

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

CRP No .58 of 2014

Shri Jyoti Prakash Saha,
son of Shri Prafulla Kumar Saha,
resident of Old Agartala, P.O. Old
Agartala and P.S. Bodhjungnagar,
District – West Tripura.

..... Petitioner

- V e r s u s -

- 1. Shri Pallab Bhattacharjee,**
son of late Shaktipada Bhattacharjee,
resident of Krishnanagar, Old Kalibari
Lane, P.O. Agartala, PIN 799001, P.S.
West Agartala, District - West Tripura,
- 2. M/S Maa Sarada Devi Industries,**
a partnership firm having its office at
Village- Noabadi, P.O. Ranirbazar -
799035, P.S. Jirania, District – West
Tripura, represented by the respondent
No.3 Shri Sujit Das, son of late Jatindra
Chandra Das, resident of village – West
Pratapgarh, P.O. A.D Nagar, PIN-
799003, P.S. West Agartala, District –
West Tripura.
- 3. Shri Sunit Das,**
son of late Jatindra Chandra Das,
resident of Village – West Pratapgarh,
P.O. A.D. Nagar, PIN-799003, P.S. West
Agartala, District – West Tripura.
- 4. Shri Bimalendu Chakraborty,**
son of late Durga Charan Chakraborty,
resident of Akhaura Road, Agartala, P.O.
Agartala-799001, P.S. West Agartala,
District – West Tripura.
- 5. Shri Srimanta Majumder,**
son of late Rebati Mohan Majumder,
C/O- Haradhan Sarkar, resident of
Akhaura Road, Near Joyram Sawmill,
P.O. Agartala-799001, P.S. West
Agartala, District – West Tripura.

..... Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. A.K. Bhowmik, Sr. Advocate
Mr. R. Dutta, Advocate

For the respondents : Mr. D. Chakraborty, Sr. Advocate,
Mr. H. Laskar, Mr. Nepal Majumder,
Advocates.

Date of hearing : 03.11.2014

Date of delivery of Judgment & Order : **22.01.2015**

Whether fit for reporting:

YES	NO
	√

JUDGMENT & ORDER

The petitioner, who was appointed as the receiver by the order dated 12.03.2012 delivered in case No. Misc. 69 of 2012, has questioned the order dated 13.03.2014 delivered in case No. Misc. Execution 120 of 2013 arising out of T.S. No.48 of 2012 by the Civil Judge, Sr. Division, Court No.2, West Tripura, Agartala which proceeding has been set in motion at the instance of the said receiver for recovery of his remuneration at Rs.10,000/- per month for the period from March, 2012 to March, 2013.

[2] By instituting the said proceeding, the petitioner has contended that the petitioner has resumed the charge of the receiver by issuing the notice to the parties by the registered post and on visiting the factory premises time to time. He as well performed other relevant works and submitted the reports to the

court as per the said order dated 12.03.2012. However, the said claim was squarely denied by the defendants contending that even though the petitioner was appointed as the receiver but the properties were never committed to the receiver nor the defendants were removed from the possession of the properties in any manner. That apart, by the order dated 30.09.2013 in FAO No.01 of 2013, Annexure-5 to this petition, this Court had set aside the order of appointment dated 12.03.2012. The relevant facts which are required to be outlined are that the respondent No.5 instituted the suit being T.S. 48 of 2012 for declaration and compensation. Along with that suit, a prayer for pre-judgment attachment of the properties as referred for facilitating the recovery of such compensation was prayed along with the prayer for appointment of the receiver. The trial court, the Court of the Civil Judge, Sr. Division, Court No.2, West Tripura, Agartala by the order dated 12.03.2012 passed order holding *inter-alia* that:

"I have carefully perused the application and other relevant papers and after going through the record it appears to this court that appointment of receiver is urgently required to protect the assets of that partnership firm till disposal of the connected suit.

So, Mr. Jyoti Prakash Saha, Ld. Advocate of Tripura Bar Association, Agartala is hereby appointed as Receiver of M/S 'Maa Sarada Devi Industries' as well as 'M/s Raima Bricks Unit-II', Noabadi, Agartala, in respect of the properties mentioned in schedules 'A' & 'B' of the application until further order and the properties mentioned in schedule 'A' to 'G' of the application are also hereby attached till pronouncement of judgment or until further order whichever is earlier.

