

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO.307 OF 2024
IN
SUIT NO.372 OF 1967

Shantidevi widow of Manoharlal Chanderbhan ...Plaintiff
Versus
Kewalram Mulchand & Ors. ...Respondents

WITH
CHAMBER SUMMONS NO. 442 OF 2019
IN
SUIT NO. 372 OF 1967

Shantidevi widow of Manoharlal Chanderbhan ...Plaintiff
Versus
Kewalram Mulchand & Ors. ...Respondents

Mr. Rohan Sawant, a/w Ms. Akanksha Patil i/b. M/s. Narayanan & Narayanan, for the Applicant No.1(a) to 1(c), 2, 2(c) to 2(e) and 3.
Mr. Akshay U. Bobade with Mr. Bharat Puneekar, Advocates, for the Respondent No.6D.
Mr. Jitendra Ramugade a/w. Ms. P. G. Chandeliya, Advocates, for the Respondent Nos.7A and 7B.
Mr. Sushil Sharma for Applicant in IA 1536 of 2024.
Mr. Vikramjeet Garewal i/b. Parvathy Iyer, Advocates, for the Respondent Nos.1, 2(a) to 2(c), 5(a) to 5(d).
Mr. Vipul Makwana i/by Mr. Yatin R. Shah Advocates, for the Respondent No.4.
Mr. S.K. Dhekale, Court Receiver a/w NC Pawar, OSD, CR Office present.

CORAM: MADHAV J. JAMDAR, J.
DATED : 9th AUGUST 2024

P. C.:

1. The Court Receiver has filed Report No.307 of 2024 seeking following directions:

*“(a) The Hon’ble Court may pleased to pass necessary Order as to whom physical possession of **Shop No.299/301,Ground Floor, Kharekh Bazar, Mumbai – 400 009** be handed over by the Court Receiver because of death of Defendant Nos. 1 to 3;*

(b) The Hon’ble Court may pleased to pass necessary Order as to whom the books of accounts and One trunk be handed over by the Court Receiver because of death of Defendant Nos. 1 to 3.

(c) The Hon’ble Court may pass necessary directions considering the death of Defendant Nos. 1 to 3 as to whom balance amount alongwith accrued interest lying with the Court Receiver be paid after deducting costs, charges and expenses of the Court Receiver and Professional fees of Dhagat & Co.

(d) This Hon'ble Court be pleased to dispose off Court Receiver Report No.186 of 2021;;

(e) The cost of this Report be awarded in the sum of Rs.5,000/- (Rupees Five Thousand Only) and the same may be allowed to be debited from amount lying in the suit account;

(f) Any other and further directions as this Hon'ble Court may deems fit and proper.”

2. In the Court Receiver's Report, the Court Receiver has mentioned about the chequered history of the litigation and also the present position. Some of the relevant facts are as follows:

- (a) This Court appointed a Court Receiver by Order dated 28th June 1967 as the ad-interim Receiver and thereafter confirmed the said appointment by fresh Order dated 5th October 1967 appointing Court Receiver as Receiver of all assets, Books of Accounts and other documents of the firm-Mulchand Chanderbhan.
- (b) The Court Receiver took physical possession of the Shop No.299/301, Ground Floor, Narshinatha Street (Kharekh Bazar), Masjid Bunder, Mumbai – 400 009.
- (c) This Court by Order dated 14th February 1984, directed the Court Receiver to handover possession of all the assets to the Defendant Nos. 1 to 3 and discharged the Court Receiver. The said Order was challenged by way of an Appeal No.760 of 1984. The

said Appeal was dismissed by a Division Bench by Order dated 11th August 1988.

- (d) The Plaintiff impugned the Order of dismissal of Appeal dated 11th August 1988 in the Supreme Court by way of Special Leave Petition (SLP) No.16474 of 1988, which in turn was also dismissed on 13th February 1989.
- (e) The Plaintiff filed Review Petition No.368 of 1989 seeking a review of said Order dated 13th February 1989. This Review Petition was also dismissed by the Supreme Court on 9th August 1989.
- (f) Advocates for Defendant No.2(b) addressed a letter dated 3rd January 2019 to the Court Receiver informing him *inter alia* about the death of Defendant Nos.1 to 3 and also informed names of their respective legal heirs and further requesting the Court Receiver to handover possession of suit property to the said heirs.

