

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COURT RECEIVER REPORT NO. 342 OF 2014**

Sayed Fakir Husain Ikram Husain & Ors	...Plaintiffs
<i>Versus</i>	
Municipal Corporation of Gr Bombay & Ors	...Defendants

Mr Chirag Modi, *a/w Chinmaya Acharya, for Pradeep Goragandhi.*
Mr Abhijeet P Rane, *for Mr Rajendra Jain for Flat No.1.*
Mr Madhav Jamdar, *for Defendant No.5.*
Mr JV Parmar, *a/w OS Kamwal, for Noticee No.13 & 14.*
Ms Tanmayee Salekar, *a/w Rishika Jhaveri, i/b Shah & Sanghvi for Noticee No.15.*

CORAM: G.S. PATEL, J
DATED: 13th December 2017

PC:-

1. I have before me today two Court Receiver's reports of quite extraordinary vintage. The first is a Report No. 31 of 2009, and the second is Report No. 342 of 2014.

2. This is how the matter arises. The property in dispute is a plot of land with a building on it known as 'Bombay View' at Raghavji Road, Near Gowalia Tank, Mumbai 400 026. The Plaintiffs, one Sayed Fakir Husain Ikram Husain and others, owned this property. They were in arrears of payment of municipal bills, and this despite being

offered instalments. Defendants nos. 1 to 3 are the Municipal Corporation and its officers. Defendant no. 4 is the assessor and the collector of the Municipal Corporation. Defendant No. 5 claims to be the highest bidder and therefore the purchaser at an MCGM-conducted and ordered auction of this property, held on 18th March 1985.

3. The Plaintiffs challenged the sale on various grounds; hence this suit, one that sought to set aside that auction sale of 18th March 1985 in favour of Defendant No. 5. The Plaintiffs also filed a Notice of Motion No. 760 of 1985 for interim relief and sought a stay on the issue of a sale certificate, a restraint against delivery of possession and other reliefs. A learned single Judge of this Court (Bharucha J, as he then was) on 7th August 1985 made the Motion absolute except for a certain bracketed portion. The Plaintiffs filed Appeal No. 732 of 1985. A Division Bench of this Court appointed an ad-interim receiver of the suit property on 23rd August 1985. This order was confirmed on 13th December 1985. The Appeal itself was disposed of on 16th January 1987, and at that time the Division Bench confirmed the continuance of the Court Receiver of the property, noting that the 5th Defendant had deposited the sale consideration in Court. The original Plaintiffs argued at that time that they should be allowed to retain possession. The order of 16th January 1987 specifically rejected this admission and went on to say that the order appointed the Court Receiver “amply protects both sides” and that there was no call for interference. The Appeal Court also said that the order of appointing the Court Receiver would operate “until final disposal of the suit”. This is the nub of the problem. Lastly, the Appeal Court directed the Court Receiver to collect the rent to meet the outgoings.

4. Evidently, the Appeal Court order proceeded on fairly reasonably twin assumptions: one, that the suit would be finally disposed of quickly, and, two, that the Plaintiffs would be alive to see a result to the suit. Unfortunately, reality dictates otherwise. The suit is still pending, but the original Plaintiffs are dead. The suit has altogether abated, attempts to bring their heirs on record having failed.

5. There now enters on the scene one Mr Goragandhi, represented by Mr Mody. He is not a party to the suit. He claims to be a transferee of the entire Bombay View building from the original Plaintiffs during their lifetime and also claims to be, and for a long time to have been, in possession of Flats Nos. 8 and 9 on the third floor of the building. There are, too, several other persons in occupation of various tenements or flats in this building. Some are before me. The Court Receiver's Report No. 342 of 2014 notes some of these diverse claims and seeks directions. Suit No. 30 of 2009 seeks directions for leave to the Court Receiver to initiate proceedings.

