

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (L) NO.370 OF 2018
WITH
NOTICE OF MOTION (L) NO.828 OF 2018
IN
APPEAL (L) NO.370 OF 2018**

Shamlal Tulsidas Hinduja ... **Appellant**
V/s.

Golden Pebbles Co-operative Housing
Society Ltd. and ors. ... **Respondents**

Mr.Cyrus Ardhesir with Mr.Anirudh Hariani, Mr.Nooruddin Dhila,
Ms.Sukhada Wagle i/by M/s Hariani & Co. for the Appellant.

Mr.Ranbir Singh with Mr.Rashmin Jain and Mr. Pheroze Merchant
i/by M/s Kanga & Co. for Respondent No.1.

**CORAM : A.S.OKA AND M.S.SONAK, JJ.
DATE : AUGUST 21, 2018.**

P.C. :

1. The original plaintiff has taken an exception to the order dated 17th July, 2018 passed by the learned Single Judge on a Notice of Motion taken out by the first respondent herein. The first respondent-society is not a party to the suit. The Notice of Motion was taken out by the first respondent-society for discharge of the Court Receiver to the extent of an area of 6,179.35 sq. meters out of the suit property.

2. The suit filed by the present appellant-plaintiff is for a

declaration that a partnership firm constituted between the plaintiff and first two defendants as well as a deceased stands dissolved. There is a prayer for directing that the affairs of the partnership be wound up and accounts be taken. There are various other prayers made including a prayer for appointment of a Court Receiver, temporary injunction etc. The subject matter of the prayer for appointment of a Court Receiver is an immovable property admeasuring 20,020 sq. meters (for short "*the suit land*"). As stated earlier, the prayer made in the Notice of Motion taken out by the first respondent is confined to an area of 6,179.35 sq.meters out of the suit property. On 5th February, 1981 ad-interim order was passed by the learned Single Judge of this Court by which the Court Receiver, High Court, Bombay was appointed as the Receiver of the assets of the partnership property. The ad-interim order appointing the Court Receiver was confirmed by the learned Single Judge.

3. The Notice of Motion on which the impugned order has been passed by the learned Single Judge was taken out by the first respondent-society relying upon several facts stated in the affidavit in support. Firstly, it is stated that the first respondent

has become the owner of the land admeasuring 6,179.35 sq. meters alongwith the structures thereon (for short “the subject property”) by virtue of a conveyance deed dated 27th August, 2013 executed by the Deputy Registrar of Co-operative Societies in exercise of the powers under Section 5(A) of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short “MOFA”). It is contended in the affidavit-in-support that there was an agreement executed by and between M/s Trimurti Corporation (The suit firm in respect of which the suit is filed) and M/s Golden Construction Company for the sale and development of the suit land. It is alleged in the affidavit-in-support that M/s Golden Construction Company constructed a building comprising of 109 flats consisting of 9 wings. It is pointed out that there was an Agreement for Sale executed on 24th April, 1980 by and between the suit firm and M/s Superior Construction Company. Moreover, there was an Agreement dated 15th November, 1980 executed by and between M/s Superior Construction Company and M/s Golden Construction Company. It is stated that M/s Golden Construction Company entered into

various Agreements for sale of flats under the provisions of MOFA right from March, 1980. Occupation Certificate (part) was granted on 23rd January, 1982. The first Respondent-society was registered on 20th January, 1985 under the Maharashtra Co-operative Societies Act, 1960. It is further alleged that the first Respondent represents purchasers of 109 flats. It is also pointed out that there are total 11 societies formed by the flat purchasers of the buildings standing on the suit land purportedly belonging to the suit firm.