(g) The Court Receiver in the Court Receiver's Report No.186 of 2021 submitted that despite directions to handover suit property to Defendant Nos.1 to 3 after being discharged, the Court Receiver could not complete the said handover as Defendant Nos.1 to 3 had died and their legal heirs were not on record. Thereafter, the present Court Receiver Report No. 307 of 2024 was filed, which is a comprehensive Report seeking certain directions from this Court. By the Order dated 26th July 2024, the previous report being Court Receiver Report No.186 of 2021 was disposed of in view of filing the present report.

3. Mr. Rohan Sawant, learned Counsel appearing for some of the heirs of Defendant Nos.1 to 3 has pointed out decree dated 14th February 1984 by which the Consent Terms executed between the parties were taken on record. The Consent Terms *inter alia* records the following clause No.6:

“6. Court Receiver to hand over all the assets and properties of the suit firm taken charge of by him to defendants Nos.1 to 3, and to stand discharged

without passing accounts on payment of his costs, charges and expenses by defendants Nos. 1, 2 & 3.”

4. Mr. Rohan Sawant, learned Counsel submitted that the Court Receiver is required to handover all the assets and properties of the Suit firm taken charge by the Court Receiver to the heirs of Defendant Nos. 1 to 3.

5. On the other hand, Mr. A. U. Bobade, learned Counsel appearing for the Respondent No.6(d) i.e. the heirs of original Defendant No.3 and Mr. Jintendra Ramugade, learned Counsel appearing for the Respondent Nos.7(a) and 7(b) i.e. heirs and legal representatives of the Plaintiffs submitted that the said decree passed by the learned Single Judge dated 14th February 1984 has been challenged by way of an Appeal No.760 of 1984 and said Appeal was dismissed by Order dated 11th August 1988 by a Division Bench of this Court. They submitted that the said Order dated 11th August 1988 of the Division Bench has been challenged before the Supreme Court by way of Special Leave Petition (SLP) No. 16474 of 1988 and the said Special Leave Petition was also dismissed on 13th February 1989. The Plaintiff filed Review Petition No.368 of 1989 in the Supreme Court and the said Review

Petition was also dismissed on 9th August 1989. They therefore, submitted that the decree directing the Court Receiver to handover all the assets and properties of the Suit firm taken charge by him, to Defendant Nos.1 to 3, has attained finality on 9th August 1989. They submitted that for the first time i.e on 3rd January 2019 the heirs of original Defendant Nos. 1 to 3 have applied to the Court Receiver seeking implementation of said decree passed on 14th February 1984 as confirmed by the Supreme Court on 9th August 1989 and therefore, the same is barred by limitation. They submitted that even the earlier Court Receiver's Report dated 2nd December 2020 and present Receiver's Report dated 26th July 2024 to implement the directions given by the learned Single Judge on 14th February 1984 as confirmed by the Supreme Court on 9th August 1989 is also barred by limitation. They submitted that the prayers sought in the Chamber Summons No.442 of 2019 are also barred by limitation. They therefore, submitted that the Court Receiver's Report as well as the Chamber Summons taken out some of by the heirs of the original Defendant Nos. 1 to 3 be dismissed on this ground alone.

6. Mr. Rohan Sawant, learned Counsel appearing for some of the heirs of Defendant Nos.1 to 3 as well as Applicant in Chamber Summons has relied on the decision of a learned Single Judge in *Atul D. Sohni v. B.M. Choksey*¹.

7. Perusal of the record shows that the parties have entered into the Consent Terms and *inter alia* agreed for the following directions:

“Court Receiver to handover all the assets and properties of the suit firm taken charge of by him to defendants Nos.1 to 3 and to stand discharged without passing accounts on payment of his costs, charges and expenses by defendants Nos. 1, 2 & 3.”

The said direction passed by the learned Single Judge in terms of the Consent Terms by Order dated 14th February 1984 are ultimately confirmed by the Supreme Court by Order dated 9th August 1989.

8. It is required to be noted that present Suit has been filed in the year 1967 and Court Receiver has been appointed by Order dated 21st July 1967 and by Order dated 14th February 1984 as

¹ (1998) 3 Mah LJ 258

noted herein above, the Court Receiver was directed to handover all the assets and properties of the Suit firm taken charge of by him to Defendants Nos.1 to 3 and to stand discharged without passing accounts on payment of his costs, charges and expenses by Defendants Nos. 1 to 3.

