

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 668 OF 2015
WITH
COURT RECEIVER REPORT NO. 6 OF 2022
WITH
CIVIL APPLICATION NO. 820 OF 2015
WITH
CIVIL APPLICATION NO. 819 OF 2015

Faiyaz Abdul Latif Kudaiye ... Appellant/
Applicant
Versus
Ishtiyak Ahmed Shah, s/o. Haji Hadisullah & Ors. ... Respondents

WITH
CIVIL APPLICATION NO. 123 OF 2019
IN
APPEAL FROM ORDER NO. 668 OF 2015
Ishtiyak Ahmed Shah, s/o. Haji Hadisullah & Ors. ... Applicant
Versus
Faiyaz Abdul Latif Kudaiye & Anr. ... Respondents

Ms. Naseem Patrawala i/b. Patrawala & Co. for the appellant/applicant.
None for the respondents.
Ms. Rekha Rane, 2nd Asstt. To Court Receiver present.

CORAM: G. S. KULKARNI, J.
DATED: 12 January 2023

P.C.

1. Heard the learned counsel for the appellant.
2. This appeal has been directed agaisnt an order dated 18 December, 2014 passed by the learned Judge of the City Civil Court, Greater Mumbai on Notice of Motion No. 805 of 2012 in Suit No. 2955 of 2012 filed by the

appellant/plaintiff. The operative part of the order as impugned is required to be noted, which reads thus:

“O R D E R

1. *Notice of Motion No. 805 of 2012 is allowed in following terms:*

- i) Receiver , Bombay High Court is appointed as receiver of the suit property.*
- ii) Receiver to remove defendant nos. 1 to 7 from the possession or custody of the property and take over management of the suit property.*
- iii) Receiver to induct licensee in the suit property who is ready to provide highest amount of licence fees with such terms and conditions as the receiver finds appropriate.*
- iv) Receiver is at liberty to meet essential expenses in respect of suit property from the profits so received from the suit property.*
- v) Receiver to maintain of accounts of the licence fees so received after the suit property is put on licence and essential expenses so incurred in respect of suit property.*
- vi) If the property is not put to gainful use, then plaintiff to bear costs of appointment of receiver and charges of keeping accounts by receiver.”*

3. The appellant/plaintiff is aggrieved by Clause (iii) of the operative part of the impugned order whereby the receiver has been directed to induct licensee in the suit property who is ready to provide highest amount of licence fees with such terms and conditions as the receiver finds appropriate.

4. This appeal has been filed on 16 February, 2015. Perusal of record indicates that from time to time orders are passed by co-ordinate Benches of this Court including on the issue of taking over of the suit property by the

Court Receiver and the hurdles which were created in that regard by the respondents/defendants. Today, it is an admitted position that the suit property is under the lock and key of the receiver. By the earlier orders passed on the present proceedings, the Court had directed that the valuation of the property be made in regard to the rent it would fetch and a report to that effect from a registered valuer was called for. A report dated 19 April, 2022 is placed on record setting out that the valuation of the suit property insofar as the rent is concerned would be Rs.26,825/-.

5. Learned counsel for the appellant, on instructions, would submit that although the appellant is desirous to occupy the suit property by depositing the rent with the Court Receiver, however, it may not be possible for the appellant to pay rent of Rs. 26,825/-. She submits that the appellant will be in a position to pay at the most an amount of Rs.18,000/- per month.

6. In the aforesaid circumstances, considering the above orders and after hearing learned counsel for the appellant, in my opinion, a short issue which has arisen for consideration, is in respect of inducting a licensee in the suit premises, as directed by the City Civil Court by the impugned order.

7. However, there is another issue which goes to the root of the matter inasmuch as whether the City Civil Court has any power and authority to

appoint Court Receiver, Bombay High Court in respect of the suit property. It appears that such an order passed appointing Court Receiver, Bombay High Court will be an order passed by the City Civil Court without jurisdiction. Although the City Civil Court would have jurisdiction to appoint a Court Receiver in a given case, however, considering the settled principles of law as seen from the decisions in *ICICI Ltd. vs. Patheja Brothers Forgings and Stampings Ltd. & Ors.*¹, *Girish M. Joshi vs. Jagat Manubhai Parikh & Ors.*² and *M/s. Shakti International Pvt. Ltd. vs. M/s. Excell Metal Processors Pvt. Ltd.*³, which are considered in the recent order dated 5 January, 2023 of this Court in *Nazir Ahmed Mohd. Islam Shah & Ors. vs. Iqbal Mohammed Akeel Shah & Ors.* in Appeal from Order No. 10 of 2023, wherein the Court has observed that the City Civil Court would not have jurisdiction to appoint Court Receiver, High Court, Bombay.

8. In the aforesaid circumstances, there is no alternative but to remand the proceedings to the City Civil Court to enable the City Civil Court to recall the order appointing Court Receiver, High Court, Bombay and substitute the same by appointing another Receiver, as the City Civil Court may deem appropriate.

1 2000(3) Mh. L.J. 212

2 Writ Petition No. 2527 of 2009 decided on 11 September, 2009

3 Court Receiver's Report No. 476 of 2016 decided on 16 March, 2017

9. The parties are accordingly directed to appear before the City Civil Court on 30 January, 2023 and place the present order on the record of City Civil Court. Learned Judge of the City Civil Court may accordingly pass appropriate orders after hearing the parties.

10. Needless to observe that considering the report as received on record of this Court, which may be placed by the parties before the learned trial Judge, the learned trial Judge may pass appropriate orders in regard to inducting licensee in the suit property, which may include appropriate order to be passed in regard to claim of the appellant to be licensee of the suit premises during the pendency of the suit and licence fees which is sought to be now offered. Learned trial Judge shall take appropriate decision on such offer as made by the appellant.

11. In the aforesaid circumstances, the appeal is disposed of in terms of the above observations. All contentions of the parties are expressly kept open. No costs.

12. In view of disposal of Appeal from Order, Civil Applications do not survive and the same are accordingly disposed of.

(G. S. KULKARNI, J)