4. On the basis of the aforesaid factual averments that the Notice of Motion was taken out by the first Respondent for discharge of the Court Receiver to the extent of the subject property having an area of 6179.35 sq.meters. By the impugned order, the learned Single Judge has referred to the fact that there were two agreements executed between the years 1978 and 1980, IOD was granted in the year 1979-1980, Agreements for sale of flats were executed under MOFA in the year 1980 and the possession of completed flats was delivered in the year 1982. The learned Single Judge observed that when Notice of Motion No.1732 of 1986 taken out by the appellant was placed

before the learned Single Judge on 21st July, 1987, the entire scenario had undergone a complete change. The learned Single Judge observed that none of the affected parties have been impleaded in the suit filed by the appellant and therefore, the facts could not be brought to the notice of the Court. In fact, the learned Single Judge observed by referring to the order dated 21st July, 1987 passed by the learned Single Judge by which the Court Receiver was permitted to file a suit challenging the transactions of 1978 and 1980, the Court was led to believe that the other than the Agreements of the year 1978 and 1980, nothing had happened. Secondly, the learned Single Judge observed that Court Receiver did nothing from his appointment in the year 1981 till the suits were filed by him in the year 1996. The learned Single Judge observed that the first respondent-society was not impleaded as a party either in the suit in which the Receiver was appointed or in the suit of the year 1996. In paragraph No. 11, the learned Single Judge again observed that when the matter was argued before learned Single Judge on 21st July, 1987, the relevant facts were not brought to the notice of the Court.

5. Thereafter, the learned Single Judge proceeded to rely upon decision of the Apex court in the case of **Anthony C. Leo Vs. Nandlal Bal Krishnan and others**¹. For the aforesaid reasons, the learned Single Judge proceeded to discharge the Court Receiver only to the extent of the subject property having an area of 6179.35 sq.meters.

6. The learned counsel appearing for the appellant pointed out that when the ad-interim order appointing the Court Receiver was passed by the learned Single Judge and when the said order was confirmed, the first respondent-society was not even registered. He submitted that an order granting a deemed conveyance was passed by the Competent Authority in the year 2013 without noticing that there was a Court Receiver appointed in respect of the suit property. He submitted that the first respondent has obtained the said order behind the back of the present appellant. He submitted that the present first respondent took out Chamber Summons No.1108 of 2017 seeking impleadment in the suit and by the order dated 9th March, 2018, the said chamber summons was withdrawn by the first respondent

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on the ground that the impleadment of the first respondent was unnecessary. He submitted that on the basis of the order appointing the Court Receiver, in the year 1996, suits have been filed by the Court Receiver. He submitted that by virtue of the impugned order, the suits will become infructuous. He submitted that even the present suit will become infructuous as far as the said subject property is concerned. He submitted that in view of the orders passed by the learned Single Judge in the suit filed by the Court Receiver, an order of execution of conveyance could not have been passed by the Competent Authority. He submitted that while passing the impugned order, the learned Single Judge has only relied upon an inaction on the part of the Court Receiver. He invited our attention to Paragraph No. 16 of the impugned order.

7. The learned counsel appearing for the first respondent supported the impugned order. He submitted that when the first respondent applied for being impleaded as a party defendant to the suit, the said prayer was opposed by the learned counsel appearing for the appellant. He invited our attention to the order passed by the learned Single Judge on Chamber Summons No.1108 of 2017. He, therefore, submitted that no interference is

called for.

8. We have considered the submissions. In Paragraph No.9 of the impugned order, the learned Single Judge has adverted to the factual position. Paragraph No.9 of the impugned order reads thus:-

“As I have noted, there are two agreements of 1978 and 1980. As far as the present society is concerned, it obtained an IOD in 1979-1980. Agreements under the Maharashtra Ownership of Flats Act are dated 1980. Possession of completed flats was delivered in 1982. There is an occupation certificate, also of 1982. The society itself obtained registration in 1985, and there were some nine other societies involved as well. This tells us that by the time matter even came before Variava J, the factual scenario on ground had changed completely. None of the affected parties had been joined to be able to tell the Court that things were not as Shamlal (and the partners with whom he had fallen out) made out to the Court. Indeed, the order seems to indicate that the Court was led to believe that other than the agreements with Superior Construction in 1980 and Golden Construction in 1978, nothing at all had happened -though paragraph 20 of the plaint *prima facie* indicates

otherwise. To the contrary: almost everything that could have happened had happened, and there was almost nothing left undone except perhaps the question of a conveyance, and to which I will come next.” (underline supplied)

