

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2514 OF 2014
IN
FIRST APPEAL NO.926 OF 2012

Ramanand Narayan Sherigara and Another	...Appellants/ ori. Defendants
versus	
Kalyani Narayan Sherigara and Others	...Respondents/ ori. Plaintiffs

Mr. A.A. Siddique, for Applicants.
Mr. Deepak Jadhav, for Respondent Nos. 1 to 8.

CORAM : K.K. TATED, J.

DATE : 04TH MARCH, 2015

P.C. :-

. Heard learned counsel for parties.

2] This application preferred by Defendants seeking direction to the Court Receiver, High Court, Bombay to take possession of the suit premises i.e. Pan cum Bidi shop situated outside the Ratnagiri Hotel Premises, Bhagwan Bhavan, Opposite Andheri police station, 15, Andheri Kurla Road, Andheri (E), Mumbai-69 and handover the same to the Plaintiffs.

3] In the present proceeding, Respondents-Plaintiffs filed S.C. Suit No. 2564 of 2000 in the Court of Bombay City Civil Court, Bombay for declaration that suit shop is belonging to the Plaintiffs and for direction to the Defendants to handover the possession of the same. The said suit decreed by the trial Court on 20-06-2011.

Operative part of the said decree reads thus:

- “1. Suit is partly decreed with costs as under.*
- 2. Defendant Nos. 1 and 2 both, shall jointly and severally pay plaintiff No. 1 Smt. Kalyani Narayan Sherigarty, Rs. 3,000/- per month from January, 2000 till today within a period of two months.*
- 3. Upon payment of such entire dues, defendants are entitled to do the business at suit shop on further condition that they shall regularly pay Rs. 3,000/- per month to plaintiff No. 1 forever till her lifetime.*
- 4. If defendants fail to deposit entire previous balance of amount within two months from today, plaintiff No. 1 at liberty to get recovered that amount by taking custody possession of this business for recovery of the dues from Court Receiver.*
- 5. Rest of the prayers claimed by plaintiff hereby rejected.*
- 6. Decree be drawn up accordingly.”*

4] As the Defendants failed to pay the monthly compensation as per the interim order dated 14-12-2000 passed by the Bombay City Civil Court, Bombay in Notice of Motion No. 2923 of 2000, the Court Receiver took possession of the suit premises on 09-01-2009.

Thereafter, the same was handed over to the Respondents/ Defendants on 16-03-2012. Hence, the present Civil Application preferred by the Defendants.

5] The learned counsel on behalf of the Defendants submits that as per the order dated 14-12-2000 passed by the trial Court in Notice of Motion No. 2923 of 2000, they deposited the compensation amount in the office of Court Receiver. He further submitted that because of communication gap between the Defendants and their Advocate for some period, the compensation was not deposited in the office of Court Receiver. He submits that Applicants/Defendants are ready and willing to pay the entire arrears towards the compensation in the office of Court Receiver. He submits that in the interest of justice, this Court be pleased to direct the Court Receiver to handover the vacant possession of the suit shop to the Defendants on depositing the arrears of compensation. He submits that if the present application is not allowed irreparable loss, harm and injury will be caused to the Defendants. He submits that Defendants have good chance in the present proceeding. On the basis of this statement, the learned counsel for the Defendants submit that in the interest of justice, this Court be pleased to direct the Court Receiver to take back the possession of the suit premises from Plaintiffs and hand over the same to the Defendants.

6] On the other hand, the learned counsel for the Plaintiffs vehemently opposed the present Civil Application. He submits that pursuant to the order passed by the trial Court, Defendants failed and neglected to deposit the compensation amount regularly in the office of Court Receiver. He submits that the trial Court on 20-11-2008 recorded that the representative of the Court Receiver, High Court, Bombay was present in the Court. The representative of the Court Receiver made grievance that Defendants are continuing the default in complying the payment of royalty and the compensation. The said grievance application is taken on record by the trial Court and marked as Exhibit-19. He submits that thereafter the trial Court by order dated 16-12-2008 directed the Defendants to deposit the entire arrears, royalty and cost of Rs. 1,000/- in the office of Court Receiver on or before 30-12-2008. He submits that in extended time, Defendants failed and neglected to deposit the royalty in the office of Court Receiver. Hence, as a last chance, the trial Court by an order dated 09-01-2009 granted time to the Defendants to clear the arrears of royalty and cost on or before 23-01-2009 failing which the Court Receiver to take possession of the suit shop.

7] The learned counsel appearing on behalf of the Plaintiffs submit that as the Defendants failed and neglected to clear the

entire arrears of royalty. Therefore, the Court Receiver took possession of the suit premises. He further submits that, thereafter matter appeared on board before the trial Court on 03-02-2009. The trial Court directed the Court Receiver to continue to hold the suit premises under his lock and key. He submits that thereafter the Court Receiver handed over possession of the suit premises to the Plaintiffs on 16-03-2012 and the same is recorded by the Court Receiver in his letter dated 20-03-2012 along-with its report dated 17-03-2012. He submits that since then the Plaintiffs are in possession of the suit premises. He submits that though Defendants lost their possession of the suit premises in the month of March, 2009, they filed the present Civil Application on 13-06-2014 i.e. after more than five years. There is no substance in the present Civil Application and the same is to be dismissed with cost.

8] I heard both the sides at length.

9] Admittedly, Court Receiver took possession of the suit premises in the month of March, 2009 as the Defendants failed and neglected to pay the royalty. Thereafter the suit filed by the Plaintiffs decreed by the trial Court on 20-06-2011. Thereafter the Court Receiver handed over the possession of the suit premises on 16-03-

2012 to the Plaintiffs and recorded these facts in its letter dated 20-03-2012. This shows that the Defendants were not in a possession of the suit premises for last more than six years. Not only that, they failed and neglected to pay the royalty as per the order passed by the trial Court. Considering these facts, I do not find any reason to allow the present Civil Application. Hence, the same is rejected.

(K.K. TATED, J.)