Mr. Jyoti Prakash Saha, the appointed receiver will get a remuneration of Rs.10,000/- per month from the fund of the M/S 'Raima Bricks Unit-II' until further order.

The appointed receiver is requested to take necessary step in respect of the properties of the aforesaid funds mentioned in schedule 'A' & 'B' and to submit his monthly report to this court regularly.

Furnish a copy of this order to Mr. Jyoti Prakash Saha, appointed receiver for information and doing the needful.

Office is directed to issue notices upon the defendant-O.Ps asking them to show cause by the next date as to why they should not be removed from the possession for custody of the properties mentioned in the schedules of the application and why those properties should not be committed to the possession, custody or management of the receiver till disposal of the connected suit."

[3] The said order as stated was challenged by an appeal being FAO 02 of 2012. The said appeal was disposed of by the order dated 13.03.2013 holding *inter-alia* that:

"It appears from the records that the suit was filed by the plaintiff-respondent for a declaration regarding entitlement of compensation for an amount of Rs.1,40,90,000/- along with 18% interest per annum w.e.f. 01.10.2010 along with other prayers. As the plaintiff-respondent is a partner of appellant No.2, M/s Maa Sarada Devi Industries, a partnership firm, and defendant Nos.3 and 4 i.e. appellant Nos.3 and 4 herein, are partners of the plaintiff-respondent and the defendant No.1, who is in no way involved with the appellant No.2, had illegally trespassed in the premises of the plaintiff's firm, i.e. defendant No.2-appellant No.2 herein and taken the possession thereof, for which the respondent-plaintiff filed the aforesaid Misc. Application with the prayer for an order of attachment before judgment as well as appointment of receiver and the learned trial court by way of passing the impugned order only passed an interim order protecting the interest of the plaintiff so that before disposal of the suit, the defendants, i.e. appellants

herein cannot dispose of the property that belongs to the defendant No.2, i.e. appellant No.2, herein.

As the learned counsel for the parties agreed for disposal of the instant appeal only with a simple direction to the learned trial court for disposing the civil miscellaneous case 69/2012 within a particular period after hearing the parties, it would not be proper on the part of this court to decide the appeal on merit.

At the same time as the trial has passed an order appointing one of the learned counsel as the receiver it would also not be proper to disturb the said order as a whole, more so, when the defendant appellants have already filed their objection in the Misc. Case and the Misc. Case is ready for disposal by the trial court.

Accordingly, learned Civil Judge (Sr. Div.), Court No.2, Agartala, West Tripura is directed to dispose of the aforesaid Civil Misc. Application within a period of one month from today, in accordance with law, after hearing the parties, and till then the appellant shall not dispose of any of the properties as mentioned in schedule A to G of the miscellaneous application without the leave of the trial court.

The defendant-appellants shall also not disturb the receiver from discharging his duties as per the impugned order."

[4] In terms of the said order dated 23.03.2013, the Civil Judge, Sr. Division, Court no.2, West Tripura, Agartala passed a fresh order in case No. Misc. 69 of 2012 arising from T.S. 48 of 2012 after hearing the parties at length on holding that:

"I have carefully perused the documents filed by the parties and found that the defendant-OP No.4 Sri Bimalendu Chakraborty being the plaintiff instituted a title suit No.54 of 2010 against the present plaintiff-petitioner and others for rendition of accounts and dissolution of partnership firm namely, M/S 'Maa Sarada Devi Industries' wherein the present plaintiff-petitioner is one of the partners of that partnership firm.

It also appears from the copy of deed of lease dated 23.02.2004 submitted by the defendant-Ops that the land of the brick field of M/S 'Maa Sarada Devi Industries' at Noabadi was owned by the defendant-Ops No.3 & 4 and they had leased out the said land to the partnership firm namely M/S 'Maa Sarada Devi Industries' for a period of five years and after expiry of lease agreement in the year 2009 the defendant-Ops No.3 & 4 did not enter into any new lease agreement with the said partnership firm rather, on 12.11.10 the defendant-Ops No.3 & 4 executed a deed of lease in respect of the said land in favour of M/s Raima Bricks of Gandacharra, District Dhalai Tripura, represented by the defendant -OP No.1 Sri Pallab Bhattacharjee and, therefore, the plaintiff-petitioner has prima facie no legal right to remove the OP No.1 from the possession of that leased out property. But it is also admitted fact that the partnership firm namely M/S 'Maa Sarada Devi Industries' has not yet been dissolved in the eye of law and almost all the properties of that partnership firm are under the possession of the defendant Ops No.3 & 4 and as such I find no justification to vacate the order dated 12.03.12 passed by this court by which Mr. Jyoti Prakash Saha, Ld. Advocate of Tripura Bar Association of Agartala was appointed as receiver of M/S 'Maa Sarada Devi Industries'. However, the said order is hereby vacated so far as the properties of M/S Raima Bricks Unit-II, Noabadi, Agartala is concerned.