6. Mr Goragandhi's claim is derived not from the auction sale but independently from the original Plaintiffs, at least in the lifetime of the original 1st Plaintiff. Mr Goragandhi was not unaware of the present proceedings. He sought impleadment. That application failed. The reasons are immaterial. Mr Mody says that Mr Goragandhi has very recently brought suit to assert his title to the entire building. Thus, Mr Goragandhi now seeks in his freshly-instituted suit to oust the title of the auction purchaser, Defendant No. 5 represented by Mr Jamdar.

7. These are therefore the two principal contestants to the property today, and neither of them is a plaintiff in this suit. One, the

auction purchaser, is Defendant No.5, and the other, Mr Goragandhi is an outsider to the suit, and has filed a separate action. It is equally true that Defendant No. 5 has filed no independent proceedings of any kind, even in the nature of a counter-claim. Mr Jamdar is correct in saying that, until now, no such suit was at all necessary. If the original Plaintiffs' suit failed, Defendant No. 5, the auction purchaser did not have need to do anything further; his title as an auction purchaser would be complete. As between Defendant No.5 and the original Plaintiffs, no counter-suit or counter-claim was necessary; and as between Defendant No.5 and Mr Goragandhi, no suit was necessary, because Mr. Goragandhi had not been joined to the present suit, and, until recently, had filed no proceedings of his own. His recent suit is yet to be served. That will be addressed on its own merits, and Defendant No.5 reserves its rights to fully oppose that suit, including by filing a counter-claim or even a separate, independent suit. Defendant No.5 of course has that liberty. Mr Jamdar has now instructions to state that Defendant No. 5 will file an appropriate civil proceeding in court of competent jurisdiction.

8. I do not see how it is possible to continue the Court Receiver in the present suit, one in which there are no Plaintiffs and one in which no final relief is any longer possible, the suit having altogether abated. It was perhaps possible to continue the Court Receiver appointed in this suit as the Receiver in another suit to balance the equities between the parties, but there is no such application before me today in the Court Receiver's Report nor in the form of any substantive application. Indeed, it is difficult to see how such an interim application could be filed or maintained in the present abated suit.

Surely such an application would have to be made in an independent suit in a lis between Mr Goragandhi and Defendant No. 5.

9. I also have before me several other claimants including occupants of room no. 4, occupants of flat no. 1 (who have filed proceedings in the Small Causes Court in respect of a claimed tenancy of that flat) and the occupants of unit 3A to 3C. As far as these persons are concerned, I do not see how the Court Receiver can continue at all and his report in respect of action to be taken in respect of room no. 4, flat no. 1 and units nos. 3A to 3C will have to stand dismissed with no further order at this stage.

10. The consequence of this inevitably is that the Court Receiver will now have to be later stand discharged of the entire building and the property without passing accounts. Mr Jamdar states that the Receiver should be directed to deliver possession to him. I cannot do that. That amount to decreeing a suit in the 5th Defendant's favour for possession. The Court Receiver did not take possession from the 5th Defendant. If Mr Jamdar's earlier formulation is correct, then there is no longer any surviving challenge from the original Plaintiffs to the auction sale in favour of the 5th Defendant; and there is as yet no interim relief in favour of Mr Goragandhi regarding that auction sale either. If the suit has abated, then all interim orders will stand vacated and the Court Receiver will stand discharged *simpliciter*, the parties being set at liberty to adopt appropriate proceedings and to seek appropriate reliefs.

11. The only question now is payment of the Court Receiver's costs, charges and expenses. I am informed that the Court Receiver

has some funds. He will appropriate from those funds his costs, charges and expenses. The remainder will be held pending a final report to be submitted for a refund *pro rata* of the balance to the parties from whom the funds were collected.

12. The Court Receiver's Report is disposed of in these terms. There will be no order as to costs.

13. The suit too stands abated and is disposed of as such with no order as to costs.

14. All contentions as between as Mr Goragandhi and M/s. Shah & Associates in respect of the auction sale and claim to the property or any part thereof are expressly kept open for appropriate proceedings.

15. As the suit is abated, all interim orders are vacated forthwith.

(G. S. PATEL, J.)