

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

COURT RECEIVER REPORT NO.01 OF 2021

IN

FIRST APPEAL NO.369 OF 2016

IN

SUIT NO.1186 OF 1979

A/W

CIVIL APPLICATION NO.997 OF 2016

Balkrishna Appayya Shetty	]	
Of Mumbai Indian Inhabitant,	]	
Carrying on business at 11/12, Chadwa	]	
Apartments, Sion Trombay Marg,	]	
Chembur, Mumbai – 400 071.	]	Appellant
		(Original Defendants)

Versus

1. Hemant H. Thakkar	]	
(since deceased)	]	
1a. Shaila Hemant Thakkar and others.	]	
2. Rita D. Katira	]	
3. Pankaj Harish Thakkar	]	
4. Tushar Harish Thakkar	]	
All of Mumbai Indian Inhabitants	]	
Residing at La-Repose, 21, Lakhamsi	]	
Nana Road, Dadar, Mumbai – 14.	]	Respondents
		(Original Plaintiffs)

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Mr. Ashish Kamat a/w Ms. Sumantini Mohite, for Court Receiver.
 Ms. Neha Bhatt i/b M/s. Bilwala & Co., for Appellant.
 Mr. G.T. Mestha, for Respondents No.3 and 4.
 Mr. Ram Upadhyay a/w Mr. Dharmesh Singh i/b Law Competere
 Consultus, for Respondent No.4(A) in First Appeal.
 Mr. D.N. Kher, Court Receiver present.

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CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 25th MARCH, 2021.
PRONOUNCED ON : 6th MAY, 2021.
 [THROUGH V.C.]

JUDGMENT:

1. This is an application by the Court Receiver (for short “C.R”) with a twofold prayer viz; seeking a discharge without passing accounts subject to costs, charges and expenses to be paid by the plaintiffs *qua* the suit property and the parties to prosecute their claims before the Debt Recovery Tribunal (for short ‘D.R.T”), independently.

2. Facts material for deciding this application can be summarized as follows;

In an appeal No.350 of 2001 in City Civil Court Suit No.6821 of 1979 (High Court Suit No.1186 of 1979), Division Bench of this Court (Coram: D.K. Deshmukh & J.H. Bhatia, JJ) passed the following order;

“ By consent of the parties, the Appeal is disposed of in following terms;

- (i) The judgment and order dated 30-3-2001 is set aside. The order dated 29-11-2000 passed in Suit No.1186 of 1979 is also set aside.*
- (ii) Suit No.1186 of 1979 is remitted back to the learned Single Judge for fresh trial in accordance with law.*
- (iii) The Receiver of this court is appointed as Receiver on the suit premises. The Receiver shall take symbolic possession of the premises and appoint the plaintiffs as agent of the Receiver to be in possession of the premises, where they will be permitted to carry on business of Restaurant.*
- (iv) The appointment of the Plaintiffs as agent of the Receiver shall be on usual terms and conditions except security and royalty. So far as royalty is concerned, the Receiver shall, after agency agreement is entered by the Plaintiffs, take steps to determine the amount of royalty in accordance with law. The amount that is to be determined by the Receiver as royalty shall not be required to be paid at present. The plaintiffs shall as agents of the Receiver shall file an undertaking before the learned single Judge that they will deposit the amount of royalty as may be determined by the Receiver, if so directed by the learned single Judge and on such terms and conditions as may be*

directed by the learned single Judge.

(v) Expenses of the Receiver shall be borne by the plaintiffs.

(vi) Considering that the suit is of the year 1979, the learned single Judge is requested to hear and dispose of the suit as expeditiously as possible”.

3. Pursuant to the said order, the Court Receiver took symbolic possession of the suit property on 8th October, 2007 and, *inter alia*, appointed the plaintiffs as his agents in respect of the suit property.

4. On 1st February, 2020, one Advocate G.T. Mestha, representing respondents Hemant Thakkar and others forwarded a copy of an order of appointment of Court Receiver and order dated 7th January, 2020 passed by DRT-II informing that in Recovery Proceedings No.506 of 2004, the D.R.T had taken possession of the suit property on 28th January, 2020 from the Manager of the respondents with Police help without giving any copy of the Panchanama and locked the suit premises through one Prabhat J. Dubey who was appointed Advocate Commissioner as per the order dated 25th November, 2019. The Recovery Officer namely Sunit K. Meshram of the D.R.T-II, Mumbai had issued an order dated 7th January, 2020 appointing the said Mr. Prabhat Dubey as an Advocate Commissioner.