However, the attachment order passed by this court on 12.03.2012 in respect of Schedule A to G properties will continue until disposal of the connected title suit (T.S. 48 of 2012)."

[5] The said order dated 23.03.2013 has also been challenged by the defendants in FAO 01 of 2013 filed before this Court. By the order dated 30.09.2013, the said appeal was allowed holding that:

"According to this Court, the impugned order for appointment of receiver as well as the order of attachment issued by the learned court below undoubtedly lacks factual backing and legal support. Hence, the impugned order of appointment of receiver as well as the order of attachment before judgment is hereby set aside.

[6] Thus, the order appointing the petitioner as the receiver was finally terminated by the said order dated 30.09.2013 in FAO 01 of 2013. Thereafter, the petitioner filed an application being Civil Misc.(Exe) No. 120 of 2013 claiming his remuneration in terms of the order dated 12.03.2012 delivered in case No. Misc. 69 of 2012 arising from T.S.48 of 2012. He claimed remuneration at Rs.10,000/- per month along with other expenses for the months from March, 2012 to March, 2013 for which the petitioner raised bills to the defendants in the suit but without any effect whatsoever. According to the petitioner, the bills were submitted on 22.03.2013 but the defendants did not make any response as regards the payment. The said petition has been rejected by the impugned order dated 13.03.2013 delivered in case No. Misc.(Exe) 120 of 2013 arising from T.S. 48 of 2012 on returning the finding as follows :

"I have carefully perused the orders passed in connected Misc. 69/2012, from where it appears that the petitioner was appointed as Receiver vide order dated 12.03.2012 and the OPs were asked to show cause as to why they should not be removed from the possession or custody of the properties as to why the properties should not be committed to the Receiver. The properties were neither committed to the Receiver nor the OPs were removed from the possession or custody of the property under dispute. Subsequently, on the appearance and written objection of OPs in Misc. 69/2012 my predecessor in Office had not vacated the order of appointment of Receiver having objected by the OPs vide order dated 23.03.2013.

The OPs, therefore, approached the Hon'ble High Court of Tripura by filing an appeal against the order dated 23.03.2013 vide FAO

No.01/2013 by which Hon'ble High Court of Tripura has set aside the order of appointment as well as the order of attachment passed by this court. At this stage we find it appropriate to refer to the order dated 03.09.2013 passed by Hon'ble High Court in FAO No.01 of 2013. The operative portion reads as under:

'Hence, the impugned order of appointment of receiver as well as the order of attachment before judgment is hereby set aside.'

In view of the discussion made above it appears that the petitioner was appointed as Receiver, but the properties under dispute was neither committed to the possession of Receiver nor the OPs were removed from the possession or custody of the properties, moreover, the Hon'ble High Court has set aside the entire order of appointment. We are, therefore, of the considered opinion that the petitioner is not entitled to remuneration as claimed."

[7] Mr. A.K. Bhowmik, learned senior counsel, assisted by Mr. R. Dutta, learned counsel has submitted that the impugned order suffers from non-application of mind to the judicial records including the orders dated 12.03.2012 and 13.03.2013 passed by this Court in FAO No.02 of 2012 and the order dated 20.03.2013 in the suit. The receiver has discharged his duties by the order and thus, he is entitled to realise the remuneration as determined by the trial court from the defendants.

[8] From the other side, Mr. D. Chakraborty, learned senior counsel, assisted by Mr. H. Laskar, learned counsel has vehemently opposed such proposition and contended that the petitioner never managed the properties as the receiver. He had not taken charge of the properties, the brick kiln for its operation

and management. Since he did not discharge any functions of the receiver, his claim for remuneration is unethical, improper, immoral and entirely unjustified. Hence, there is no reason to interfere with the impugned order rejecting the claim of the petitioner.

