

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

**APPEAL FROM ORDER NO.1190 OF 2015
ALONGWITH
CIVIL APPLICATION NO.1505 OF 2015**

Salma Asgarali Makati and others .. Appellants/Applicants
Versus
Shabbir Shaikh Shamsuddin Pachorawala
and others .. Respondents

Mr. Sachin Chavan for the Appellants/Applicants.

Mrs. Pooja Bhaidkar, 2nd Assistant Master to Court Receiver present.

CORAM : R.M. SAVANT, J.
DATE : 18th JULY 2016

PC.

1 The above Appeal from Order takes exception to the order dated 03.10.2015 passed by the Learned Judge of the City Civil Court, Greater Mumbai, to the extent it rejects Notice of Motion No.3020 of 2015 filed by the Appellants/Applicants who are the original Plaintiffs. By the said Notice of Motion, the Applicants have sought the removal of the Defendant No.1 i.e. the Respondent No.1 herein as the agent of the Court Receiver.

2 The suit in question was originally filed in this Court and bore

High Court Suit No.1777 of 2004. On the pecuniary jurisdiction of the City Civil Court being enhanced sometime in September 2012, the suit came to be transferred to the City Civil Court and now bears Short Cause Suit No.6882 of 2004. Whilst the suit was pending in this Court, by order dated 16.06.2005 passed in Notice of Motion No.2178 of 2004, the Court Receiver came to be appointed in respect of the immovable property described in Exh.D to the plaint excluding the property mentioned at page No.50 of the plaint. The Defendant No.1 who was in possession was appointed as the agent of the Court Receiver on the usual terms and conditions except the payment of royalty and security. The Defendant No.1 was directed to maintain an account in respect of the income and expenditure in respect of the immovable properties. It seems that the said order dated 16.06.2005 was carried in Appeal by way of Appeal No.843 of 2005. However, in the context of the present Appeal from Order what is required to be noted is that the order appointing Defendant No.1 as Court Receiver was not disturbed. However, certain directions were issued in respect of the property which were occupied by tenants and in respect of the property which was in possession of the Defendant No.1 and property which was vacant. The Defendant No.1 was however directed to execute the agency agreement. Thereafter in Chamber Summons No.1214 of 2007 filed in the same suit, a Learned Single Judge of this Court had issued

directions in respect of the amount deposited by one Okay Transport which was directed to be deposited with the Court Receiver. The Defendant No.1 thereafter it seems filed an Appeal being Appeal No.614 of 2010 in which Appeal an order came to be passed that the amount be kept with the Defendant No.1 and that he should file an undertaking that if the Plaintiffs succeed he would bring back the amount. The instant Notice of Motion being No.3120 of 2015 is founded on the fact that the Defendant No.1 has not executed the agency agreement, has not furnished the undertaking as mandated by the order passed by the Division Bench and has also misconducted himself for the reasons mentioned in the Notice of Motion. The Defendant No.1 filed his reply to the said Notice of Motion. The Trial Court has considered the said Notice of Motion and has by the impugned order dated 03.10.2015 rejected the same. The rejection is on the ground that this Court had appointed the Defendant No.1 as the agent of the Court Receiver and that he was directed to execute the agency agreement. Though the Defendant No.1 has not executed the agency agreement, the Trial Court was of the view that he can be granted time for the same. In so far as the furnishing of the undertaking is concerned, it came on record that on 25.04.2011 the Defendant has executed undertaking. The Trial Court did not countenance the other ground urged on behalf of the Appellants/original Plaintiffs and therefore

deemed it appropriate to issue the directions in so far as the relief sought vide Notice of Motion No.3020 of 2015 is concerned, the Trial Court has accordingly vide clause (b) of the operative part of the order has directed the Defendant No.1 to execute the agency agreement within one month and vide clause (c) has observed that if the Defendant No.1 failed to comply with the order, he would be deemed to be removed as the agent of the Court Receiver. In my view, having regard to the reasons mentioned in the impugned order and considering the fact that the Trial Court has deemed it appropriate to extend the time to execute the agency agreement, no case for interference is made out. The Appeal from Order is accordingly dismissed.

3 However the Learned Counsel appearing on behalf of the Appellants Mr. Sachin Chavan points out that the Defendant No.1 has filed an application for extension of time to comply with the direction in so far as the execution of the agency agreement is concerned. Since the Trial Court by the impugned order had made the continuation of the Defendant No.1 as the agent of the Court Receiver contingent upon him executing the agency agreement and the consequences of not executing the same being provided for, it is for the Trial Court to consider the said application for extension of time if filed by the Defendant No.1 having regard to the aforesaid aspects. In so far as the application if filed for extension of time

is concerned, this Court does not express any opinion in that respect. It is for the Trial Court to consider the same on its own merits and in accordance with law but having due regard to the impugned order.

4 Needless to state that the contentions of the parties are kept open for being urged before the Trial Court.

[R.M. SAVANT, J]