5. When the Section Officer of the Court Receiver's Office checked the status of the suit and the orders passed on the Official Website of the Mumbai City Civil Court, Mumbai, he came to know for the first time that the learned City Civil Judge by a judgment and order dated 4th December, 2015, decreed the suit. The operative order of the said judgment reads thus;

“ Suit is decreed with costs.

The defendant do deliver the possession of the suit shops alongwith the suit business to the plaintiffs.

The plaintiffs shall continue their possession in the suit shops and the business of Parkway Restaurant therein as owners thereof and not as agents of the Receiver after Receiver is discharged. The Receiver shall stand discharged on passing accounts.

The defendant shall pay Rs.3000/- per month to the plaintiffs from 25.07.1979 till they were put in possession of the suit shops by the Court Receiver.

The Court Receiver to refund the plaintiffs the royalty amount, if any, paid by them after deducting their requisite charges/fees, after the period of appeal.

A decree be drawn accordingly”.

6. According to the Court Receiver, none of the parties had communicated to the Office of the Court Receiver about the fact of

the said judgment dated 4th December, 2015. However, after getting the knowledge, the Office of the Court Receiver has prepared a final statement taking steps for filing account statement. It is contended that due to the pandemic of Covid-19 , Office of the Court Receiver could not file the account in the Office of the Commissioner.

7. On 7th February, 2020, Mr. G.T. Mestha had forwarded a copy of an order dated 27th June, 2017 passed by this Court (Coram: G.S. Patel, J.) in First Appeal No.369 of 2016, whereby the appeal came to be admitted. There are no further orders passed. According to the Court Receiver, it's office has received letters dated 28th July, 2020, 1st August, 2020, 8th October, 2020 and 20th October, 2020 from one Law Competere Consultus Advocate representing respondent Rita Katira who is original plaintiff No.2 in H.C Suit No.1186 of 1979.

8. In its letter dated 28th July, 2020 and 8th October, 2020, the said Law Competere Consultus had informed the Court Receiver's office that since it had not rendered the account, the property is still with the Court Receiver and the property had also been sold through an auction by RO-II of DRT-II despite the possession being with the Court Receiver. It was also informed on behalf of Rita Katira that she had noticed illegality and unlawful work at the suit premises in the nature of sale of the property and taking over it's possession by the RO DRT-II despite the possession being with the Court Receiver.

9. The Office of the Court Receiver by a communication dated 30th September, 2020 informed the Law Competere Consultus representing Mrs. Rita Katira that the plaintiffs are agents of the Court Receiver on record and an undertaking was given by the plaintiffs as per the directions of this Court that they shall not dispose off, part with or assign or transfer or sell or encumber or mortgage or exchange or offer as security or otherwise, in any way, alienate or deal with or dispose off or any part thereof, of the premises of the suit premises which was allowed by the Court Receiver to use and occupy to conduct the business of restaurant as his agents under the agreement signed on behalf of them.

10. Subsequently, Court Receiver's Office received a letter on 8th October, 2020 from Law Competere Consultus, for Rita Katira intervener/co-owner in Recovery Proceeding No.506 of 2004, stating therein that she had filed an application for setting aside sale of the suit property under Rule-60 r/w Rule-11 of Second Schedule of Income Tax Act and as she had been aggrieved by the impugned action of the Court Commissioner appointed by the Recovery Officer, DRT-II, Mumbai who took the physical possession of the suit premises without serving any notice upon his client under Rule-49 which is mandatory in nature. It is also informed that the Central Bank of India had put the suit premises for auction in June, 2019 without the knowledge and consent of the intervener who is a co-owner of the suit premises.

