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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 168 OF 2008

Avinash Anant Gawade

..Petitioner

Vs.

Mohanlal O.Jain & Ors.

... Respondents.

Mr. Dave i/b N.N. Vaishnawa & Co., for the Petitioner.

Mr. V.V. Khemka i/b A.Q. Motiwala, for Respondent Nos.1 to 4.

CORAM: S.C.DHARMADHIKARI,J.DATE : 30th APRIL, 2010.**PC.**

1. This Contempt Petition alleges willful breach of the undertaking given to the City Civil Court in Long Cause Suit No.1557 of 2004.

2. The undertaking is stated to be in the consent terms filed in the Court and Clause 4 thereof reads thus:

“The Defendant No.2 undertakes to this Hon’ble Court to hand over possession of permanent alternate accommodation admeasuring 408 sq.ft. as per agreement executed on 22.4.2004 executed by and between the Plaintiff and Defendant no.2. Both the parties agree and undertake to abide by the terms and conditions of the said agreement daed 22.4.2004.”

3. It is urged that the Trial Court passed an Order on 28.4.2004 wherein the Court accepted this undertaking. Thereafter, a letter was addressed on 20.6.2007 by the Petitioner and the Advocate's letter states in terms that the Respondent to this Contempt Petition have provided a flat (permanent alternate accommodation) admeasuring 408 sq.ft. carpet area. However, in the letter several demands are made including for parking space and payment of corpus amount.

4. This letter was followed by another letter in July 2007 wherein for the first time the Petitioner alleged that the flat has been measured and Engineers have given certificate that the area is not 408 sq.ft. but 390.26 sq.ft. Based upon this area statement provided by the Engineers that it is alleged that the Respondent committed willful breach of the undertaking and that is civil contempt.

5] A reply affidavit has been filed wherein it is pointed out that the Petitioner's Advocate stated that the Petitioner has taken possession of the flat and it measures 408 sq.ft. Further, that the area of 390 is incorrect and there is certificate from the Respondent's Architect which states that the area is 408 sq.ft. I am afraid that this controversy cannot be resolved in the limited jurisdiction. This Court cannot render any opinion in contempt jurisdiction with regard to the correctness or otherwise of the contents of the certificate of the Architect/Engineers. Further, in the clause which is reproduced above there is no undertaking that the Respondent to pay the

sum specified. If the case is that the Respondent failed to abide by the agreement, then, the remedy of the Petitioner lies elsewhere. The Contempt Petition is misconceived and is accordingly dismissed. No costs.

(S. C. DHARMADHIKARI, J.)