

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
APPEAL FROM ORDER NO.1048 OF 2014

Dilip Shankar Mulay

... Appellant

V/s.

Pradip Shankar Mulay

...Respondent

Mr. Dilip Shankar Mulay Appellant in-person.

Mr. Sandesh Deshpande for Respondent No.1.

CORAM: K.K. TATED, J.

DATED : FEBRUARY 12, 2015

PC. :

1. Heard the Appellant party-in-person and the learned counsel for Respondent No.1. The Appellant is Plaintiff and Respondent No.1 is original Defendant No.1.

2. This Appeal from Order is preferred by the Plaintiff challenging the order dated 16/04/2013 passed by the Civil Judge, Senior Division Thane below Exhibit 563 in Regular Civil Suit No.1407/2012 rejecting the Plainti Application under Order XL Rule 1 of the Code of Civil Procedure, 1908 for appointment of a Court Receiver to conduct the business of flour mill situated at Thane.

3. The Plaintiff filed Special Civil Suit No.1303/1996 (old number) Regular Civil Suit No.1407/2012 (new number) for partition of HUF property and for possession of his share. Initially, the Plaintiff filed Application below Exhibit 7 for appointment of a Court Receiver, which was rejected by the Trial Court by order dated 31/08/1998. Being aggrieved by the said order, the Plaintiff preferred Appeal from Order

No.1154/1998 in this court, which was also rejected by this court (Coram : D. K. Deshmukh, J.) vide order dated 13/01/1999 directing Defendant No.1 to maintain accounts of the flour mill which is in his possession and to submit accounts quarterly in the court. This court further directed Defendant No.1 to give details about the electricity consumption also.

4. Thereafter the Plaintiff preferred Application below Exhibit 563 dated 15/01/2013 under Order XL Rule 1 of the Code of Civil Procedure, 1908 for appointment of a Court Receiver and other reliefs, which read thus :

A) The Defendant No.1 has misappropriated funds of Rs.95021/- or more and is causing waste and should be removed and discharged from flour mill immediately.

B) The Defendant No.1 is unfit, unreliable, untrustworthy person and should be removed and discharged from flour mill in view of exemption Applications in CC No.165/2010 in view of Exhibit V and C and has not informed Trial Court and made suitable arrangement for collecting daily cash of running business of Rs.800/- or more resulting Bhaiys by name Yadav is illegally profiteering.

C) The Plaintiff be appointed as a Receiver, because there is no bar to appoint a Receiver, if new facts and circumstances are brought to the notice of the high court.

D) The Defendant No.1 be removed and discharged from flour mill for not showing naya paisa of rent towards flour mill from dated 13/03/1999 till date of filing of this Civil Application for last 16 years and have misappropriated the same or shown how much of balance rent accumulated in flour mill account in expenses.

E) The Defendant No.1 be removed and discharged from flour mill for illegally transferring shop and establishment license and professional tax certificate on his name during pendency of trial suit and is against section 52 and 53 of Transfer of Property Act and has played fraud on court and infringed property rights of Plaintiff.

F) The Defendant No.1 be removed and discharged from flour mill for not filling muster roll cum wage register of servant in flour mill from September 2009 till date of filing this Application.

G) The Defendant No.1 be removed and discharged from flour mill for not supporting income expenses statements with vouchers bills, chalans etc. after 11/04/2011 the account filed are all bogus and manipulated.

H) The Defendant No.1 be removed and discharged from flour mill for concealing and suppressing his exemption Application dated 28/06/2011 and 01/12/2012 from Civil Court (SD) Thane and further, utterly failing to make alternate, arrangement of collecting daily cash or galla with direction of Civil Court (S.D.) Thane.

The said Application was rejected by the Trial Court on 16/04/2013. Hence, the present Appeal from Order.

5. The Plaintiff party-in-person submits that the Trial Court erred in coming to the conclusion that the Plaintiff has not made out any case for appointment of a Court Receiver in respect of the suit property i.e. flour mill. He further submits that the Trial Court rejected his Application below Exhibit 563 dated 15/01/2013 only on the ground that earlier this court by order dated 19/09/2011 in contempt petition No. 159/2011 observed that Defendant No.1 has partly complied with order dated 13/01/1999 in Appeal from Order No.1154/1998. He

further submits that, he placed on record several documents to prove that Defendant No.1 is misappropriating the income from the said flour mill. He submits that in the statement of account submitted by Defendant No.1 there are several mistakes. He submits that in some of the statement of accounts, Defendant No.1 claimed the expenses twice. Not only that, Defendant No.1 also claimed the expenses on higher side. He submits that the Defendant No.1, in a statement of account for December 2009 has shown the expenses of Rs.50,999/- towards Gajanan Construction Co. and same was also claimed in subsequent statement of account submitted on 21/01/2010 at serial number 2(m). In this way, the Defendant No.1 is misappropriating the income of the flour mill. Therefore, in the interest of justice, this Hon'ble Court be pleased to appoint a Court Receiver and hand over possession of the flour mill to the Plaintiff as an agent of the Court Receiver to conduct the business. In support of this contention, the party-in-person relies on the judgments in the case of *Hanumayya and Anr. Vs. Venkatasubbayya and Ors. MANU/TN/0111/1894*, *Bandoo Krishna Kulkarni Vs. Narsingrao Konherrao Deshpande MANU/MH/0187/1914*, and *Victor John Gomes (D) & Ors. Vs. Thomas John Gomes & Anr. AIR 2006 Bombay 92*.

