

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 18660 OF 2022

IN

FIRST APPEAL NO. 2214 OF 2005

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Laxmi Asbestos Products Ltd.
IN THE MATTER BETWEEN
Ganpat Parappa Kamble and Ors

...Applicant

... Appellants

Versus

Laxmi Asbestors Products Ltd.

...Respondent

Mr. Pradeep Thorat a/w Sourasubha Ghosh, Samarth Chowdhary i/b
M/s. Indus Law, Advocates for the Applicant/Original Respondent.
Mr. I.M. Pathan , Advocate for the Respondent.
Mr. Ashish Dubey a/w Ankita Upadhyay for Respondent Nos.
12,20,22 and 27.

CORAM: M.M.SATHAYE J.

DATE : 14th DECEMBER, 2023

PC. :

1. This is an Application by the original Plaintiff company in Short Cause Suit No. 4905 of 1997 ("the said Suit" for short) which is Respondent in the above Appeal. This Application is filed seeking following reliefs :

a) *by an Order of this Hon'ble Court the Appellants be restrained by an Order of Injunction from carrying out construction of any nature whatsoever on*

the suit property i.e. property bearing Plot No. 11A, admeasuring 2038.04 sq. mtrs situated at Survey No. 161 (part), Village Pahadi, Goregaon (West), Mumbai and be further restrained by an Order of Injunction from creating any third party rights of any nature whatsoever in respect of the structures constructed on the suit property i.e. property bearing Plot No. 11A, admeasuring 2038.04 sq. mtrs. situated at Survey No. 161(part), Village Pahadi, Goregaon (West), Mumbai;

b) that pending the hearing and final disposal of First Appeal No. 2214 of 2205, this Hon'ble Court be pleased to appoint the Court Receiver to exercise all the powers under Order 40 of the Code of Civil Procedure, 1908 to take possession of the suit property and also to prepare a report on the present condition of the suit property and to prepare a list of the existing structures and the people who are in occupation of the hutments on the said Plot i.e. property bearing Plot No. 11A, admeasuring 2038.04 sq. mtrs. situated at Survey No. 161 (part), Village Pahadi, Goregaon (West) Mumbai;

C) that pending the hearing and final disposal of First Appeal No. 2214 of 2205 this Hon'ble Court be pleased to direct the Appellants to deposit with this Hon'ble Court an amount of Rs. 11,25,000 (Rupees Eleven Lakh Twenty Five Thousand Only) per month or any other reasonable sum at this Hon'ble Court's discretion, towards compensation to be awarded to the Applicant for occupying the said Plot;

2. Heard learned counsel for the Applicant. Interestingly, despite the fact that the present Appeal is being jointly prosecuted by all the Appellants together, who are original Defendants (or their legal heirs, as the case may be), the present Application is opposed by Advocate Mr. Pathan and one Mr. Ashish Dubey who claims to be representing original Appellant Nos.12, 20, 22 & 27. Mr. Dubey undertakes to file *vakalatnama* for his said clients within a period of one week from today. Heard Mr. Pathan and Mr. Dubey for the original Appellants.

3. Learned Counsel for the Applicant has taken me through various documents annexed to this application.

4. By Judgment and Decree dated 14.10.2005, the learned City Civil Court, Greater Bombay, decreed the said suit and directed original Defendant Nos. 3 to 29 (Appellants in the above Appeal) to quit, vacate and remove themselves with their belongings and structures from the suit premises which is plot of land bearing No. 11A admeasuring 2038.04 sq. meters in Survey No. 161 (part) at village Pahadi, Goregaon (West), Mumbai and hand over vacant and peaceful possession thereof to the present Applicant/Plaintiff on or before 31.01.2006. The present Appellants carried the matter in above Appeal which was admitted on 04.04.2006. While admitting the Appeal by an order dated 04.04.2006 in Civil Application No. 5617 of 2005, this Court directed that execution of the Decree will remain stayed subject to the condition that the Appellants shall

maintain status-quo in all respects in respect of the suit premises. The Applicant has relied upon a photograph annexed to the original stay Application filed by Appellants (page 65), which showed only temporary structures on the suit premises

5. Record further shows that, since according to the present Applicant, the status-quo was breached, an application being Civil Application No. 4574 of 2010 was filed and moved contending that the present Appellants have converted the user of the suit premises and the same is being used for commercial activity. However, by an Order dated 28.02.2011, this Court held that no case was made out by the Applicant that any third party rights are created or possession has been parted with and it was further held that change of user is no ground for vacating the interim relief. It was further held that if according to the Applicant, the Respondents have violated the order of status-quo it will be open for the Applicant to take appropriate proceedings in that behalf.

6. Thereafter, according to the Applicant, the suit premises which were having temporary structures at the relevant time when the status quo was granted, has undergone change, in as much as nature of the structures has changed and brick-walls with tin-roofs etc. have been constructed. The Applicant therefore filed 1st complaint with the Municipal Corporation on 15.03.2018. It is Applicant's case that the complaint has not resulted into any action by the Municipal Corporation. Thereafter, again since according to the Applicant, the change in the nature of the structures continued and the same was

continuously being put to commercial use, 2nd complaint was filed on 31.05.2018. However, no action was initiated by the Municipal Corporation.