9. Mr. A. U. Bobde, learned Counsel appearing for the Respondent No. 6(d) i.e. heir of original Defendant No.4 and Mr. Jintendra Ramugade, learned Counsel appearing for the heirs of the Plaintiffs would have been right in taking a stand that proceedings for execution of decree if filed by the decree holders of the decree passed in their favour i.e. by the Defendant Nos. 1 to 3 or heirs and legal representatives of Defendant Nos. 1 to 3, then such Execution Application would have been barred by limitation. However, it is required to be noted that by Order dated 28th June 1967/ 5th October 1967 this Court has appointed the Court Receiver with respect to the properties in question and Court Receiver is incharge of the properties. The legal position whether the Court Receiver stands discharged immediately after the Court passes order to that effect is explained by a learned Single Judge

in *Atul Sohni* (supra) of which paragraph Nos.15 and 16 are relevant. The said paragraph Nos.15 and 16 read as under:

“15. Even after going through all the aforesaid parts of the Book of Receiver, I do not find any specific provision as to when the office of the Court Receiver should be deemed to have ceased function i.e. whether from the date of the discharge order or whether on any subsequent date or event. Chapter XVII regarding discharge of the Receiver also does not clarify this position even though it states under Note: 1 Duration of receivership, that the duration of the receivership is limited by the court. However, it is repeatedly held that there is no automatic discharge of receiver merely because the proceedings have ended and Note No. 6 of the same Chapter also provides that the termination of the suit will not ipso facto discharge the Receiver. It also says an order requiring a Receiver to return the property in his possession to the defendant does not in itself effect the discharge of receiver. However, it states that when the main suit is dismissed and the rights of the parties are finally established, the receiver must account to the court appointing him for money or property which is in his hands and the court which appoints receiver has authority to pass orders for winding up the affairs of the receiver and his powers even after the dismissal of the suit.

16. Supreme Court decision in Hiralal Patni v. Loonkaren Sethia, AIR (1962) SC 21 is referred to in this book on page 523 and the following guidelines laid down by the Supreme Court have been quoted as under:

“(1) If a receiver is appointed in a suit until judgment, the appointment is brought to an end by the judgment to in the action.

(2) If a receiver is appointed in a suit without his tenure being expressly defined, he will continue to be a receiver till he is discharged.

(3) But after the final disposal of the suit as between the parties to the litigation, the receiver's functions are terminated; he would still be answerable to the court as its officer till he is finally discharged.

(4) The court has ample power to continue the receiver even after the final decree if the exigencies of the case so require.”

(Emphasis added)

10. Thus, as held by the Supreme Court in *Seth Hiralal Patni v. Seth Loonkaran Sethiya*² as well as by the learned Single Judge in *Atul Sohni* (supra), even after final disposal of the Suit as between the parties to the litigation, and after the Court Receiver's functions are terminated, the Court Receiver would still be answerable to the Court as its Officer, till he is finally discharged. It is also settled law that the Court has ample powers to continue the Court Receiver even after the final Decree, if the exigencies of the case so require.

² 1961 SCC OnLine SC 312

11. In this particular case, admittedly, the Decree passed by the learned Single Judge dated 14th February 1984 has attained finality when the Supreme Court dismissed the Review Petition by Order dated 9th August 1989. It is also an admitted position that inspite of the said Orders, the Court Receiver has continued to administer the property. Thus, this is not a case where merely execution is filed (assuming Chamber Summons No.442 of 2019 is an execution proceeding) which is barred by limitation, however, in this case, the Court Receiver is incharge of the property.

12. As noted herein above even after final disposal of the Suit as between the parties to the litigation, and after the Court Receiver's functions are terminated, the Court Receiver would still be answerable to the Court as its Officer, till he is finally discharged. It is also settled law that the Court has ample powers to continue the Court Receiver even after the final Decree, if the exigencies of the case so require. As the Court Receiver is still incharge of the properties in the interest of justice, it is necessary to issue directions to the Court Receiver which are consistent with the decree/directions issued on 14th February 1984 by this Court. Therefore the contention that no direction can be issued even to

the Court Receiver in terms of decree dated 14th February 1984 passed by the learned Single Judge as ultimately confirmed by the Supreme Court's by Order dated 9th August 1989 as the execution of the same is barred by limitation cannot be accepted.

