

IN THE HIGH COURT OF BOMBAY AT GOA**MISC. CIVIL APPLICATION NO. 209 OF 2015****IN****FIRST APPEAL NO. 22 of 2015****FLORIANO GAMBETA DA PIEDADE AVILA
AND ANR.****... Applicants****Versus****JOSE BELARMINO ANTAO AND ANR.****... Respondents**

Mr. V. Korgaonkar, Advocate for the applicants.

Mr. S. S. Kakodkar, Advocate for the respondents.

Coram : C. V. BHADANG, J.**Date : 20th July, 2015.****ORAL ORDER :**

By this application the applicants are seeking the continuation of Receiver by “extending the order dated 23 August 2006, passed in Writ Petition No.672 of 2003”.

2] The brief facts are that the applicants / appellants had filed a suit for recovery of possession of the eastern portion of the suit house, on the ground that the respondents have illegally taken possession of the same. The suit was filed for the relief of prohibitory injunction and alternatively for possession and injunction. According to the respondents they are in occupation of the house (including eastern portion), as tenants. It appears that the suit was initially decreed on 10 September 2007. However, the appeal filed by the respondents came to be allowed

on 23 May 2008, and the suit was remanded to the trial Court. After remand, the trial Court has dismissed the suit by judgment and order dated 27 May 2014, which is subject matter of challenge in the first appeal. The first appeal is already admitted.

3] It appears that during the pendency of the suit, the appellants had filed an application for temporary injunction. The trial Court had dismissed the application for temporary injunction and the same was confirmed by the Appellate Court. The matter had reached this Court in Writ Petition No.672 of 2003, in which the parties had arrived at settlement. On the basis of the Minutes of Order dated 23 August 2006, the petition came to be disposed of. The minutes of order may be reproduced as under :

1. The Nazir of the Court of Civil Judge Junior Division, Margaonis appointed as Court Receiver for the suit premises i.e. the premiss which is not the subject matter of the written Lease Deed dated 29.1.1982 executed between the Petitioner No.1 and the Respondent No.1, from the date of this Order till the disposal of the suit bearing No.295/2001/D by the Trial Judge. During this period the Respondent No.1 shall occupy the suit premises as an agent of the Court Receiver and entitled to occupy the same with Respondent No.2 and his family members and shall deposit a sum of Rs.500/- (Rupees five hundred only)

per month as compensation with the Court Receiver towards the suit premises.

2. *The said sum of compensation of Rs.500/- shall be deposited on or before the 10th of every succeeding month for which it becomes due till the disposal of the suit by the trial Judge. The frist such deposit of Rs.500/- shall be for the month of August 2006 and shall be deposited on or before 10.9.2006. On disposal of the suit by the trial Judge the Respondents shall cease to deposit or pay the said sum to the Court Receiver and / or Petitioners.*

3. *The Court Receiver shall accept the said deposit of Rs.500/- per month and all further monthly deposits till the disposal of the suit by the Trial Judge and shall pay the same to the Petitioner No.1, or his pleader or his authorized agent against receipt.*

4. *The said Civil Suit R.C.S.No.295/2001/D shall be expedited and the same shall be disposed of within one year from the date of receipt of the writ of this Court.*

5. *All contentions raised by both the parties in their pleadings before the Trial Judge are left open and any observations made herein shall not influence the Trial Judge who shall dispose of the said suit on merits in accordance with law.*

6. *This Writ Petition stands disposed of in accordance with the above terms with no order as to costs.*

4] It is now submitted that the Receiver once appointed was never discharged and in such circumstances the Receiver may be continued. The prayer clause 6(a) of the application is to the effect that the order dated 23 August 2006 (passed by this Court in Writ Petition No.672 of 2003) be extended till the disposal of the appeal.

5] It is submitted by the learned counsel for the appellants that the eastern portion of the suit house was never rented out. It is submitted that the finding recorded by the learned trial Court to the contrary is clearly against the evidence on record and the applicants have good chances of success in the first appeal. It is submitted that under the minutes of order the Receiver was to be in notional possession of the eastern portion as an agent of the respondents and further the respondents had also agreed to pay an amount of Rs.500/- per month, which was done till the disposal of the civil suit. It is submitted that in the given circumstances and particularly in the absence of the Receiver being discharged, the same arrangement needs to be continued. The learned counsel has placed reliance on the decision of the Hon'ble Apex Court in the case of *Hiralal Patni vs. Loonkaran Sethiya reported in 1961 DGLS (Soft.) 170, The Supreme Court of India*, in order to submit that the Receiver would continue and would be liable to render accounts unless and until he is specifically discharged by an order of

Court. The learned counsel would submit that this Court has ample power to continue the Receiver during the pendency of appeal, if the exigencies of the case so require.

