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IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

ORIGINAL SIDE

APOT/282/2024
ACR/2214/1987
IA NO.GA/1/2024
SMT. CHARUSILA TRUST ESTATE
Vs
SMT. SUSMITA ROY AND ORS.

BEFORE :
THE HON'BLE JUSTICE HARISH TANDON
And
THE HON'BLE JUSTICE PARTHA SARATHI SEN
Date : 1st October, 2024

Appearance :

Mr. Surajit Samanta, Adv.
Mr. Udayan Chakraborty, Adv.
Mr. Debraj Bhattacharya, Adv.
Ms. Priyanka Gope, Adv.
Ms. Anindita Roy, Adv.
Ms. Sohini Samanta, Adv.
...for the appellant.

Mr. Surajit Nath Mitra, Sr. Adv.
Mr. Deepnath Roy Chowdhury, Adv.
Mr. Subir Sabud, Adv.
..for Ranjan Roy.

Mr. Nirmalya Dasgupta, Adv.
...for Susmita Roy.

The Court : It is the sordid state of affairs that an appeal is filed through a Receiver challenging a proceeding in relation to an application seeking removal as well as recalling

an order by which the Receiver was appointed. By the impugned order the Court upon noticing the serious allegations having made against the Receiver directed the exchange of the affidavits and simultaneously restrained the Receiver from operating the bank account of the trust property and also involving into or handling any financial matter thereof.

By an order dated 26th February, 2024 the erstwhile Receiver showed his unwillingness to act in such capacity and the Hon'ble Judge who passed the impugned order upon noticing the fact appointed the present Receiver in his place and stead as a stop gap measure to inspect the trust property and submit the report on physical condition and the name of the occupiers. Though it is recorded in the said order that there is no one to administer the estate but such was an observation in relation to an unwillingness shown by the erstwhile Receiver and, therefore, has to be construed in such perspective. Interestingly, a plea is taken that the learned Judge who passed the impugned order did not have the determination on the said fateful day and, therefore, the order would be construed as an order without jurisdiction.

The aforesaid contention is flowing from the authority of the Receiver which emanates from the order of the Court more

particularly, the learned Judge who appointed him. The application has multiple prayers including the prayer for removal of the Receiver and recalling an order by which the present Receiver was appointed and, therefore, we do not find any infirmity in this regard more particularly, when the Court has not arrived at a final decision and directed the parties to exchange affidavits and therefore, we do not find any infirmity in this regard, more particularly, when the Court has not arrived at a final decision and directed the parties to exchange affidavits. The Receiver being an officer of the Court shall act on the directions or the orders passed from time to time. It cannot transgress its powers nor can assume power unless conferred upon. Order 40 Rule 1(d) of the Code though recognizes power upon the Receiver to institute and defend the suit but such power must be conferred by an order passed by the Court and cannot be inferred simply on the premise of being appointed as a Receiver. The language employed under Order 40 Rule 1 of the Code is explicit and clear that at the time of appointing the Receiver the Court may, by order, confer the powers indicated in clauses (a) to (d) of Order 40 Rule 1 of the Code. It is sought to be contended that the moment Receiver becomes a custodian of the property, it has, however, right to

protect and preserve the same including the right to institute the suit. We are conscious of the proposition that the Receiver can institute the suit nor protect or preserve without obtaining leave provided such leave is obtained subsequent thereto. But unless the Court confers the power to institute the suit in whatever manner, the Receiver cannot assume such powers and therefore, have to act within the precincts thereof. Following the dictum of the Apex Court as observed in the case of Shree Ram Urban Infrastructure Limited Vs. Court Receiver, High Court of Bombay, reported in (2015) 5 SCC 539 that, "After considering and analysing all the decisions, in our opinion, we cannot give a narrower construction with regard to the right/authority given to the Receiver under Order 40 Rule 1(d). We have also considered the appointment order in the present case. In our opinion, the Receiver was given full powers under the provision of Order 40 Rule 1(d) as rightly shown."

We noticed from the above report that the High Court while appointing the Receiver categorically indicated that the Receiver will have all powers under Order 40 Rule 1 CPC which, by no stretch of imagination, would not include the power to institute or defend the suit. We find such powers conspicuously

absent in the order of appointment and therefore, we do not find any illegality and/or infirmity in the impugned order.

The same is hereby rejected.

Consequently, the application also stands rejected.

(HARISH TANDON, J.)

(PARTHA SARATHI SEN, J.)

