

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 1461 OF 2021
IN
SUIT NO. 856 OF 1988**

Gabriel Apartments Co-op. HSC. Ltd.

.. Applicant/Plaintiff

Versus

Mary Patricia wd/o Josheph Peter Gonsalves
& Ors. (Fef) and Court Receiver

.. Respondents

**WITH
COURT RECEIVER REPORT NO. 431 OF 2024
IN
SUIT NO. 856**

Mr. Sajid Shamin a/w Sharif Lakdawala i/b S. Shamin & Co. for the,
Applicant.

Mr. Cletus Gonsalves Plaintiff No.5 in person

Ms. Nandini Y. Deshpande for Assistant to Court Receiver.

CORAM: FIRDOSH P. POONIWALLA, J.

DATE: SEPTEMBER 10, 2025

P. C.

1. This Interim Application has been filed by the Applicant Gabriel Apartments Cooperative Housing Society Ltd. seeking the following relief in prayer clause (c) which reads thus:

“c) This Hon'ble Court be pleased to discharge the Court Receiver in respect of the property mentioned in Schedule I to the Plaint i.e. All that piece or parcel of land together with the Building standing thereon bearing survey no.149, Hissa No.4, C.T.S No.1382, of Village Marol, Taluka Andheri, Bombay

Suburban District and assessed by Bombay Municipal Corporation under Assessment No. KE-11337(3) 86 GA 7 of Village Marol, admeasuring about 1792.3”

2. The present suit has been filed for partition of certain properties mentioned in Exhibit ‘A’ to the Plaint. By an Order dated 10th October, 1988 passed by this Court, Notice of Motion No. 907 of 1988 filed in the present suit was made absolute in terms of prayers (a) and (b). Prayer (b) of the said Notice of Motion was for the appointment of Court Receiver, High Court Bombay as a Receiver of the suit properties described in Exhibit ‘A’ to the plaint. The properties were described in three Schedules i.e. First Schedule, Second Schedule and Third Schedule.

3. The Court Receiver had taken formal possession of the properties described in Exhibit ‘A’ to the Plaint. Thereafter, a Consent Preliminary Decree for partition was passed on 4th April 1991 and the Court Receiver, High Court Bombay was discharged without passing accounts in respect of the properties mentioned in the Second and Third Schedule of Exhibit ‘A’, with further Orders that appointment of the Court Receiver as Receiver in respect of the property mentioned in the First Schedule of Exhibit ‘A’ to the Plaint shall continue till the property is divided/sold as per the Consent Terms.

4. Clause 3 of the said Consent Terms provided for the sale of the property mentioned in the First Schedule to Exhibit ‘A’ on the terms and

conditions mentioned therein. Clause 5 of the Consent Terms provided that the Court Receiver in respect of the property mentioned in the First Schedule of Exhibit 'A' to the Plaint shall continue till the property is divided/sold as per the Consent Terms.

5. The Plaintiffs and Defendants were unable to sell the property to an outsider. In these circumstances, the Plaintiffs and Defendants agreed to sell the property mentioned in the First Schedule to Exhibit 'A' by entering into 40 separate agreements with tenants by accepting 350 times the rent from each tenant. The total consideration worked out to Rs. 15,48,000/-.

6. Thereafter, Notice of Motion No. 3407 of 2003 was taken out by the Applicant for discharge of the Court Receiver in respect of the property mentioned in the First Schedule to Exhibit 'A'. By an Order dated 2nd March, 2006 passed by this Court, the Court Receiver was discharged without passing of accounts on payment of costs, charges and expenses by the Plaintiff in respect of the property mentioned in the First Schedule to Exhibit 'A' to the Plaint.

7. Plaintiff No.5, Cletus Gonsalves, preferred Appeal No. 430 of 2006 to set aside the said Order dated 2nd March 2006 and by an Order dated 1st April, 2010, a Division Bench of this Court was pleased to set aside the Order dated 2nd March, 2006 and remand the Notice of Motion back to the Single Judge.

8. Thereafter, the Applicant withdrew Notice of Motion No. 3407 of 2003 with liberty to file a fresh Notice of Motion. The same was recorded by this Court by an Order dated 20th July, 2010.

9. Thereafter, the Applicant filed a fresh Notice of Motion, being Notice of Motion No. 2905 of 2010, again seeking discharge of the Court Receiver. By an Order dated 19th January, 2011 this Court refused to discharge the Receiver and dismissed Notice of Motion No. 2905 of 2010.

10. In the context of this Application, a significant event occurred on 21st July, 2011. By an Order dated 21st July, 2011 passed on the Court Receiver's Report, this Court held that, in view of the sale of the property to the tenants i.e. the Applicant, under which they had paid the entire consideration, the Court Receiver was not to collect rents from the tenants. As a result of this Order, the Court Receiver appointed had no further role to play in the matter.

