PATEL)**

This application has been preferred under the provisions of The Contempt of Courts Act, 1971 against the opponents, for deliberate violation of the judgment and order dated 25th August, 2006 passed by this Court in First Appeal No. 458 of 1984.

2. Brief facts of the present application are as under:

2.1 The present applicants had instituted Civil Suit NO. 3734 of 1979 for recovery of possession of the suit premises. In fact, two rooms were rented to the respondents (original defendants). The suit was decreed in favour of the present applicants vide judgment and decree dated 31st January, 1984 and the opponents (original defendants) were directed to hand peaceful and vacant possession of the front portion suit premises.

2.2. Being aggrieved by the said judgment and decree of the trial court, the opponents (original defendants) had preferred First Appeal No. 458 of 1984, whereas the applicants (original plaintiffs) had preferred First Appeal No. 459 of 1984 for recovery of the possession of the whole suit premises.

2.3. First Appeal No. 451 of 1984 preferred by the present applicants (original plaintiffs) was dismissed and so far as First Appeal No. 458 of 1984 was concerned, it was filed by the opponents (original

defendants) and while disposing of these two appeals vide common judgment and order dated 25th August, 2006, it has been held in paras-2 and 3 as under:

"2. So far as First Appeal No. 458 of 1984 is concerned, the same is filed by the appellants, original-defendants [hereinafter referred to as 'the defendants'] challenging the judgment and decree 31.1.1984 passed by the learned Judge, City Civil Court at Ahmedabad in Civil Suit No. 3734 of 1979 in partly decreeing the said suit and directing the appellants, original-defendants to hand over front room of the suit property, i.e., room bearing No. 4172/A by treating them as trespassers. So far as First Appeal No. 459 of 1984 is concerned, the same is filed by the original-plaintiffs challenging the very judgment and decree passed dated 31<sup>st</sup> January 1984 by the learned Judge, City Civil Court at Ahmedabad in Civil Suit No. 3734 of 1979 in decreeing the aforesaid suit partly only qua the front room of the suit property only and in not decreeing the suit qua the rear portion of the room of the suit property.

3. When both these Appeals came to be heard finally, Shri Shital Patel, learned advocate appearing on behalf of the appellants of First Appeal No. 458 of 1984, i.e., original-defendants of Civil Suit No. 3734 of 1979 has submitted under instructions of his clients that he does not press for the present First Appeal, however requested to grant some time to the original-defendants to vacate from the front portion of the suit property so that some alternative arrangement can be made. He has requested for 8 months' time to vacate from the suit property as per the decree passed by the learned Trial Judge. He has submitted that all the major members who are residing in the suit property are ready and willing to give usual undertaking that they will hand over peaceful and vacant possession as per the decree passed by the learned Trial Judge on or before 1<sup>st</sup> July 2007 and that they will not transfer, alienate, in any manner whatsoever the suit property and/or induct any

person into the suit property, and that the said undertaking will be filed within the period of two weeks from today. In view of the above, the First Appeal No. 458 of 1984 is dismissed as having not pressed. However, considering the request made on behalf of the original-defendants and other persons who are in possession of the suit property, time is granted to vacate from the suit property, as per the judgment and decree passed by the learned Trial Judge, upto 30<sup>th</sup> June 2007 on condition that all the major persons, who are in occupation and possession of the suit property, shall give usual undertaking before this Court within the period of two weeks from today to the effect that they will hand over peaceful and vacant possession of the suit property as per the judgment and decree dated 31<sup>st</sup> January 1984 passed by the learned Trial Judge of City Civil Court, Ahmedabad, on or before 1<sup>st</sup> July 2007, and, in the meantime, they will not induct any other person in the suit property and that they will not transfer, alienate, and/or create any interest and/or charge on the suit property in any manner whatsoever."

3. We have heard the learned counsel for the applicants who has mainly submitted that despite the aforesaid order passed in the First Appeals and despite the fact that LPA was also not entertained, further extension of time was sought for by the opponents (original defendants) to vacate the said application was also dismissed and it was maintained by this Court that within eight months from the date of the order, the suit premises was to be vacated. Thereafter, even Review Application was also

filed which was also dismissed by this Court. Thereafter, Execution Application No. 487 of 2007 was filed by the applicants and the trial court i.e. City Civil Court, Ahmedabad vide order dated 29th April, 2008 passed in Execution Application No. 487 of 2007 to be read with order below exh. 31 in Execution Application passed by the very same Court, though a clear cut direction is given and though in every proceedings, the opponents (original defendants) have lost their case, they have not vacated the premises they have not vacated the suit premises i.e. front portion room of the suit premises, as directed by this Court while disposing of First Appeals vide common order dated 25th August, 2006. Neither premises is vacated nor an undertaking was filed before this Court.