7. Thereafter again on 08.12.2020, the Applicant filed 3rd complaint with the Municipal corporation and this time also sent correspondence with the local police station. The Applicant requested the Municipal corporation to take appropriate action of removal of alleged un-authorised constructions happening on the suit premises. Again no action was taken. In support of this contention, the Applicant has annexed copies of earlier court orders, the said complaints and colour photographs of time range from January to August 2018 and December 2020, on record of this application.

8. In these circumstances, this application has been filed seeking reliefs as already stated above.

9. An Affidavit-in-reply of all the Appellants affirmed on 28.11.2022 is filed opposing this Application. Perusal of the said Affidavit-in-reply shows that the photographs annexed to this Application are dealt with in just one line in para 2 which reads thus :

“Photographs annexed do not show any ongoing construction, falsifying the claim of applicants to vacate the order of status quo.”

In short, all the photographs relied upon by the Applicant as well as what is seen in the said photographs themselves, are neither disputed nor denied in the Affidavit-in-reply.

10. *Per contra*, learned counsel Mr. Pathan appearing for the original Appellants submitted that his clients i.e. Appellants-occupants are poor people who are not indulging in any illegal construction or illegal activity. He submitted that indeed repair work is going on because the Appellants are occupying the hutments/structures on the suit property. He submitted that there is no breach of order of status-quo and as such there is no need to appoint Court Receiver.

11. Learned Counsel Mr. Dubey submitted for his separate set of Defendants, that if the Applicant is alleging breach of status-quo order, he should issue notices which can be then replied and dealt with. However, this is not a fit case for appointment of Court Receiver.

12. During pendency of the present Application, the Applicant has filed Additional Affidavit dated 27.07.2023 and has placed on record recent photographs of July 2023, in support of his case that the structures on the suit property are not only further growing from temporary to pakka structures with brick-walls and tin-roof but also are increasing in number of floors.

13. In these set of facts, the Applicant has placed on record an

order dated 07.07.2023 passed by the Division Bench of this Court during pendency of this application and appeal. This order is passed in Writ Petition (L) No. 1751 of 2021 filed by the Applicant seeking directions against Municipal Corporation to take appropriate actions against unauthorized structures/constructions on the suit property. Perusal of said order shows that since there is already an order of Civil Court granting decree to hand over vacant and peaceful possession of the suit premises and the First Appeal is pending, any relief in writ jurisdiction for removal of unauthorized structures on the suit premises cannot be sought. Needles to mention that reference in the said order is to the present suit premises.

14. In these circumstances, it is obvious that the Applicant has no other option but to press the present Application. The Applicant is seeking appointment of Court Receiver. In the teeth of facts and circumstances narrated above and material placed on record, it can be seen that the suit premises have been wasted and changing its nature with the structures thereon increasing by day.

15. Perusal of record shows that apparently no separate reply is filed by the said clients of Mr. Dubey and all his statements are oral. The additional affidavit of the Applicant is also not countered by any separate reply.

16. I have carefully considered all the submissions. It is settled position of law that if there is a decree of possession granted against

the party and if that party continues in occupation of the subject matter property because Appeal is pending and stay is granted, then decree holder has to be compensated for occupying the property. On a specific query of the Court to the learned Counsel for the original Appellants as to whether Appellants are willing to compensate the present Applicant/Decree holder for their continuous occupation since the decree of year 2005 till today or even part of it, apparently the Appellants are not willing to offer any such compensation.

17. Perusal of various photographs referred to above, shows that commercial activity such as sale of vegetables, sale of CDs/DVDs, Food-mess, dairy business, electricity shops are going on. The photographs also show that the structures are in the form of pakka brick-walls with tin-roofs. Some of the photographs of the year December 2020 as well as July 2023 also show that construction with iron girders and concrete slabs are also taking place.

18. Breach of status-quo and action provided therefor under the law, is in the realm on contempt proceedings. That is a totally different subject. The considerations for appointment of Court Receiver are totally different, which are provided in Order 40, Rule 1 of the Civil Procedure Code. It provides that where it appears to the Court to be just and convenient, the Court may order appointment of Court Receiver, not only for protection and preservation of the suit property but also for removing a person in possession or removing a person from custody of the property or management of the property overall or improvement of the property or any collection of the rent

and profits thereof and for execution of documents as owner himself, as may be directed by the Court.

19. It is therefore obvious that far and wide powers are available with the Court for appointment of Court Receiver, if it appears to the Court just and convenient.

20. In the fact and circumstances narrated above, when the order of status quo has not been effective in stopping change of nature and user of the suit premises, when commercial activity is ex-facie going on, when floors are being raised, brick walls and tin roofs are being put up during pendency of the Appeal, in my opinion this situation is sufficient reason to appoint Court receiver and place the suit premises *custodia legis*, so that any further changes and involvement of third party rights can be put in check and the suit property can be protected from further waste.

21. In that view of the matter, following order is passed :

- (i) Interim Application is allowed in terms of prayer clause (b). The Court Receiver is directed to prepare and submit its report, as directed, within a period of 6 weeks from today.
- (ii) Learned counsel for the Applicant, on instructions states that he will not press prayer clause (c) at this stage.
- (iii) So far as prayer clause (a) is concerned, the Applicant is at liberty to file appropriate proceedings as permitted

under law for prayers made therein.

- (iv) The Application is disposed of in the aforesaid terms.
No order as to costs.

22. Notwithstanding the disposal of this Application, place this matter for compliance about vakalatnama of Mr. Dubey on 21.12.2023.

23. All concerned to act on duly authenticated or digitally signed copy of this order.

[M.M.SATHAYE,J.]