



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 3844 of 2022

Pralhad S/o Bhikulalji Gupta

Versus

Pushkarmal S/o Holkarmal Gupta and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri J.M.Gandhi, Advocate for the petitioner.

Ms. Ashiwarya Sharma, Advocate for the respondent
nos. 3 to 5.

CORAM : N.R.BORKAR, J.

DATED : 19th AUGUST, 2024.

This petition takes exception to the order dated 8th November, 2021 passed by the learned District Judge-1, Khamgaon in Misc. Civil Appeal No. 42 of 2019.

2. The petitioner herein had filed an application before the learned trial Court for removal of the receiver and appointment of another receiver. The learned trial Court rejected the said application. The appeal was filed and by the order impugned the learned appellate Court has confirmed the order passed by the learned trial Court.

3. This Court on 12th October, 2022, passed the following order:-

“Heard Mr. Gandhi, learned counsel for the petitioner. The contention is that the receiver appointed for the properties in the schedule annexed with the plaint by the order dated 25/4/2011 has not done anything in respect of the duties cast upon him and therefore, the said receiver needs to be replaced by appointing another receiver.

2. Issue notice for final disposal, returnable after Diwali vacation.”

4. The matter was thereafter listed on 8th March, 2024 and on that day this Court had passed the following order:-

“Heard learned counsel for the petitioner.

2. Even though the respondents are duly served, none appeared.

3. Though the office note shows that the respondent Nos.3 to 5 are not served, learned counsel for the petitioner submits that the said respondents are proforma parties and in fact supporting the petitioner.

4. The parties are put to notice that the matter will be taken up for final disposal at the admission stage itself on the next date.

5. Stand over to 15th March, 2024.”

5. Again by order dated 26th April, 2024 a fresh notice was issued to the contesting respondents. In spite of service of fresh notice, there is no appearance on behalf of the contesting respondents.

6. I have heard learned counsel for the petitioner.

7. The learned counsel for the petitioner submits that by the order dated 24th December, 2010 the receiver was appointed to take actual possession of the suit properties, to collect the rent and was also required to maintain the true and proper accounts with regard to the income and expenses from the suit properties. It is submitted that as no accounts were submitted by the receiver the application was moved and by order dated 3rd March, 2016, the trial Court directed the receiver to submit the report. It is submitted that pursuant to said order after six years for the first time on 19th August, 2017, the report was submitted. It is submitted that the receiver has not taken possession of all the suit properties as directed by the Court.

8. I have perused the impugned orders. The prime reason for rejecting the application appears to be the fact that the receiver, whose removal is sought, was appointed by the consent of the parties. No finding is recorded that grievance of the petitioner is not valid. Considering the overall facts and circumstances, the orders impugned are set aside. The learned trial Court shall appoint new receiver and for that purpose, the

petitioner shall move an application before the learned trial Court. The learned trial Court shall appoint a new receiver within a period of one month from the date of filing of such application. The writ petition is disposed of.

[N.R.BORKAR, J.]