

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2965 OF 2012
IN
FIRST APPEAL NO.1078 OF 2012**

Chandrakant Bhiwaji Kawalkar .. Applicant

Vs.

Anil P. Sachdev .. Respondent

Mr.Joel D'souza i/b Mr.S.M.Kamble for the applicant

Mr.J.A.Udaipuri i/b M/s.Udaipuri and Co. for the respondent

Mr.N.A.Bandodkar, 2nd Asstt. Court Receiver with Mr.A.B.Malvankar,
S.O. present in court

**CORAM : K.K.TATED, J.
DATED : 11/02/2015**

PC:

1 Heard the learned counsel for the parties.

2 This Application is preferred by the plaintiff for continuation of Court Receiver appointed by this court by order dated 26.07.2011 in Appeal from Order No.266 of 2011.

3 The applicant filed Special Civil Suit No. 207 of 2010 in the Bombay City Civil Court, Mumbai for an order of injunction

restraining respondent defendant from dispossessing applicants from the suit premises and or entering into the suit premises namely Gala No.47A situated on the 2nd floor of the building known as Satyam Industrial Estate and lying on the plot of land bearing Survey No.72, Hissa No.5, Subhash Road, Jogeshwari (East), Mumbai - 60. In that suit the trial court framed following three issues:

ISSUES	FINDINGS
1 Does the plaintiff prove that, he is in possession of suit premises i.e. Gala No.47A situated on the second floor of the building known as 'Satyam Industrial Estate' and lying on the plot of land bearing Survey No.72, Hissa No.5, Subhash Road, Jogeshwari (East), Mumbai – 400 060?	In the negative
2 Does the plaintiff prove that, the defendant is trying to dispossess him illegally from the suit premises?	In the negative
3 Whether plaintiff is entitled, for declaration and injunction as sought for?	In the negative
4 What order?	As per final order
4 After considering the evidence on record, the Trial Court by judgment and decree dated 07.05.2012 dismissed the suit.	

5 Thereafter the applicant preferred present First Appeal. The said appeal was admitted by this court. In this appeal, initially the applicant preferred Civil Application No.2967 of 2012 for an order of injunction restraining respondent from creating any any third party right, title and interest in respect of the suit property. Prayer clause

(a) of the Civil Application reads thus:

“(a) The pending the hearing and final disposal of the above First Appeal the Respondent through himself or his agent, servants or any other person on his behalf be restrained by order of Injunction from creating any third party right, title, interest in respect of the suit premises being Gala No.47A situated on the 2nd floor of the Building known as Satyam Industrial Estate and lying on the plot of land bearing Survey No.72, Hissa No.5, Shubash Road, Jogeshwari (East), Mumbai 400 060.”

The said application was rejected by this court (Coram: R.Y.Ganoo, J.) on 11.11.2013.

6 In the present Civil Application the applicant is seeking continuation of Court Receiver in respect of the suit premises.

7 The learned counsel for the applicant submits that during the pendency of the Special Civil Suit No. 207 of 2010 the applicant preferred Appeal from Order No.266 of 2011. After hearing both the sides this court (Coram: J.S.Bhatia, J.) by order dated 26.7.2011 appointed Court Receiver in respect of the suit property and directed the occupant i.e. Rajesh Jain to pay the royalty as per the terms and conditions of the Leave and License Agreement dated 5.5.2011. This court further passed order stating that in case the occupant Rajesh Jain licensee at that time, vacates the premises before disposal of the suit, the Court Receiver shall appoint some other person as a licensee

after consulting both the parties.

8 The learned counsel for the applicant submits that at the time of passing the impugned judgment and decree dated 07.05.2012 the trial court have not discharged the Court Receiver. Hence, Court Receiver is in possession of the suit premises. Therefore, Court Receiver's appointment be continued till the hearing and final disposal of the present First Appeal.

9 On the other hand, the learned counsel for the respondent defendant vehemently opposed the present Civil Application. He submits that once the suit is dismissed there is no question of continuation of Court Receiver which was appointed by this court by order dated 26.7.2011 in Appeal from Order No.266 of 2011. This court appointed Court Receiver by that Order only during the pendency of the suit before the Trial Court. Hence, there is no substance in the present Civil Application and same be dismissed with costs.

10 I have heard both the sides at length. At the time of dismissing the suit by judgment dated 07.05.2012 the trial court has not continued the appointment of Court Receiver. Not only that the order passed by this court on 26.7.2011 (Coram: J.S.Bhatia, J.) in Appeal from Order No.266 of 2011 shows that Court Receiver was appointed only till the disposal of the suit. Paragraph (ii) of that order reads thus:

“(ii) In case Mr.Rajesh Jain, the present licensee,

vacates the premises before disposal of the suit, the Court Receiver shall appoint some other person as a licensee after consultation with both the parties.”

This itself shows that the intention of the court by order dt.26.7.2011 was to appoint Court Receiver during the pendency of the suit. Therefore, there is no question of continuation of appointment of Court Receiver unless there is a specific order passed by the trial court or this court. Admittedly, there is no order passed either by the trial court or this court for continuation of Court Receiver.

11 Court Receiver who is present in court submits that earlier occupant Rajesh Jain by his letter dated 30.3.2012 informed the Court Receiver that he does not want to continue with the suit premises and vacated the same. Therefore he claimed refund of Rs.1,50,000/- deposit. Pursuant to the said letter the Court Receiver called a meeting of both the parties in the present proceeding. That meeting was held on 17.4.2012. In that meeting Court Receiver directed both the parties to submit their say to the letter dated 30.3.2012 received from Rajesh Jain. Court Receiver submits that neither plaintiff or defendant submitted any reply and or suggestion for appointment of new person to occupy the suit premises. Thereafter the respondent defendant informed the Court Receiver by letter dated 12.05.2012 that the suit shall stand dismissed by judgment and decree dt.07.05.2012. Hence, Court Receiver has not taken any steps. Court Receiver further submits that he will submit

his report to this court about the expenses which he has incurred and the excess amount lying with him so that court can pass appropriate order about the excess amount lying with the Court Receiver.

12 Considering the above mentioned facts that the appointment of Court Receiver was not confirmed either by trial court or this court after 07.05.2012 there is no question of allowing the present Civil Application. Hence, following order:

- a) Civil Application stands rejected.
- b) Court Receiver to submit his report about the amount lying with him within two weeks from today with a copy to the other side.
- c) Court Receiver stand discharged without passing any account.
- d) Office is directed to place First Appeal No.1078 of 2012 on board after two weeks for filing Court Receiver's report.

(K.K.TATED, J.)