6] On the contrary, it is submitted by the learned counsel for the respondents that the minutes of order would show that the Receiver was appointed only till disposal of the suit and not thereafter. It is submitted that thus the scope of minutes of order on the basis of which the writ petition was disposed of, cannot be enlarged, particularly when the applicants have lost on merits before the trial Court. It is submitted that even when the matter was pending before the learned District Judge in appeal, (during the first round of litigation prior to remand) no similar prayer was made for continuation of the Receiver, which would show that the applicant was aware that the appointment of the Receiver, was only till the disposal of suit. It is submitted that the learned trial Court has rightly come to the conclusion that the suit house including eastern portion is rented out to the respondents. It is submitted that the respondents are regularly remitting the amount of Rs.200/- per month as rent and no case for continuation of Receiver is made out.

7] On hearing the learned counsel for the parties, I do not find that any case for continuation of the Receiver, is made out.

8] The minutes of order would show that the interim arrangement arrived at was to remain in force only till disposal of the suit bearing Suit No.295/2001/D, by the learned Civil Judge, Junior Division, Margaon. Perusal of Para 2 of the minutes of order would further show that even so far as deposit of Rs.500/- is concerned, it was to be during the pendency of the suit before the trial Court. The parties had specifically agreed that on disposal of the suit by trial Judge, the respondents shall cease to deposit or pay the said sum to the Court Receiver and / or to the petitioners (the applicants herein).

9] It would further appear that the learned trial Court had framed a specific issue namely issue No.1, as to whether the appellants prove that the first respondent (defendant No.1) is the tenant of only a portion of the suit house and nothing else, which portion was shown in red in the sketch annexed to Deed of Sale (Annexure 'A' to the plaint). This issue has been answered in the negative. It is true that this finding of fact recorded by the trial Court is open in the first appeal, which is already admitted. However, at the same time, unless and until the appeal is heard on merits and the said finding is reversed, it would subsist as against the applicants / appellants. The appointment of the Receiver was only on the strength of the minutes of order arrived at between the parties and the Receiver was appointed only till disposal of

the suit. It is therefore not possible to extend or enlarge the scope of the minutes of order, more so when the finding on issue No.1 is against the appellants at this stage.

10] In the case of **Hiralal Patni** (supra), the material issue was whether the Court was legally competent to confer a power on the Receiver under Order XL, Rule 1(1)(d) of the Code of Civil Procedure, to recover the possession of the disputed property, which was a mill in that case. The Hon'ble Supreme Court held in the affirmative. In so far as the period for which such appointment subsists / continues, the Hon'ble Apex Court in Para 11 of the judgment, has summarized the legal position as under :

The law may briefly be stated thus : (1) If a receiver is appointed in a suit until judgment, the appointment is brought to an end by the judgment in the action. (2) If a receiver is appointed in a suit, without his tenure being expressly defined, he will continue to be receiver till he is discharged. (3) But, after the final disposal of the suit as between the parties to the litigation, the receivers functions are usually terminated, he would still be answerable to the court as its officer till he is finally discharged. (4) The Court has ample power to continue the receiver even after the final decree if the exigencies of the case so require.

It can thus be seen that if a Receiver is appointed in a suit until the judgment, the appointment is brought to an end, on pronouncing of the judgment itself, as has been held in Para 11 above. In the present case

also, the minutes of order would clearly show that the appointment of Receiver was on the basis of a concession till disposal of the suit and not beyond that. In the present case, it is not in dispute that the respondents are remitting the amount of Rs.200/- per month, to the appellants. In the given circumstances, I do not find that the order dated 23 August 2006 can be “extended till disposal of the appeal”, as prayed for in Para 6(a) of the application. It is needless to mention that if the appellants ultimately succeed in the appeal, appropriate orders as regards mesne profits can always be passed. Subject to this, there is no merit in the application and it is accordingly dismissed.

C. V. BHADANG, J.

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