4. We have heard the learned advocate for the opponents (original defendants) who has mainly submitted that in fact the opponents (original defendants) are ready and willing to vacate the suit premises as per panchnama drawn before the trial court. It has been submitted by the learned advocate for the opponents that as per original decree, they have to vacate the the suit premises bearing No. 4172/08, but as per the panchnama drawn by the Court

Commissioner of the trial court, it is a rear side room which was given marking as "A" and therefore, they have filed a pursis before Executing Court that they are ready to vacate the premises as per the aforesaid panchnama. There is no deliberate breach of the order passed by this Court. It is also submitted by the learned advocate for the opponents that they have not filed any undertaking before this Court as directed by this Court and therefore, there is no question of committing breach of this undertaking. In view of this, this Miscellaneous Civil Application filed by the applicants deserves to be dismissed.

5. Having heard the learned advocates for both the sides, it appears that originally Civil Suit No. 3734 of 1979 was instituted by the present applicants for recovery of possession of the suit premises which was rented to the opponents (original defendants). The said suit was partly decreed in favour of the applicants (original plaintiffs) vide judgment and decree dated 31st January, 1984. In the said judgment, the trial court had directed the opponents (original defendants) to hand over vacant and peaceful possession of the front room of the suit premises to the applicants (original plaintiffs). Against this judgment and decree, the original defendants preferred First Appeal No. 458 of 1984 as they were directed to hand over vacant and peaceful possession of front side of the suit premises. Likewise, the applicants (original plaintiffs) had preferred First Appeal No. 459 of 1984 as the whole premises was not ordered to be vacated. Both these First Appeals were heard

together by this Court. First Appeal No. 459 of 1984 preferred by the applicants (original plaintiffs) was dismissed on merits and in paragraphs 2 and 3 of the said order for First Appeal No.458 of 1984, it was observed that eight months' time was requested for vacating the premises which was granted by this Court. Thus, the suit premises was to be vacated on or before 30th June, 2007. Thus, the Appeal filed by the opponents (original defendants) was not allowed by this Court as stated in para-3 of the judgment and order dated 25th October, 2006 passed by this Court. It also appears that the opponents (original defendants) were directed to file an undertaking before this Court. Still however, neither undertaking is filed before this Court nor front portion room of the suit premises was vacated by the opponents (original defendants).

6. It also appears that against this order dated 25th August, 2006 in First Appeal No. 458 of 2004, an LPA alongwith delay condonation application bearing Civil Application No. 3683 of 2007 was preferred and the Division Bench of this Court has not condoned delay and it has been observed that LPA will be a Second Appeal which is not permissible under the law and therefore, both, LPA as well as Civil Application for condonation of delay were dismissed by this Court vide order dated 1st May, 2007. Thus, the judgment and order dated 25th August, 2006 passed in First Appeal Nos. 458 of 1984 and 459 of 1984 has attained its finality. Despite this, front side room of the suit premises has not been vacated by the opponents

(original defendants).

7. It also appears from the facts on record that the opponents (original defendants) had preferred Civil Application No. 8511 of 2007 for extension of time. This prayer was also rejected by this Court vide order date 28th June, 2007 in Civil Application No. 8511 of 2007 and it has been observed by this Court that already eight months' time was granted to the original defendants to vacate the suit premises. Even no undertaking was filed as directed by this Court and also for the reason that Civil Application i LPA has also been dismissed by the Division Bench of this Court. This prayer for extension of time to vacate and hand over the possession of the suit premises to the original plaintiffs was not granted by this Court. Despite this order also, front side room of the suit premises was not vacated by the opponents (original defendants). Thus, it appears that the opponents (original defendants) are deliberately and willingly committing breach of the orders passed by this Court. One after another attempts are being made by the original defendants so that rented premises can be retained by them.

8. One more application bearing Miscellaneous Civil Application No. 1988 of 2007 was preferred by the opponents (original defendants) on the ground that the applicant of that application was the heir of the deceased Subbamiya Hasumiya Shaikh and she was not joined as a party-respondent in the main First Appeal and therefore, the judgment and order passed in the



First Appeal is not binding to the said applicant. This contention was also negatived by this Court vide order dated 31st July, 2007 and it has been observed in para-2 of the said order that it was an another attempt on the part of the applicant wherein she was already a party in Civil Application No. 7888 of 1998 in First Appeal No. 459 of 1984 filed by the heirs of the deceased Subbamiya Hasumiya Shaikh. The applicant is one of the applicants in the said application. This application was not granted by this Court for joining legal heirs.

9.           Thereafter, one more petition bearing Special Civil Application No. 28983 of 2007 was instituted by the opponents challenging the order dated 24th October, 2007 in Execution Petition No. 487 of 2007 passed by the trial court. A detailed order has been passed by this Court vide order dated 20th November, 2007 in the aforesaid writ petition and this petition was dismissed.

10.          Despite the aforesaid orders passed by this Court against the present opponents (original defendants), they have not vacated the front side room of the suit premises involved in the Civil Suit No. 3734 of 1979.