[9] Having regard to the rival contentions, this court finds that while passing the impugned order dated 13.03.2014, certain important aspects were not taken into consideration by the Civil Judge, Sr. Division, Court No.2, West Tripura, Agartala. His finding is entirely confined to taking over the possession of the custody of the properties. By the order dated 12.03.2012 delivered in case No. Misc. 69 of 2012, the terms of appointment of the receiver are made as under:

"Mr. Jyoti Prakash Saha, Ld. Advocate of Tripura Bar Association, Agartala is hereby appointed as Receiver of M/S 'Maa Sarada Devi Industries' as well as 'M/s Raima Bricks Unit-II', Noabadi, Agartala, in respect of the properties mentioned in schedules 'A' & 'B' of the application until further order and the properties mentioned in schedule 'A' to 'G' of the application are also hereby attached till pronouncement of judgment or until further order whichever is earlier.

Mr. Jyoti Prakash Saha, the appointed receiver will get a remuneration of Rs.10,000/- per month from the fund of the M/S 'Raima Bricks Unit-II' until further order.

The appointed receiver is requested to take necessary step in respect of the properties of the aforesaid funds mentioned in schedule 'A' & 'B' and to submit his monthly report to this court regularly.

[10] From close reading of the order dated 12.03.2012, it transpires without any ambiguity that by the said order dated 12.03.2012 the property mentioned in Schedules-A & B and the property mentioned Schedules-A to G were attached till pronouncement of the judgment or until further order whichever is earlier. As such, the court attached those properties and directed their management by the receiver, the petitioner herein. The petitioner was further directed to submit the monthly report to the trial court regularly.

[11] From the order dated 23.03.2013 delivered in case No.Misc.69 of 2012, it appears that:

This appointed receiver Sri J.P. Saha submits a report whereby it is informed to this court that the appointed receiver has not been allowed to discharge his duty as per order of this court by the agents of the defendant-OPs namely Sri Sunit Das and Shri Pallab Bhattacharjee and that the defendant-OPs also did not submit the accounts book, registers, documents and records of the firm to the receiver for inspection and not only that the men and agents of the defendant-OPs have been threatening the receiver continuously.

The appointed Receiver also files one separate petition claiming his outstanding remuneration of Rs.1,30,000/ from the defendant-OP No.1 Sri Pallab Bhattacharjee.

[12] By the said order dated 23.03.2013 some of the properties, the properties of M/s Raima Bricks Unit-II, Noabadi, Agartala were released from the attachment and from the management of the receiver. But so far the properties described in Schedules-A to G owned by M/S Maa Sarada Devi Industries,

Noabadi, Agartala, the order of attachment and management by the receiver as appointed by the court had been maintained. However, there is no direction by the court as to the prayer made by the receiver.

[13] There is no dispute that by the order dated 30.09.2013, delivered in FAO 01 of 2013, the said order dated 23.03.2013 was interfered with and set aside. Hence, from 30.09.2013, the orders dated 12.03.2012 and 23.03.2013 have become inoperative. The petitioner has claimed his remuneration for the period from March, 2012 to March, 2013. The Civil Judge, Sr. Division, Court No.2 did not consider those aspects including that the petitioner had filed the monthly report. Moreover, it has been claimed that on the basis of the order dated 12.03.2012, the receiver served the notice on the defendants by the registered post on 15.03.2012 and thereafter, he visited the factories of M/S Maa Sarada Devi Industries and M/s Raima Bricks Unit-II, Noabadi, Agartala. It appears further that the petitioner claimed to have acted as the receiver. He issued notice on the defendants, whose properties were under the order of attachment for a limited period for handing over the various records of those firms. It appears from the order dated 23.03.2013, the petitioner submitted a report to the trial court and he complained of the misconduct of the defendants. However, no effective order was

passed by the court while rehearing the prayer for attachment of the properties and appointment of receiver for their management.

[14] While passing the impugned order as the trial court did not consider these aspects which cannot be severed from the basis of the claim, the impugned order is interfered with and quashed for a limited purpose that this matter be remanded to the trial court for re-appreciation and for passing the appropriate order after considering the conditions of appointment, duties discharged by the petitioner as the receiver and the records as referred hereinabove.

Thus, the petition stands allowed to the limited extent as indicated. There shall be no order as to costs.

JUDGE

Sujay