6. Plaintiff further submits that in the above mentioned Authority, the Hon'ble High Courts held that if a person who was in possession of the property, misappropriates the funds and/or not in a position to maintain accounts properly, the court should appoint a Court Receiver. He submits that in the present proceedings, he has placed on record several documents including statement of accounts submitted by

Defendant No.1 himself to show that he has misappropriated the funds of the joint family for his personal use.

7. He further submits that the Trial Court erred in relying on the judgment of the Madras high Court in the matter of T. Krishnaswamy Chetty Vs. Thangavelu Chetty and Ors. AIR 1955 Madras 430.

8. Hence, this Hon'ble Court be pleased to set aside the impugned order passed by the Trial Court on 16/04/2013 and appoint a Court Receiver in respect of the suit property.

9. On the other hand, the learned counsel for the Defendant No.1 vehemently opposed the present Appeal from Order. He submits that initially the Plaintiff preferred Application below Exhibit 7 in Trial Court that was rejected. Thereafter the Plaintiff has preferred Appeal from Order No.1154/1998. Same was rejected by this court by order dated 13/01/1999 with directions to the Defendant no.1 to file statement of accounts of the income and expenditure of the flour mill. He further submits that thereafter the Plaintiff filed contempt petition No. 159/2011 alleging that the Defendant was not complying with the order passed by this court on 13/01/1999 in Appeal from Order No.1154/1999 i.e. submission of a statement of accounts in Trial Court. He submits that, the said contempt petition was dismissed by this court by order dated 19/09/2011 holding that the Defendant No.1 has complied with the order passed by this court. He further submits that by order dated 19/09/2011 in contempt petition No. 159/2011 this court expedited hearing of the suit pending before the Trial Court. This

court directed the Trial Court to dispose of the suit before September 2012. He submits that the Plaintiff preferred several Applications in that suit. Therefore, the same is still pending.

10. The learned counsel for the Defendant No.1 submits that subsequently the Plaintiff filed contempt petition No. 598/2014 in this court for breach of the order dated 13/01/1999 passed by this court in Appeal from Order No.1154/1998. This court (Coram : R. G. Ketkar, J.) by order dated 13/10/2014 dismissed the contempt petition. He submits that the Plaintiff instead of proceeding with the trial of the suit, has filed several applications to prolong the hearing and final disposal of the suit. He submits that the statement of accounts filed by the Defendant can be scrutinized at the time of trial. There is no question of considering the same at this interim stage. He further submits that the Application filed by the Plaintiff for appointment of a Court Receiver below Exhibit 7 was rejected by the Trial Court as well as this court and case for entertaining an application for appointment of a Court Receiver has not been made out. On the basis of these submissions the learned counsel for the Defendant No.1 submits that there is no substance in the appeal and same be dismissed with costs.

11. Heard both sides at length. In the present proceedings, the Plaintiff has filed second Application below Exhibit 563 under Order XL Rule 1 of the Code of Civil Procedure, 1908 for appointment of a Court Receiver on the ground that Defendant No.1 is misappropriating the income of the flour mill. It is to be noted that statement of account filed by the Defendant No.1 can be considered by the Trial Court at the

time of final hearing of the suit. Whether the Defendant No.1 is misappropriating the funds of the HUF property cannot be decided at this stage. It is to be noted that this court, by order dated 19/09/2011 in contempt petition No. 159/2011 directed the Trial Court to dispose of the suit as early as possible but in any case before September 2012 but the Plaintiffs has delayed the hearing of the suit by filing various applications and appeals.

12. The Plaintiff in his Application below Exhibit 563 dated 15/01/2013 has not made out case for appointment of a Court Receiver. Even the authorities relied on by the Plaintiff, cited above, are not applicable in the facts and circumstances of the present case. In the present case, the earlier Application filed by the Plaintiff for appointment of a Court Receiver was dismissed. In any case, this court expedited hearing of the suit. Considering these facts, the following order is passed:

- a) The Appeal from Order stands rejected.
- b) The Trial Court is directed to decide the Special Civil Suit No. 1303/1996 (old number) Regular Civil Suit No.1407/2012 (new number) as early as possible but in any case within 1 year from today.
- c) In view of the rejection of the Appeal from Order, nothing survives in the Civil Application. Same stands dismissed as infructuous.
- d) Parties to act on a copy of this order duly authenticated by the Sheristedar of this court.

(K.K. TATED, J.)