11. It appears that the Recovery Officer of D.R.T, Mumbai had already taken physical possession of the suit premises. It is the

contention of the Court Receiver that since he was put in a symbolic possession and the actual possession has always been with the plaintiffs as agents and as the suit has already been disposed of confirming the possession of the plaintiffs as owners thereof, he requests for seeking his discharge without passing accounts subject to costs, charges and expenses to be paid by the plaintiffs as well as directing the parties to prosecute their claim before the Debt Recovery Tribunal independently.

12. I heard Mr. Ashish Kamat, learned Counsel appearing for the Court Receiver. I have perused the written submissions on behalf of the respondents.

13. Respondent No.2 has filed a Miscellaneous Application (L) No.397 of 2021 in the City Civil Court in a disposed of S.C Suit No.6821 of 1979 (H.C. Suit No.1186 of 1979) seeking following prayers under Order-XL, Rule-4 of the Code of Civil Procedure personally against Mr. D.N. Kher, who is the present Court Receiver, without seeking prior leave of this Court.

The Following prayers are made by respondent No.2;

“a) This Hon’ble Court be pleased direct to attach all the movable and immovable properties of Mr. D.N. Kher, Court Receiver (i.e the Respondent herein) which stands in his name (whose properties details are available in the Court Receiver’s Office) under Order 40 Rule 4 Sub-rule c of the Code of Civil Procedure 1908 and further direction be given to sell the said

attached property of Mr. D.N. Kher for making good the losses suffered by the Applicant on account of wilfull grave negligence of the Respondent in discharging its duties in slapdash manner towards the suit premises since February 2020.

b) This Hon'ble Court be pleased to impose heavy cost and penalty upon Mr. D.N. Kher, Court Receiver (i.e The Respondent herein) for maintaining stoic silence and for discharging its duties as enumerated under Order 40 of the CPC 1908 which resulted into irreparable losses of the Applicant's co-ownership rights upon the suit premises due to the lackadaisical and shoddy approach of Respondent since February 2020;

c) pending the hearing of the present Miscellaneous application, this Hon'ble Court be pleased to appoint other experienced person as court receiver in place of D N Kher (i.e Respondent herein) as this Hon'ble Court deems fit and proper and further direct newly appointed CR to take all possible measures in accordance with law for protecting, preserving and securing the suit premises namely shop no.11 & 12, Chhadva Premises Co-operative Housing Society Ltd., Chhadva Apartments, Sion, Trombay Road, Near Diamond Garden, Mumbai – 400 071;

d) pending the hearing of the present Miscellaneous application, this Hon'ble Court be pleased to issue show cause notice to D N Kher Court Receiver (ie the Respondent herein) for explaining his conduct for not taking necessary measures under the law for protecting the rights, title, interest etc. of the Applicant's in the suit premises despite having knowledge about the e-auction sale conducted by the Ld. Recovery Officer, DRT-II, Mumbai since February, 2020;

e) Interim reliefs in terms of prayer clause (c) and (d) above may be granted in favour of the Applicant herein;

14. Following points need to be considered;

- (a) whether in a disposed of suit by a Judge of the City Civil Court who has become *funcuts officio*, respondent No.2, herein, could have moved an application against the Court Receiver with prayers as above?
- (b) Whether Judge of the City Civil Court could have entertained such an application?
- (c) Whether the respondents, in order to thwart recovery proceedings before the DRT collusively levelled false and baseless allegations against the Court Receiver, who had already been discharged from his symbolic possession by the Judge of the

City Civil Court in view of the judgment and decree dated 4th December, 2015?

Answers to these questions are emphatically in the negative for the following reasons.

15. As can be seen from the judgment and decree dated 4th December, 2015, the Receiver who was in symbolic possession had already been discharged and the plaintiffs/respondents who were in possession of the suit property as an agents of the Receiver have been directed to continue with their business from the suit property. Therefore, there is no question of the Court Receiver remaining in possession of the suit property as the plaintiffs/respondents have never parted physical possession of the suit property in favour of the Court Receiver who was merely in symbolic possession thereof. Admittedly, first appeal preferred by the original defendant bearing No.369 of 2016 is pending before this Court challenging the judgment and decree of the City Civil Court. In such circumstances, there was no business for the City Civil Court to entertain an application, that too, of such a nature against the Court Receiver since that Court had become *functus officio*. The City Civil Court has no authority in law to entertain such an application in a disposed of suit against which an appeal has already been pending in this Court. It is surprising as to how the City Civil Court had entertained an application when it is aware of the fact that an appeal has been filed in this Court. More so, in the said application, respondent No.2 has sought certain directions against the Court Receiver, that too, in

his personal capacity, who is an officer of this Court under the direct administrative control of the Hon'ble the Chief Justice.

