

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

**CIVIL APPLICATION NO. 3874 OF 2014
IN
FIRST APPEAL NO. 1874 OF 2007**

Leela T. Thadani ... Applicant
V/s.
Jagdish Somaiya & ors. ... Respondents

Mr. Vivek Pandey i/b Dr. Santosh Raje for the applicant.
Mr. R. B. Jaiwal for the respondent.
Mr. S.S. Deshpande, Court Receiver with Mr. G.G. Ketkar, 1st Asst. Court Receiver with Mr. A.S. Tammannawar, Section officer present.

**CORAM : K. K. TATED, J.
DATED : 03/07/2015.**

PC.:

. Heard learned Counsel for the parties and Court Receiver Mr.S.S. Deshpande.

2 This application is preferred by plaintiff for discharging the Court Receiver in respect of suit premises i.e. Shop situated at Sion fish market, Duncan Causeway Road No.1, Sion (E), Mumbai – 400 022.

3 In the present proceeding, initially the applicant plaintiff filed S.C. Suit no. 429 of 2003 in the Bombay City Civil Court at Bombay for possession of suit property and mesne profit. That suit was decreed by the Bombay City Civil Court at Bombay by decree dated 20.12.2006. the operative part of the said decree, reads thus:

“ORDER

1. S.C.Suit No. 429/2003 is decreed in following

terms:-

(a) Issue mandatory injunction against the defendant no.1, His servants, agents etc. to quit and hand over the vacant and peaceful possession of the suit premises, more particularly described in sketch plan i.e. Exh.A to the plaint, admeasuring 10' X 4' X 9' height situate at Sion Fish market, Duncan Road no.1, Sion (East), Mumbai – 400 022, within three months from today to the plaintiff.

(b) Plaintiffs are entitled to recover mesne profits from the Defendant no.1 which shall be determined by Registrar of this Court, in separate inquiry to be initiated at the instance of plaintiff for the period from filing of the suit till actual handing over the possession of the suit premises to the plaintiffs.

(c) After handing over the possession of the suit premises to the plaintiff by the defendant, the Court Receiver shall stand discharged.

2. Defendant no.1 to bear his own costs and of the plaintiffs.

3. Decree be drawn accordingly.”

4 Being aggrieved by the said decree, the Appellant defendant preferred First Appeal no. 1874 of 2007 in this Court. That was decided by this Court (Coram : A.P. Bhangale, J) by order dated 29.10.2013. The operative part of the said order reads thus:

“O R D E R

1 The appellant (original defendant) is directed to apply before the Court of Small Causes at Bombay within a period of one month from the date of this order and preferably as early as possible. If such application is made, the Special Court i.e. Court of Small Causes at Mumbai would restore the suit which was dismissed in default of appearance and her the parties on merits in accordance with law.

2 The Court Receiver who was appointed, pending disposal of First Appeal No.1874/07 and respondent plaintiff who is in possession of the suit shop would hold the possession of the suit shop until an appropriate order is passed by the Special Court.

Further continuance of the appointment of the Court Receiver would depend upon the appropriate order that may be passed by the Special Court.

3 Liberty for the respondent (original plaintiff) to apply for all incidental and consequential reliefs pursuant to dispute between the parties.

4 Observation by the learned City Civil Judge that the defendant as trespasser would not come in the way of learned Special Judge. Court of Small Causes at Mumbai to independently decide the issue regarding tenancy or otherwise as the case may be.

5 In the event the appellant (defendant) fail to apply before the Small Causes Court pursuant to this order, within prescribed time limit, liberty granted accordingly shall stand vacated automatically.

6 Appeal is disposed of accordingly.”

7 It is specifically stated in paragraph 2 of the operative part of that order, the appointment of the Court Receiver in suit premises would depend upon the appropriate order that passed by the Special Court i.e. Small Causes Court. Till today, the Small Causes Court has not passed any order.

8 The learned Counsel for the applicant/ plaintiff submits that the defendants failed and neglected to pay royalty in respect of suit premises. Hence, Court Receiver has taken possession of suit premises on 23.09.2008. Thereafter, the Court Receiver handed over the possession of the suit property to the plaintiff on 07.10.2009 on non payment of royalty. Since, then the Court Receiver is in possession of the suit premises. Though, the respondent/defendant claimed for

restoration of the suit but they have not filed application for continuation of the Court Receiver. Hence, Court Receiver be discharged in view of order passed by this Court on 29.10.2013.

9 On the other hand, the learned Counsel for the Appellants defendants vehemently opposed the present Civil Application. He filed affidavit-in-reply dated 03.07.2015. The learned Counsel for the Appellants/defendants submits that they already filed application before the Small Causes Court for directing the Court Receiver to hand over the possession of the suit premises to them and appointment as a agent of the Court Receiver. He further submits that if the present Civil Application is allowed and the Court Receiver is discharged, irreparable loss and injury will be caused to the respondents defendants. Hence, there is no question of allowing the present Civil Application.

10 I heard both the sides at length. It is to be noted that in the present proceeding only issue is whether the plaintiff in Small Causes Court i.e. respondents defendants in the present proceeding has filed any application for appointment and/or continuation of the Court Receiver. The Appellants defendants nowhere made any averments in the affidavit-in-reply that they have filed such application in the Small Causes Court and also during the course of arguments, they have not made any statement to that effect. The Court Receiver, who is present before this Court submits that he has not received any application for continuation in respect of suit premises.

11 Considering these facts, I am of the opinion that applicant has made out case for allowing the Civil Application.

12 Hence, the following order.

ORDER

a) Civil Application is allowed in terms of prayer clause (c), which reads thus:

“c) That this Hon'ble Court be pleased to discharge the court receiver immediately and the court receiver be directed to hand over formal possession of the suit premises to the applicant herein.”

b) The Court Receiver is discharged without passing any account subject to costs and their charges, if any.

c) The Court Receiver is directed to take appropriate proceeding for recovery of royalty or any other amount from the defendants which is due and payable as per their Agency agreement.

d) Civil Application stands disposed of accordingly.

13 At this stage, the learned Counsel for the defendants seeks stay of this order.

14 Considering the facts and circumstances of the present case that this Court passed an order in First Appeal no. 1874 of 2007 dated 29.10.2013 and till today the defendants have not made any application before the Small Causes Court for continuation of the Court Receiver, I do not find any reason to allow the oral application. Hence, same is rejected.

(K.K.TATED, J.)