9. The facts stated in the aforesaid paragraph are borne out from the record. Moreover, on 27th March, 2013, there is a conveyance executed in favour of the first respondent-society. Whether the order directing the execution of the conveyance is legal or not is an altogether different issue. As of today, there is a conveyance in favour of the first respondent in respect of the subject property. When the ad-interim order for appointment of the Court Receiver was prayed for by the present appellant, there was already an IOD granted to construct the buildings. A part occupation certificate in respect of the subject building appears to have been granted in the year 1982. When the ad-interim order was passed, the construction of the building had commenced. In the year 1980, there were agreements executed by the Golden Construction Company under the provisions of MOFA in favour of flat purchasers. The learned Single Judge in the impugned order has commented upon the inaction of the Court Receiver.

However, the impugned order is not passed only on the basis of the alleged inaction of the Court Receiver. Apart from factual observations made by the learned Single Judge in Paragraph No.9, the learned Single Judge has relied upon the well known decision of the Apex Court in the case of **Anthony C. Leo (supra)**.

10. At this stage, we may also note the observations made by the learned Single Judge in the order dated 9th March, 2018 in Chamber Summons No.1108 of 2017 taken out by the first respondent. In Paragraph No.3, the learned Single Judge observed thus:-

“I do not see how this Suit could possibly be viewed in that perspective. There are two reasons. First, there is no prayer in the present Suit to impeach those property transactions; and this prayer or set of prayers impeaching the property transactions is/are the subject matter of the two 1996 Suits. Thus, even if the present Suit is decreed the Applicant Society's claim to title will remain entirely unaffected. Those property transactions are not the subject matter of this Suit. The only subject

matter of the present Suit is the Partnership Firm, its dissolution and the drawing up of its accounts.”

(underline supplied)

It appears that when the first respondent applied for impleadment by filing the said chamber summons, the said prayer was opposed by the present appellant.

11. Considering the fact that the first respondent and its members will be directly and adversely affected by the order appointing the Court Receiver and considering the fact that the appellant has not chosen to implead the first respondent as a party defendant, we find no error in the view taken by the learned Single Judge and the order of discharge of the Court Receiver.

12. What is argued by the learned counsel for the appellant about the effect of the impugned order on the suits filed by the Receiver is a mere consequence. If the order appointing the Court Receiver without impleading the first respondent cannot be justified, the consequences of the impugned order are not relevant at all.

13. If the appellant wants an appointment of the Court Receiver in respect of the part of suit property in respect of which

the order appointing the Court Receiver has been vacated, firstly, the appellant will have to apply to the learned Single Judge seeking permission for impleading the first respondent as a party defendant to the suit. Only after the first respondent is impleaded as a party defendant, appellant can make a fresh application for appointment of the Court Receiver. If a case is made out warranting appointment of a Court Receiver in respect of the said property, the learned Single Judge can always pass an appropriate order in accordance with law.

14. Subject to what is observed above, there is no scope to interfere with the impugned order which is just and equitable. Accordingly, the appeal is dismissed.

15. Pending notice of motion, if any, does not survive.

16. At this stage, the learned counsel appearing for the appellant seeks stay of the order of the learned Single Judge by pointing out that the learned Single Judge had himself stayed the order for the period of three years. The prayer is opposed by

the learned counsel appearing for the first respondent. We direct that order for stay will continue to operate for a period of four weeks from the date this judgment and order is uploaded.

(M.S.SONAK, J.)

(A.S.OKA, J.)

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