16. At this stage, Mr. Kamat, learned Counsel for the Court Receiver has rightly placed useful reliance upon a judgment of this Court in case of **Girish M. Joshi Vs. Jagat Manubhai Parikh and others, in Writ Petition No.2527 of 2009** (Coram: A.S. Oka, J.). Paragraphs 4 and 5 of the judgment reiterates the position as regards the nature and duties of the Court Receiver as well as the fact that no Court other than this Court can appoint the Court Receiver, High Court of Bombay, as a Receiver.

“4. Thus, the order of Division Bench notes that the Court Receiver, High Court, Bombay is an employee of the High Court who is subject to administrative control of the Hon'ble the Chief Justice. There is no provision either in the Original Side Rules or in the Rules framed under the City Civil Courts Act which empowers the City Civil Court to appoint the Court Receiver, High Court, Bombay as a Receiver in the suits and proceedings filed in the City Civil Court at Bombay. The Court Receiver in his report has pointed out provisions of Chapter I of the Office Manual issued by the office of the Court Receiver in which it is stated that the Court Receiver may be appointed as a Receiver of a property either by the High Court or by the City Civil Court. The Office Manual is nothing

but a book of departmental instructions. Prima facie it appears to me that on the basis of the provisions of the Office Manual, the City Civil Court does not get jurisdiction to appoint an officer of this Court as the Receiver in suits and proceedings pending in the said Court. By that logic, every Court in the State of Maharashtra will be entitled to appoint Court Receiver, High Court, Bombay as a Receiver.

5. *In the report of the Court Receiver various orders passed by the City Civil Court have been pointed out. The office of the Court Receiver is already under enormous pressure as by virtue of orders passed by this Court in various suits and proceedings including the arbitration petitions under section 9 of the Arbitration and Conciliation Act, 1946, the Court Receiver is required to look after very large and valuable immovable properties in the City of Bombay and at other places. In fact, by virtue of appointment as of the Court Receiver in suits filed in this Court, the Receiver has to look after properties which are situated even outside the State of Maharashtra. Considering the enormous pressure on the office of the Court Receiver, High Court, Bombay and the lack adequate infrastructure, the said office cannot be burdened any further. There is no provision of law under which any Court subordinate to this Court can appoint the Court*

Receiver, High Court, Bombay as a Receiver. Therefore, necessary directions may be required to be issued on the administrative side. It is, therefore, directed that a copy of this order shall be placed before the Hon'ble the Chief Justice for considering the matter on the administrative side”.

17. Respondent No.2 has not obtained leave of this Court before initiating any action against the Court Receiver. The Hon'ble Supreme Court in case of **Everest Coal Company (P) Ltd Vs. State of Bihar and others, (1978) 1 Supreme Court Cases 12** held thus;

“(2)When a court puts a Receiver in possession of property, the property comes under Court's custody, the Receiver being merely an officer or agent of the Court. Any obstruction or interference with the Court's possession sounds in contempt of that court. Any legal action in respect of that property is in a sense such an interference and invites the contempt penalty of likely invalidation of the suit or other proceedings. But, if either before starting the action or during its continuance, the party takes the leave of the court, the sin is absolved and the proceeding may continue to a conclusion on the merits. In the ordinary course, no court is so prestige conscious that it will stand in the way of a legitimate legal proceeding for redressal or relief against its receiver unless the action is totally meritless, frivolous or vexatious or otherwise vitiated by any sinister factor.

Grant of leave is the rule, refusal the exception. After all, the court is not, in the usual run of cases, affected by a litigation which settles the rights of parties and the Receiver represents neither party, being an officer of the court. For this reason, ordinarily the court accords permission to sue, or to continue a suit already filed. The jurisdiction to grant leave is undoubted and inherent, but not based on black letter, law in the sense of enacted law. Equally clearly, prior permission of the court appointing the Receiver is not a condition precedent to the enforcement of the cause of action. Nor is it so grave a vice that later leave sought and got before the decree has been passed will not purge it. If, before the suit terminates, the relevant court is moved and permission to sue or to prosecute further is granted, the requirement of law is fulfilled. Of course failure to secure such leave till the end of the lis may prove fatal”.

