

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO.4379 OF 2015

Shri Narendrakumar Ramrao Shinde.] ... Petitioner

Versus

M/s. Paranjpe Schemes Construction Ltd.]
 Through its Director Shri S. P. Paranjpe.] ... Respondent/
 Orig. Plaintiff

Mr. Nitin P. Dalvi for Petitioner.

Mr. P. S. Dani, Senior Advocate, h/f Mr. Prasad B. Kulkarni for
 Respondent/Orig. Plaintiff.

CORAM :- M. S. SONAK, J.

DATE :- JULY 07, 2015

P. C. :-

1. The challenge in this petition is to the order dated 22/04/2015 which reads thus :

“Heard advocate R.M. Pathak for the plaintiff. I have also perused the order of Hon'ble High Court and prayer clause b vide Exh.5. The receiver has to take the possession from the defendants and hand over the said possession to the plaintiff for development of the suit property. However while passing the above over, the receiver is directed to take possession but in respect of handing over the possession there is no direction. Hence

the receiver is hereby directed to hand over the possession to the plaintiff to carry out the development work and report the compliance in that respect.”

2. The aforesaid order dated 22/04/2015 adds to the order made on 20/04/2015, by which Receiver was appointed to take possession of the suit premises from certain Defendants in the suit, including the Petitioner herein. The grievance of the Petitioner is that before the impugned order dated 22/04/2015 was made, the Petitioner was not offered opportunity of hearing.

3. The record indeed discloses that no hearing was granted to the Petitioner before the order dated 22/04/2015 was made. Normally, in a matter of this nature, it would have been appropriate if the learned Civil Judge had given a hearing to the Petitioner before making the impugned order. However, in view of facts and circumstances, which are referred to hereafter, no case is made out to interfere with the impugned order.

4. The orders dated 20/04/2015 and 22/04/2015, are in the nature of compliances with the interim order granted by this Court on 10/11/2014 in Appeal from Order No.916 of 2014 wherein this Court, granted the Respondent-Plaintiff interim relief in terms of prayer clause (b) of the Exh.5 application. This prayer clause reads thus :-

“b. Hon'ble Court may kindly appoint Court Receiver in respect of suit property, during the pendency

of the present suit, and he be directed to compel the defendants 2 to 20 to immediately vacate their respective flats in the suit property and for that purpose, if necessary to take police help to dispossess and evict the said defendants and with a further direction to the said court receiver to immediately hand over possession thereof to the plaintiff and with further direction to ensure that the plaintiff is able to carry out demolition of old buildings on the suit property and to carry out redevelopment of suit property and to enforce all its rights under suit agreement without any obstruction from any of the defendants during pendency of the present suit.”

5. The Petitioner and others, preferred petition for special leave to appeal against the aforesaid order dated 10/11/2014, which came to be dismissed on 16/01/2015. In fact, on behalf of the Petitioner, time was sought to vacate the premises in question and the Hon'ble Apex Court extended the time for vacating the premises in question peacefully up to 15/04/2015.

6. As there was no compliance, the Respondent-Plaintiff applied for appointment of Receiver in pursuance of relief in terms of prayer clause (b) as aforesaid. Such appointment, was really not opposed by the Petitioner and the order dated 20/04/2015 came to be made. In the said order however, there was no clarity as to whether

the Receiver could hand over the possession of the suit premises to the Respondent-Plaintiff for the purposes of development of the suit property. This aspect was clarified in the order dated 22/04/2015. Thus, even if hearing were to be afforded to the Petitioner, there was really nothing much that the Petitioner could have said in the matter of the direction made, particularly in the wake of the order made by this Court on 10/11/2014 and the dismissal of the special leave petition on 16/01/2015. It is in these circumstances, there is no reason to exercise extraordinary jurisdiction and set aside the impugned order dated 22/04/2015.

7. The learned Counsel for Petitioner, however, submitted that this Court, in its order dated 10/11/2014, whilst granting interim relief in terms of prayer clause (b), had further directed that the Appeal Court shall select a suitable person for appointment of a Receiver of the suit property and also decide the costs and charges of the Receiver after hearing the parties. The hearing, as contemplated by the order dated 10/11/2014, was in the context of costs and charges of the Receiver. There is no serious dispute that such hearing was afforded by the Appeal Court to the parties. In fact, the trial Court even sought names from the parties in the matter of the choice of the Receiver.

8. The learned Counsel for Petitioner, however, submitted that there are certain issues with regard to the entitlement of the Petitioner in the context of the development being undertaken by the

Respondent-Plaintiff and that hearing is required upon the said issue. Undoubtedly, the trial Court will offer a hearing to all parties including the Petitioner in the matter of such entitlement. However, that is not a reason to interfere with the impugned order dated 22/04/2015. The two orders are not interrelated, particularly, in the light of orders made by this Court on 10/11/2014 and the dismissal of the special leave petition as against the same on 16/01/2015.

9. With the aforesaid observations, this Petition is dismissed. There shall be no order as to costs. The interim order granted earlier shall stand vacated.

(M. S. SONAK, J.)