11.          Execution Application was also instituted by the original plaintiffs bearing Execution Application No. 487 of 2007. In the order passed in this

Application also, a direction was given to the opponents (original plaintiffs) to hand over vacant and peaceful possession of the front portion of the property bearing survey no. 4172/A on or before 2nd May, 2008. Despite this order also, front portion room of the suit premises has not been vacated by the opponents (original defendants). Thus, there is deliberate and wilful violation of the order dated 25th August, 2006 in First Appeal Nos. 458 and 459 of 1984.

12. It is contended by the learned advocate for the opponents (original defendants) that one panchnama was drawn by the Court Commissioner of the trial court and in that panchnama, rear part of the rented premises was shown as mark "A" and therefore, they are ready and willing to vacate the rear side of the room. This is a lame excuse. We are unable to accept this contention of the opponents. It has been already clarified by the trial court vide order dated 24th December, 2007 below exh. 31 in Execution Application No. 487 of 207 as under:

"Therefore, the possession of the front portion of the suit property be handed over to the plaintiff-decree holder as per the decree passed by the Court. This Court has already issued possession warrant, it should be executed. The plaintiff decree holder has filed an application and declared before the Court that the obstruction is created by applying lock on the property. If that be so, the lock applied to the property should be broken in presence of the panchas and the possession of the decretal property that is of front room be handed over to the plaintiff-

decree holder as per the provisions of the law."

13. Thus, there was no ambiguity at all in the order passed by the trial court, while partly allowing the suit vide judgment and decree dated 31st January, 1984 in Civil Suit No. 3734 of 1979, whereby it was directed that front portion of the suit premises bearing survey no. 4172/A is to be vacated. In First Appeal also, this Court vide judgment dated 25th August, 2006, while disposing of First Appeal preferred by the opponents (original defendants) directed the opponents (original defendants) to hand over peaceful and vacant possession of the front room of the suit premises bearing survey no. 4172/A. (para-2 of the said order). No further time was extended by this Court as per order passed in Civil Application No. 8511 of 2007 vide order dated 28th June, 2007. Even Civil Application for condonation of delay in in LPA Stamp No. 257 of 2007 was also dismissed by the Division Bench of this Court vide order dated 1st May, 2007. Likewise, one more writ petition bearing Special Civil Application No. 28983 of 2007 was dismissed by this Court vide order dated 20th November, 2007 coupled with the fact that the Executing Court i.e. City Civil Court, Ahmedabad vide order dated 29th April, 2008 had directed the opponents (original defendants) to hand over front part of the property bearing survey no. 4172/A to the applicants (original plaintiffs). In spite of this order, the opponents(original defendants) have not vacated the

suit premises and the ambiguity of the panchnama which is being unnecessarily harped upon by the opponents (original defendants) which is already clarified much earlier in point of time by the trial court vide order dated 14th December, 2007 passed below exh. 31 in Execution Application No. 487 of 2007 to the effect that the judgment debtor i.e. the original defendants have to vacate the suit premises which is a front side room of survey no. 4172/A. Panchnama shows that part-A is a rear side room, but panchnama is not a final one. As per the decree and all the orders as stated hereinabove, front side room of the suit premises was to be vacated, whether it is part-A in panchnama or part-B in the panchnama. This was already made clear as on 14th December, 2007 by the order passed below exh. 31 in Execution Application No. 487 of 2007. Thereafter also, several orders have been passed as stated hereinabove, but it appears that deliberately and consciously, the opponents are not vacating front side room of the suit property. Even while arguing this Application before this Court also, the opponents (original defendants) have not shown any readiness to vacate the front side room of the suit premises. Even before this Court also, a lame excuse of panchnama has been taken. In panchnama, rear side room is shown as part-A, but we are not concerned with the panchnama as per the order stated hereinabove in the decree, in First Appeal, in subsequent civil applications, in further writ petition being Special Civil Application No. 28983 of 2007 and also in final order passed in Execution Application. At every place, front side of the suit premises is referred. It appears that the

opponents are deliberately vacating the front side room of the suit premises. It has been observed by this Court while dismissing Special Civil Application No. 28983 of 2007 vide order dated 20th November, 2007 in para-4 as under:

"4. When this Court asked the present petitioner whether they want any extension of time to vacate the premises on the basis of any difficulty, the learned counsel appearing for the petitioner has not shown any willingness for getting time for vacating the suit premises."

14. As a cumulative effect of the aforesaid facts and reasons, it is abundantly clear that the opponents (original defendants) have committed wilful civil contempt of the order passed by this Court. They have deliberately violated the order dated 25th August, 2006 passed by this Court in First Appeal No. 458 of 1984. Therefore, they are liable for penal action. This Miscellaneous Civil Application is therefore, allowed. Each of the opponents is hereby directed to pay a fine of Rs. 5000/- (Rs. Five thousand). The amount of fine by each of the opponents will be deposited before this Court on or before 28th November, 2008, in default, each of the opponents shall undergo simple imprisonment of 15 days. Rule made absolute accordingly.

(R.P.Dholakia,J)

(D.N.Patel,J)

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