

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

WRIT PETITION NO. 3014 OF 2016

Ashirwad Nice Developers	... Petitioner
V/s.	
Smt. Snehlata Ganpat Dalvi & Ors.	... Respondents

Mr. Rakesh Agrawal for the Petitioner.
Mr. Kiran Somane for the Respondent No.1
Mr. Anand Kumar Singh for respondent nos. 3 and 5.
Mr. Ishwar Ahuja i/b Thakardas Madgaonkar for Respondent nos. 10 to 12.
Mr. R. B. Ghadi, Clerk of Court Receiver present.

**CORAM : K. K. TATED, J.
DATED : 30/06/2016**

PC.:

. Heard learned Counsel for the parties.

2 The learned counsel for the petitioner filed affidavit of service dated 27.06.2016 stating that all the respondents are served. Though, all the respondents are duly served, some of the respondents failed to present before this Court.

3 By this Writ Petition, the third party challenges the order dated 05.02.2016 passed by Bombay City Civil Court, Mumbai in Misc. Application No. 57 of 2013 in S.C.Suit No. 8447 of 1998 rejecting petitioner's application for permission to file a suit against Court Receiver appointed by this Court in respect of suit property.

4 It is the case of the petitioner that they purchased suit property by conveyance dated 19.06.2009. Thereafter, they issued letter of *attornment* to all the parties occupying the suit property. He submits that suit property is plot bearing CTS No. 778 together with three buildings in plot admeasuring 3045 sq. yard. He submits that the said open plot of land was leased out to Sitabai Ramchandra Dalvi. Thereafter, the legal heirs of the said Sitabai filed suit No. 4677 of 1998 in this Court at Original Side for various reliefs. In that suit, this Court by order dated 02.09.2003 in Notice of Motion No. 1325 of 2003 appointed Court Receiver and since then Court Receiver is in possession of the suit premises. He submits that the petitioner through their Advocate issued legal notice dated 28.01.2013 to the respondent and terminated the lease. He submits that thereafter, the petitioner preferred Misc. Application No. 57 of 2013 in Bombay City Civil Court, Mumbai for leave to sue the Court Receiver. Prayers in that Misc. Application reads thus:

“a) That this Hon'ble Court be pleased to grant permission to applicant to sue Court Receiver, High Court, Bombay appointed as a receiver in present suit in respect of said plot viz. plot of the land admeasuring 3045 sq. yards being Plot No. F(Part) of Rajadha Nagar Scheme bearing final plot No. 703 (presently given F.P. No. 715) of TPS III, Borivali, bearing city survey no. 778 situated at Shimpoli Road, Borivali (W), Mumbai – 400 092 in the suit proposed to be filed by applicant in the Small Causes Court, at Bandra.

b) For such further and other orders and relies as the nature and circumstances of the case may require.”

5 The learned counsel for the petitioner submits that Trial Court after hearing both the sides dismissed petitioner's application only on the ground that petitioner failed to point out any provision in law that

petitioner can ask permission to sue the Court Receiver. For that purpose, the learned counsel for the petitioner relies on paragraph 5 of the impugned order. He submits that the Trial Court failed to consider the fact that once the Court Receiver is appointed in respect of the property, then before filing of any suit or litigation, applicant has to take appropriate permission from the Court who appoints the Court Receiver. In support of his contention, he relies on the judgment of the Apex Court in the matter of ***Everest Coal Company Pvt. Ltd. V/s. State of Bihar, reported in AIR 1977 Supreme Court 2304***. He relies on paragraph 4 of that Judgment, which reads thus:

“4. The laconic affirmance by the High Court of the trial court's order has necessitated the appellant's challenge of its propriety and legality. Instead of leaving the matter 'astrologically' vague and futuristically fluid, we shall state the legal position and settle the proposition governing this and similar situations. When a court puts a Receiver in possession of property, the property comes under court custody, the Receiver being merely an officer or agent of the court. Any obstruction or interference with the court's possession sounds in contempt of that court. Any legal action in respect of that property is in a sense such as interference and invites the contempt penalty of likely invalidation of the suit or other proceedings. But, if either before starting the action or during its continuance, the party takes the leave of the court, the sin is absolved and the proceeding may continue to a conclusion on the merits. In the ordinary course, no court is so prestige-conscious that it will stand in the way of a legitimate legal proceeding for redressal or relief against its receiver unless the action is totally meritless, frivolous or vexatious or otherwise vitiated by any sinister factor. Grant of leave is the rule, refusal the exception. After all, the court is not, in the usual run of cases, affected by a litigation which settles the rights of parties and the Receiver represents neither party, being an officer of the court. For this reason, ordinarily the court

accords permission to sue, or to continue. The jurisdiction to grant leave is undoubted and inherent, but not based on black-letter law in the sense of enacted law. Any litigative disturbance of the court's possession without its permission amounts to contempt of its authority; and the wages of contempt of court in this jurisdiction may well be voidability of the whole proceeding. Equally clearly, prior permission of the court appointing the Receiver is not a condition precedent to the enforcement of the cause of action. Nor is it so grave a vice that later leave sought and got before the decree has been passed will not purge it. If, before the suit terminates the relevant court is moved and permission to sue or to prosecute further is granted, the requirement of law is fulfilled. Of course, failure to secure such leave till the end of the Us may prove fatal.”

6 On the basis of these submissions and the law declared by the Apex Court in the matter of Everest Coal Company Pvt. Ltd.(supra), the learned counsel for the petitioner submits that the impugned order passed by the Trial Court is required to be set aside and Misc. Application filed by the petitioner for leave to sue the Court Receiver be allowed. He submits that if the said application is not allowed, irreparable loss will be caused to the petitioner.

7 The learned Counsel for the respondent nos. 3 and 5 submits to the court's order.

8 The learned Counsel for the respondent nos. 10 to 12 original plaintiffs opposed the present Writ Petition. He submits that if permission is granted to the petitioner to sue the Court Receiver, irreparable loss will be caused to the plaintiffs. He submits that as on today near about 80 tenants are occupying the suit premises. He

submits that original owner of the land leased out the open plot of land to the plaintiffs. The plaintiffs predecessors constructed the building on that plot. Hence, there is no question of granting any leave to the petitioner to sue the Court Receiver for his rights. Therefore, there is no substance in the present Writ Petition and same to be dismissed with costs.

9 I heard both the sides at length. There is no dispute that the petitioner purchased the suit property by Conveyance Deed dated 19.06.2009 and thereafter, issued letter of termination of lease to the respondents plaintiffs by letter dated 28.01.2013. This Court by order dated 02.09.2003 in suit No. 4677 of 1998 (old number) appointed Court Receiver. Now the petitioner wants to file a suit for his rights in respect of suit property. Therefore, he filed application for permission to sue the Court Receiver.

10 Considering the fact that the petitioner is owner of the suit property and he wants to protect his rights and considering law declared by the Apex Court in the matter of Everest Coal Company Pvt. Ltd.(supra), I am satisfied that petitioner has made out case for setting aside the impugned order passed by the trial court and allowing the petitioner's application. The trial court erred in recording in paragraph 5 of the impugned order that the petitioner has not pointed out any provision in the law. It is to be noted that whenever Court Receiver is appointed in respect of property and if some one wants to file a suit in respect of the same property, then they have to take permission from the court under the Rule of equity.

11 Considering these facts, the following order is passed:

a) The impugned order dated 15.02.2016 passed by the Bombay City Civil Court at Mumbai in Misc. Application No. 57 of 2013 is set aside.

b) Application filed by the petitioner in trial court as Misc. Application No. 57 of 2013 is allowed in terms of prayer clause (a), which read thus:

“a) That this Hon'ble Court be pleased to grant permission to applicant to sue Court Receiver, High Court, Bombay appointed as a receiver in present suit in respect of said plot viz. plot of the land admeasuring 3045 sq. yards being Plot No. F(Part) of Rajadha Nagar Scheme bearing final plot No. 703 (presently given F.P. No. 715) of TPS III, Borivali, bearing city survey no. 778 situated at Shimpoli Road, Borivali (W), Mumbai – 400 092 in the suit proposed to be filed by applicant in the Small Causes Court, at Bandra”

c) No order as to costs.

(K.K.TATED, J.)