18. Rule 596 of the Bombay High Court Original Side reads thus;

R.596. Certified copy of the Minutes of the decree or order to be served on the Receiver. *In a suit or matter where a Receiver has been appointed, a certified copy of the minutes of the decree or order containing provisions which directly or indirectly concern the Receiver shall be served on the Receiver by the party on whose application the decree or order*

is passed within one week from the date of such decree or order;

Provided, however, that where the party is represented by an Advocate entitled to act on the Original Side of this Court, it shall be the duty of such Advocate to serve a certified copy of the minutes of the decree or order on behalf of the party within the time herein provided.”

This rule mandates that within one week from the date of the decree, a party to the suit shall furnish certified copy of the minutes of the decree or order containing provisions which directly or indirectly concern the Receiver. Indubitably, none of the parties, ever since the suit has been decreed, in the month of December, 2015 for a period of five years complied with the said provisions. There is nothing on record from which it can be said that the Court Receiver was duly intimated as above. No evidence has been placed in that regard. Even otherwise, the Court Receiver had already been discharged from the symbolic possession subject to passing of accounts which is an act between the Court Receiver and Commissioner. It does not mean that the Court Receiver is still in possession and had failed to discharge his lawful obligations. No explanation is forthcoming from the respondents or for that matter from the appellant as to why there was no compliance of Rule-596.

19. Respondents No.1, 3 and 4 are brothers. Respondent No.2 is their sister. Respondent No.2 is the applicant before the City Civil Court. Admittedly, DRT (II), Mumbai took possession of the suit property in Recovery Proceeding No.506 of 2004. Respondent No.4-Tushar Thakkar had informed the Court Receiver on 1st February, 2020 that the Recovery Officer had appointed the Commissioner to take possession of the suit property. Respondent No.4 is a party before D.R.T. He could have intimated the Court Receiver about the judgment of the City Civil Court and also the DRT proceedings way back in 2004 itself i.e even before the appointment of the Court Commissioner on 23rd August, 2007. It is apparent that respondent No.2 in collusion with respondent No.4 and appellant are trying to falsely implicate the Court Receiver in his personal capacity who had already been discharged from symbolic possession. Since the respondents have been in continuous physical possession of the suit property when the Court Receiver was appointed, no sane man will believe respondent No.2 that she was unaware of the auction sale of the suit property before D.R.T. The story put forth by the respondents is palpably unbelievable, unacceptable and untrustworthy. Business of restaurant is being run by the respondents in the suit property. The record indicates that *Notice of settling the sale proclamation* in the recovery proceedings was pasted upon the suit property. Under such circumstances, office of the Court Receiver cannot be permitted to be misused to thwart the D.R.T proceedings which have been initiated in accordance with law.

20. Though the appellant and respondent No.4 have spoke in tune with respondent No.2, *inter alia*, objecting discharge of the Court Receiver, they, in fact, have no locus in view of the fact that they too failed to inform the Court Receiver regarding the judgment and decree passed by the City Civil Court on 4th December, 2015.

21. Mr. Kamat has strenuously urged to take into consideration a *mala fide* conduct of respondent No.2, *inter alia*, praying for imposing exemplary costs so that in future such elements should not succeed in their nefarious design to personally implicate the Officer of this Court in such a manner. I must appreciate the concern shown by Mr. Kamat, however, I restrain myself from imposing any costs upon respondent No.2, for, the observations made hereinabove, according to me are sufficient in facts and circumstances of this case.

22. The corollary of the aforesaid discussion is that the application taken out by respondent No.2 before the City Civil Court is quashed and set aside.

23. The Court Receiver shall submit the accounts within eight weeks from the date of passing of this order.

24. The parties are at liberty to pursue their remedies before the D.R.T, in accordance with law.

25. In view of disposal of the Court Receiver's Report No.01 of 2021, pending application, if any, stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]