

WRIT PETITION NO.13307 OF 2022

V/s.

... Respondents

WRIT PETITION NO.13307 OF 2022

... Applicant

V/s.

& Ors.

... Respondents

Mr. Vivek Pandey with Ms. Ridhima Mangaonkar and Mr. Shyam Krishna Tripathi for the petitioner and applicant in IA19677/2022 & for the respondent No.1 in IA/1455/2023.

Mr. S.A. Jabbar i/by Mr. Tanvir Shaikh for the applicant
in IA/1455/2023 & for respondent No.1 in
IA/19677/2022.

Mr. S.K. Dhekale, Court Receiver, High Court, Mumbai is present.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 12, 2023

P.C.:

1. The challenge in this writ petition is to the order dated 20 September 2022 passed below Exhibit 40 by the Additional Sessions Judge, Borivali Division, Dindoshi in S.C. Suit No.1141 of 2013.

2. By application below Exhibit 40, plaintiff sought direction against Court Receiver to comply with order dated 13 June 2018 passed in Notice of Motion No.175 of 2017. The prayer clauses (a) (alternative prayer) and (b) of the Notice of Motion No.175 of 2017 reads thus:

“a) This Hon’ble Court be pleased to direct the Court Receiver to remove Defendant Nos.2A, 2B, 3 and 4 from the suit premises and hand over physical possession of the suit premises to the Plaintiff and appoint Plaintiff as an agent of the Court Receiver without payment of royalty;

OR IN THE ALTERNATIVE

This Hon’ble Court be pleased to direct the Court Receiver to remove Defendant Nos.2A, 2B, 3 and 4 from the suit premises, take physical possession of the suit premises and keep it under lock and key till disposal of the suit;

b) This Hon’ble Court be pleased to strike out the entire defence being written statement of Defendant Nos.2A, 2B, 3 & 4 for committing default in obeying the reliefs granted in the order dated 25/10/2016 passed in Notice of Motion No.2964 of 2016; This Hon’ble Court be pleased to pass a decree in favour of the Plaintiff as per the reliefs prayed for in the suit;”

3. By order dated 13 June 2018, Notice of Motion No.175 of 2017 was allowed in terms of alternative prayer clauses (a) and

(b).

4. Being aggrieved by the said order, the defendant filed Writ Petition No.8056 of 2018. This Court on 26 July 2018 disposed of the writ petition permitting petitioner to deposit arrears. It is made clear that if the petitioner fail to deposit the first instalment of Rs.5 lakh on or before 3.00 p.m. on 31 July 2018, the Court Receiver to take possession of the suit premises.

5. It is undisputed that the petitioners deposited the amount before 31 July 2018, with the result restraint against the Court Receiver to take possession has come into effect.

6. Despite this, the plaintiff filed an application below Exhibit 40 before the Trial Court for compliance of order dated 13 June 2018. The Trial Court without giving opportunity of hearing to the petitioner passed impugned order. Since the impugned order is passed without opportunity of hearing to the petitioner, the impugned order cannot be sustained. Hence, following order:

a) The impugned order dated 20 September 2022 is quashed and set aside;

b) Application below Exhibit 40 in S.C. Suit No.1141 of 2013 is restored to the file of the Trial Court;

c) The Trial Court shall decide the application below Exhibit 40 in S.C. Suit No.1141 of 2013 after giving opportunity of hearing to both the sides *on its own merits without being influenced by the observation made in this order*;

7. The writ petition stands disposed of in above terms. No

costs.

8. In view of disposal of the writ petition, pending interim applications are disposed of as infructuous. However, the respondents are entitled to seek prayers as are made in the interim application before this Court in an appropriate proceeding.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 23 October 2023. Corrections in paragraph 6(c) are shown in italicize.