

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO. 8318 OF 2017
WITH
CIVIL APPLICATION (STAMP) NO. 8319 OF 2017
IN
APPEAL FROM ORDER (STAMP) NO. 8318 OF 2017

Mrs. Vandana Vijaykumar Dalvi .. Appellant
vs.
Maruti Dhulaji Thakur & Ors. .. Respondents

Mr. P. J. Thorat with Ms Aditi Naikare with M. R. Chauhan for Appellant.
Mr. Aditya Thakkar with Mr. Deepak Shukla i/b. Vinod Mistry & Co. for Respondent No. 1.
Mr. Anil Siyal i/b. M/s. A. V. Jain & Co. for Respondent No. 2

CORAM : M. S. SONAK, J.
DATE : 24 MARCH 2017

P.C :

1] Heard Mr. Thorat for the appellant, Mr. Thakkar for respondent no. 1 and Mr. Siyal for respondent no. 2.

2] The challenge in this Appeal is to the order dated 24 February 2017 made by the learned Trial Judge. The operative portion of this order, reads thus :

"ORDER

1. *Notice of Motion No. 1665 of 2014 is partly allowed.*
2. *Court receiver High Court, Bombay be appointed as a receiver in respect of the Flat No. D-51, 5th floor, Indrayani Co-op. Hsg. Socy. Ltd., J. K. Sawant Marg, Dadar (W), Mumbai – 400028, ad-measuring 510 sq. ft.*
3. *The Court receiver shall obtain the possession of "suit flat" and shall appoint the present occupant as the agent of the Court Receiver, until further orders.*

4. *The occupant shall pay tentative monthly royalty of Rs.20,000/- to Court Receiver and shall bear the maintenance and property taxes, electricity charges separately.*

5. *The Court Receiver is directed to fix proper monthly royalty after hearing the parties.*

6. *No order as to costs.*

7. *Notice of Motion No. 1665 of 2014 is disposed of accordingly.”*

3] Mr. Thorat, learned counsel for the appellant, at the outset, has stated that the appellant has no objection to the appointment of Court Receiver and the appellant occupying the suit flat as the Agent of the Court Receiver. However, he submits that clause 4 of the operative portion of the impugned order which directs the appellant to pay tentative monthly royalty of Rs.20,000/-, is illegal and unjustified.

4] Mr. Thorat submits that none of the parameters prescribed under Order XL Rule 1 of CPC for appointment of Court Receiver has been satisfied in this matter. He relies upon the decision in the case of ***T. Krishnaswamy Chetty vs. C. Thanga-velu Chetty & Ors.***¹, to support this proposition. He submits that the appellant is a *bona fide* purchaser of the suit flat for valuable consideration and therefore there is absolutely no reason to divest the appellant of the de-facto possession of the suit flat. He submits that the Administrator of the society, who has filed an affidavit in the matter, was partisan. He submits that on basis of his chance visit on some date, it cannot be accepted that the appellant had indeed created any third party rights in the suit flat or even parted with possession of the suit flat. He submits that the society bills should not have been relied upon. In any case, he submits that the circumstance

1 AIR 1955 Madras 430

that the appellant has been paying non occupancy charges, does not mean that the appellant has inducted third parties under any leave and licence agreement. He submits that the appellant is a house wife and it will be harsh to constrain her to pay royalty of Rs.20,000/- per month. For all these reasons, he submits that the impugned order is liable to be set aside or in any case, the direction for payment of royalty at the rate of Rs.20,000/- per month is liable to be set aside.

5] Mr. Thakkar, learned counsel for respondent no. 1 submits that this Court need not interfere with the impugned award. Mr. Thakkar defends the impugned order mainly by citing the reasons set out in the impugned order itself. He submits that the appellant is by no means any *bona fide* purchaser. He submits that the suit flat was owned by the respondent no. 1 and the respondent no. 3, who is the son-in-law of respondent no. 1 has without any right or title, purported to sell the same to the appellant. He points out that respondent no. 3 has already divorced respondent no. 1's daughter and it is really, with the intention to harass respondent no. 1 that the respondent no. 3 has purported to sale the suit flat. Mr. Thakkar submits that incidentally, the appellant is the wife of the ex chair person of the society. He submits that the sale was effected at the stage when the appellant's husband was the chairperson of the society. He submits that the appellant has defied injunction orders issued by the court. In these circumstances, he submits that there is no case made out to interfere with the impugned order.

6] Rival contentions now fall for determination.

7] At least *prima facie*, it cannot be said that the appellant is some *bona fide* purchaser for valuable consideration and without notice of any encumbrances. The appellant's husband, was the

chair person of the society. The respondent no. 3, at least *prima facie*, cannot be said to have had any title or authority to effect such transfers. The appellant, on the basis of such transfers, at least *prima facie*, cannot claim any impeccable title to the suit flat.

8] That apart, admittedly, there were restraint orders in the matter of not only the transfer of the suit flat but also parting with possession of the suit flat. From the material on record, it does appear that the appellant has been playing hide and seek. At the stage when an Administrator was appointed to govern the affairs of the society, the Administrator did find strangers in the suit flat. The contention that strangers were present on account of some Puja being held in the suit flat are too simplistic to deserve acceptance. The society bills indicate the payment of non occupancy charges for a considerable period. The Administrator has stated that such non occupancy charges are levied, when the member of the society himself does not stay in the suit flat, but, inducts, some third parties therein. The Trial Judge, has very carefully, considered all these circumstances and also, the conduct of the appellant. The Trial Court, has recorded a finding that the conduct of the appellant is, sufficient to conclude that the appellant had parted with possession of the suit flat in violation of the restraint orders issued by the court.

9] The appellant's continuance to occupy the suit flat cannot be regarded as safe. The manner in which, the appellant has acquired alleged rights or possession of the suit flat is itself, *prima facie* quite questionable. The appellant, has another flat in the same society. The contention that her husband resides in that flat is again too simplistic to deserve acceptance. It is apparent that the appellant is dependent upon the income, from out of the suit flat by way of letting or licensing the same. This is in the teeth of restraint orders

which are in operation.

10] Since, it was represented that the appellant has no objection to the appointment of the Court Receiver but, the appellant, should not be required to pay any royalty amount, a query was posed as to the income of the appellant. The answer was that the appellant is a house wife. In so far as the income of the appellant's husband is concerned, who was the ex chairman of the society, again, the replies were evasive, though it was stated that the appellant's husband is in '*social service*'. All these aspects may not be relevant as to whether the Court Receiver ought to be appointed or not. However, these aspects are relevant when the appellant seeks a waiver in the matter of payment of royalty.

11] In a case of this nature, particularly considering the conduct of the appellant, the prescribed parameters for appointment of the Court Receiver have been fulfilled. In making the impugned order, the learned Trial Judge, has applied the correct principles and the view taken by the learned Trial Judge can hardly be regarded as unreasonable, in the facts and circumstances of the present case. Applying therefore, the principles laid down by the Hon'ble Supreme Court in the case of ***Wander Ltd. & Anr. vs. Antox India P. Ltd.***², there is really no case made out to interfere with the discretion exercised by the learned Trial Judge. This Appeal is therefore dismissed. There shall be no order as to costs.

12] In view of dismissal of the appeal, the Civil Application does not survive and the same is also disposed of.

13] At this stage, Mr. Thorat requests for a stay, for a period of four weeks. Since, the appellant has indicated that she has no

2 1990 (Supp) SCC 727

objection to the appointment of the Court Receiver, that portion of the impugned order obviously, need not be stayed. The occasion to pay monthly royalty will arise after four weeks from today.

Chandka

(M. S. SONAK, J.)