

APPEAL NO.333 OF 2013
WITH
COURT RECEIVER'S REPORT NO.342 OF 2012
WITH
CHAMBER SUMMONS NO.907 OF 2014

Kashinath Lalta Tiwari and others Appellants
versus
Subhash Jarda Tiwari and others Respondents

Mr.R.M.Nakhwa i/by Mr.Vasant Dhawan for Appellants.
Ms.Archana Khan i/by Mr.Omkar M. Kulkarni for Respondent
no.1.
Mr.M.S.Deshpande, SDO with Mr.S.S.Deshpande, Court
Receiver, are present.

CORAM : A.S.OKA AND P.D.NAIK, JJ.

DATE : 20th April 2016

PC :

1. The submissions of the learned counsel for the parties were heard on the earlier date. There are two orders passed by the learned Single Judge, which are subject matter of challenge in this appeal. The first order is dated 27th June 2012 and the second order is dated 25th July 2012. Court Receiver's Report No.342 of 2012 was submitted by the Court Receiver, High Court, Bombay before the learned Single Judge. In the said report, it was pointed out that in terms of the directions issued

by the learned Single Judge, by order dated 7 and 12th January 2015, the First Assistant to the Court Receiver fixed the royalty in respect of the premises subject matter of the appeal. By Court Receiver's Report No.342 of 2012, the Court Receiver sought directions from the Court about taking possession of the suit premises in respect of which the Appellants were appointed as Agents of the Court Receiver on the ground of their failure to pay the royalty. By the first impugned order, the Court Receiver's Report was made absolute in terms of prayer clause (a), thereby directing the Court Receiver to take physical possession of the suit premises. By the second impugned order, the Chamber Summons taken out by the Defendants for setting aside the royalty fixed by the Court Receiver was dismissed by observing that the Appellants shall pay the market value as fixed by the Court Receiver, failing which the Court Receiver shall take action as already ordered.

2. Present appeal was placed before this Court on 3rd August 2012. Notice of Motion No.1770 of 2012 was taken out by the Appellants. A Division Bench of this Court by order dated 3 August 2012 granted interim stay to the impugned orders subject to compliance with various terms and conditions. The stay was granted subject to the Appellants depositing a sum of Rs.10,000/- per month for the first and second floor of building No.30B, Gunbow Street, Fort, Mumbai and further subject to the Appellants depositing the amount at the rate of Rs.30/- per

sq.ft. for the premises being used for residential purposes and at the rate of Rs.60/- per sq.ft. for the premises being used for commercial premises.

3. It appears that the said interim order passed by the Division Bench of this Court was challenged by the original Plaintiffs (Respondents in appeal) by filing Special Leave to Appeal No.30676 of 2012 before the Apex Court. On 17th October 2013, the said special leave to appeal was disposed of by the apex Court by passing following order :

" This petition is directed against interim order dated 3.8.2012 passed by the Division Bench of the Bombay High Court in Notice of Motion No.1770/2012 in ?AL No.488/2012 in CRRN No.342/2012 in Suit No.3993/1995.

We have heard learned counsel for the parties and perused the record. In our considered view, instead of investing time in dealing with the prayer for i9nterim relief in the pending appeal, the High Court should have disposed of the main appeal.

In the premises aforesaid, the special leave petition is disposed of by directing that operation of order dated 3.8.2012 passed by the High Court shall remain stayed and the High Court shall decide the pending appeal within a period of nine months from the date of production of copy of this order.

We also allow six months' time to the respondent to deposit the amount in terms of order passed by the learned Single Judge."

The result of the order of Apex Court is that the interim order granted in this appeal on 3rd August 2012 was stayed till

disposal of the appeal and that time of six months was granted to the present Appellants to deposit the amounts in terms of the orders of learned Single Judge, which are subject matter of challenge in this appeal.

4. Court Receiver's Report No.177 of 2016 was filed on the last date which records that as per the impugned order dated 25th July 2012 passed by the learned Single Judge, arrears payable by the Appellants are of Rs.2,02,97,430/-.

5. Today, the learned counsel for the Appellants has tendered across the bar compilation of documents which is taken on record and marked 'A-2' for identification. The compilation contains letters dated 5th March 2016 and 12th April 2016 addressed by the advocate on record for the Appellants to the Appellants informing them about the fact that the appeal is fixed today for hearing. The amount which is required to be deposited by the Appellants in terms of the order of the Apex Court is also informed to the Appellants. Today, learned counsel for the Appellants has tendered on record letter dated 16th April 2016 addressed by the Appellants to the advocate on record for the Appellants. In the said letter, the Appellants have accepted that they have not complied with the order of Apex Court and that they are not in a position to comply with the said order. Therefore, they have stated that they have no objection if any appropriate order is passed by this Court.

6. We have already reproduced the order passed by the Apex Court on 17th October 2013. As per the order of the Apex Court, the Appellants were under obligation to deposit the amount of arrears within a period of six months. The period of six months has expired in April 2014. Admittedly the Appellants have committed breach of the order of Apex Court and in fact their stand is that they are unable to comply with the said order. The Appellants have not applied for extension of time before the Apex Court. Considering the said conduct of the Appellants, we decline to entertain this appeal. The appeal is dismissed. there will be no order as to costs.

7. Needless to add that now the Court Receiver will act as per the orders impugned in this appeal. The amount lying deposited in the office of Prothonotary & Senior Master shall be transferred to the office of Court Receiver, High Court, Bombay. The record of the suit be immediately sent back to the Bombay City Civil Court. Pending Chamber Summons No.907 of 2014 does not survive and stands dismissed in view of dismissal of appeal.

(PD.NAIK, J.)

(A.S.OKA, J.)

MST