13. Learned Counsel opposing the prayers in the Report of the Court Receiver has not raised any other contention except that the implementation of decree dated 14th February 1984 passed by the learned Single Judge is barred by limitation. For the above reasons, the said objection is rejected.

14. It is required to be noted that as set out in the Court Receiver's Report No.307/2024, the property known as Shop No.299/301, Ground Floor, Khareash Bazar, Mumbai- 400 009 is in actual and physical possession of the Court Receiver.

15. Insofar as the property mentioned in prayer clause (a) of the Court Receiver's Report i.e. Shop No.299/301, Ground Floor, Khareash Bazar, Mumbai- 400 009, the Court Receiver shall handover the possession of the same to the heirs of Defendant

Nos. 1 to 3 who are also the Applicants in Chamber Summons No.442 of 2019.

16. Mr. Rohan Sawant, learned Counsel appearing for some of the heirs and representatives of the Defendant Nos. 1 to 3 states that Mr. Deepak Anand (Applicant No.1A), Mr. Surendra Anand (Applicant No.3) and Ms. Manorama Sethi (Respondent No.4 in Chamber Summons) who are some of the heirs and legal representatives of original Defendant Nos. 1 to 3 to whom the Court Receiver can handover possession of the said shop premises i.e. Shop No.299/301, Ground Floor, Kharesh Bazar, Mumbai- 400 009. He also pointed out that by Order dated 26th February 2024, a learned Single Judge has noted that the learned Counsel appearing for the legal heirs of deceased Defendants would jointly submit a joint Application which would be made to the Court Receiver by submitting an indemnity for receiving possession of the properties as per the consent Decree. Mr. Rohan Sawant, learned Counsel states that such indemnity bond has already been filed before the Court Receiver.

17. Accordingly, the Court Receiver is directed to handover physical possession of the suit premises i.e. Shop premises No.299/301, Ground Floor, Kharesh Bazar, Mumbai- 400 009 to Mr. Deepak Anand (Applicant No.1A), Mr. Surendra Anand (Applicant No.3) and Ms. Manorama Sethi (Respondent No.4) jointly on behalf of all the heirs and legal representatives of the Defendant Nos. 1 to 3.

18. Mr. Rohan Sawant, learned Counsel states that the amount as reflected in paragraph Nos.13 & 14 of the Court Receiver's Report No.307 of 2024 can be deducted by the Court Receiver as well as other charges and expenses and the balance amount can be paid to the heirs and legal representatives of Defendant Nos.1 to 3.

19. Mr. Rohan Sawant, learned Counsel appearing for some of the heirs and representatives of Defendant Nos.1 to 3 as well as Mr. Shah, learned Counsel appearing for the Respondent No.4 state that the Court Receiver can issue cheque of balance amount in favour of M/s. Narayanan & Narayanan, Advocates who has taken out Chamber Summons No.442 of 2019. Both of them state

that necessary indemnity bond will be issued in favour of the Court. Receiver. Accordingly, Court Receiver to refund the balance amount after deducting amount as reflected in paragraph 13 & 14 as well as other charges and expenses by cheque to M/s. Narayanan & Narayanan, Advocates, on receipt of necessary indemnity bond and fulfillment of other requirement in accordance with law, if any.

20. Prayer clause (e) of the Court Receiver's Report is also allowed.

21. Accordingly, the Court Receiver's Report No.307 of 2024 is disposed of. The Court Receiver is discharged after handing over the physical possession of the shop premises i.e. Shop No.299/301, Ground Floor, Kharesh Bazar, Mumbai- 400 009 and after complying with the directions issued hereinabove.

22. Accordingly, in view of discharge of Court Receiver in the terms of the books of accounts and one trunk be handed over to the heirs and legal representatives of Defendant Nos. 1 to 3 i.e. jointly to Mr. Deepak Anand (Applicant No.1A), Mr. Surendra

Anand (Applicant No.3) and Ms. Manorama Sethi (Respondent No.4).

23. In view of the disposal of the Court Receiver's Report No.307 of 2024, nothing survives in the Chamber Summons No.442 of 2019 and the same is also disposed of as it has become infructuous.

[MADHAV J. JAMDAR, J.]