

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 10 OF 2023
WITH
INTERIM APPLICATION NO. 110 OF 2023

Nazir Ahmed Mohd. Islam Shah & Ors. ... Appellants
Versus
Iqbal Mohammed Akeel Shah & Ors. ... Respondents
Mr. Nikhil Mishra for the appellants.
Ms. R.V. Rane, 2nd Assistant to Court Receiver present.

CORAM: G. S. KULKARNI, J.
DATED: 5 January 2023

P.C.

1. Not on board. Upon mentioning taken on board on a praecipe as moved on behalf of the appellants.
2. The 2nd Assistant to the Court Receiver is present in the Court who states that by an order dated 22 August, 2012 passed by the City Civil Court on Notice of Motion No. 2351 of 2011 in S.C. Suit No. 263 of 2011, the City Civil Court had appointed Court Receiver and not the Court Receiver, High Court, Mumbai.
3. In this view of the matter, the City Civil Court will have to reconsider the impugned order dated 23 November, 2022 on Notice of Motion No. 3175 of 2015 in S.C. Suit No. 263 of 2011. The parties are directed to appear before the City Civil Court on 12 January, 2023 at 10.30 a.m. along with a copy of this order so that appropriate orders may be passed. No further orders are accordingly required to be passed.

4. In any event, it appears to be well settled that there is no provision in law under which any Court subordinate to High Court, can appoint the Court Receiver, High Court, Bombay as a Receiver. Some of the decisions in this context are required to be noted.

5. In *I.C.I.C.I. Ltd. Vs. Patheja Brothers Forgings and Stampings Ltd. & Ors.*, 2000(3) *Mh.L.J.*212 , a learned Single Judge of this Court held that lending the services of the Court Receiver in the proceedings before the Debt Recovery Tribunal would not arise. Learned Single Judge in this context observed thus:-

“11. In this matter, the learned Acting Chief Justice, High Court, Bombay has received a letter from the Hon’ble Finance Minister of India requesting the High Court to lend the services of the Court Receiver to DRT till alternate arrangements are made. The learned Acting Chief Justice, High Court, Bombay, thereafter invited submissions from the Prothonotary and Senior Master, High Court, Bombay. After due deliberation, it has been decided that administratively it would not be possible to lend the services of the Court Receiver to DRT. Detailed reasons in that regard have been given. Some of the reasons have been mentioned hereinabove. It may be once again stated that in the past Court Receiver's services have not been lent to Small Causes Court. In any event, in the light of this judgment the question of lending services of the Court Receiver to DRT does not arise.”

6. In “Girish M.Joshi Vs. Jagat Manubhai Parikh & Ors.” (Writ Petition No.2527 of 2009, decided on 11 September 2009), a co-ordinate Bench of this Court has observed that the City Civil Court would not have jurisdiction to appoint an officer of this Court as the Receiver in suits and proceedings before the City Civil Court. The relevant observations of the Court can be noted, which read thus:

“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 of 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."

(emphasis supplied)

7. In "M/s.Shakti International Pvt. Ltd. Vs. M/s.Excell Metal Processors Pvt.Ltd" (Court Receiver's Report No.476 of 2016, decided on 16 March 2017), referring to the decision in Girish M.Joshi Vs. Jagat Manubhai Parikh & Ors. (supra), the learned Single Judge has held that it will not be permissible for the arbitral tribunal to appoint the Court Receiver, High Court, Bombay, as the Court Receiver is an Officer exclusively under the High Court. The observations of the Court can be noted, which reads thus:-

"33. The categorical view that it is only this Court that can appoint the Court Receiver, High Court, Bombay, also finds mention in the Judgment of Girish M. Joshi (supra). Whilst it is true that the City Civil Court, Mumbai does appoint the Court Receiver, High Court, Bombay, it is that very practice, the origins of which are indeed difficult to trace, that was questioned by this Court in Girish M. Joshi. The practice followed by the City Civil Court, the correctness of which was questioned

by this Court, cannot form a legal basis for allowing an arbitral tribunal to appoint the Court Receiver, High Court, Bombay, thereby overlooking the position as it emerges from the aforementioned Judgments.

34. Taking into consideration all of the above, I am of the view that an arbitral tribunal Cannot appoint the Court Receiver, High Court, Bombay, to act as a Receiver, under Section 17 of the Amended Act. This follows from the nature of the office and position of the Court Receiver, High Court, Bombay, as explained above. As discussed below, the language of Section 17 of the Amended Act does not alter this conclusion at all.”

8. It is thus well settled that the City Civil Court, Bombay, would not have jurisdiction to appoint Court Receiver, High Court, Bombay, as a Receiver. Hence, the Court Receiver as appointed by the City Civil Court, Bombay would be required to be discharged by the City Civil Court and a fresh Court Receiver would be required to be appointed.

9. To enable the learned Judge, City Civil Court, Bombay, to do so, the parties are directed to appear before the City Civil Court, Bombay, as directed above, so that appropriate orders can be passed to discharge the Court Receiver, High Court, Bombay, who was required to take steps as per the orders dated 22 August 2012 passed by the City Civil Court, Bombay on Notice of Motion No.2351 of 2011.

10. The Court Receiver, High Court, Bombay, shall hand over all the records and the documents to the Receiver who shall now be appointed by the City Civil Court, Bombay, who would be now required to continue to discharge the duties of the Court Receiver, as per the orders passed by the City Civil Court, Bombay.

11. In the above circumstances, the Appeal from Order, hence, would not warrant any further adjudication.

12. Appeal from Order is disposed of in the above terms.
13. All contentions of the parties before the City Civil Court, Bombay, are expressly kept open.
14. In view of disposal of Appeal from Order, Interim Application would not survive and the same is accordingly disposed of.

G. S. KULKARNI, J