11. It is also pertinent to note that, although the Order dated 21st July 2011 records that the property described in the First Schedule of Exhibit 'A' was sold to the tenants and they have paid the entire consideration, it is the contention of Plaintiff No.5 that a part of the consideration had been paid to his Advocates and the same had not been paid by his Advocates to him. In this context, Plaintiff No.5 adopted proceedings before the Bar Council of India. The said proceedings were dismissed by the Bar Council of India and

subsequently also by the Hon'ble Supreme Court by an Order dated 31st January, 2012.

12. In these circumstances, it is submitted by the learned Advocate for the Applicants that, after the Order dated 21st July, 2011 was passed by this Court directing the Court Receiver not to collect any rent in respect of properties mentioned in the First Schedule to Exhibit 'A', the Court Receiver is not doing anything in respect of the property and therefore the Court Receiver is required to be discharged. The Court Receiver has also filed a Court Receiver's Report in Court, being Court Receiver Report No. 431 of 2024. The Court Receiver has submitted that, as per the Consent Preliminary Decree dated 4th April 1991, the Court Receiver was continued as Receiver in respect of the properties mentioned in the First Schedule of Exhibit 'A' to the Plaint and was to be continued till the property is divided/sold as per the Consent Terms. The Court Receiver has further recorded that, as recorded in the Orders dated 2nd March, 2006 and 21st July 2011 of this Court, the property mentioned in the First Schedule of Exhibit 'A' to the Plaint was sold by the Plaintiffs and Defendants. The Court Receiver has submitted that, in these circumstances, it is necessary to discharge the Court Receiver in respect of the property mentioned in the First Schedule of Exhibit 'A' to the Plaint. The Court Receiver has also sought certain other directions in the Report.

13. The Interim Application has been opposed by Cletus Gonsalves, Plaintiff No.5, who appears in person. It is the submission of Mr. Gonsalves

that the Applicants cannot be called as owners of the property as the entire consideration has not been paid and is lying with the Advocates of the Plaintiffs. It is the case of Mr. Gonsalves that the consideration should not have been deposited with the Advocates for the Plaintiffs and should have been directly paid to the Plaintiffs. In support of this submission, Mr. Gonsalves has relied upon the judgements of *Chancery Division In Re Bellamy and Metropolitan Board of works Volume XXIV, Chancery Division 387; and King Vs. Smith Volume 2 Chancery Division 425; and to the judgement of the Hon'ble Supreme Court in Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Anr. (2012) 1SCC 656.*

14. The second submission of Mr. Gonsalves opposing the Interim Application is that there was a material alteration in the Agreements entered into with the 40 tenants by the addition of clause 12A therein regarding 'MOFA' and therefore the said Agreements were void.

15. The third submission of Mr. Gonsalves is that the conveyance has not been executed in respect of the said property. It is the submission of Mr. Gonsalves that, till the conveyance is executed in respect of the said property, the same cannot be said to have been sold to the Applicants, and therefore, the Court Receiver cannot be discharged on that ground also.

16. We are unable to agree with the submissions of Mr. Gonsalves. As the record shows, the Court Receiver has been appointed in respect of property described in the First Schedule to Exhibit 'A' of the Plaint till the

property was divided/sold. It is an admitted position, as recorded in the Order dated 21st July, 2011 of this Court, that the sale of the said property to the tenants had taken place and that they had paid the entire consideration in respect of the said property. In these circumstances, in light of the said sale and the payment of the said consideration, the Court Receiver will be required to be discharged as provided by the Consent Preliminary Decree passed in terms of the Consent Terms.

17. Further, by the Court Receiver's Report, the Court Receiver has made a similar submission.

18. Further by the Order dated 21st July, 2011 passed by this Court, this Court had directed that in view of the sale of the property to the tenants and the payment of the entire consideration, the Court Receiver was not to collect rent from the tenants. Therefore, after the passing of the said Order, the Court Receiver had no role to play in respect of the said property. That is one more reason as to why, in my view, the Court Receiver ought to be discharged.

19. The submission of Mr. Gonsalves, that the Applicants are not owners as the entire consideration has not been paid as the same is lying with the Advocates for the Plaintiff, cannot be accepted. Further, it is recorded in the Order dated 20th November, 2005 passed by the Bar Council of India, that it is an admitted position that the Plaintiffs had authorized their Advocates to accept the consideration. In any case, if Plaintiff No.5 has any grievance

against his Advocates for non-payment of consideration, it is open for Plaintiff No.5 to adopt appropriate proceedings in that regard and the same cannot come in the way of the Court Receiver being discharged for the reasons mentioned above.

20. As far as the Judgements relied upon by Mr. Gonsalves are concerned, they are on completely different facts and do not take his case any further.

21. The submission of Mr. Gonsalves, that the Court Receiver should not be discharged as there is a material alteration in the Agreement by adding clause 12A and, therefore, the agreement is void and there is no sale on account of which the Court Receiver would be required to be discharged, also cannot be accepted.

22. On the record, there is a letter dated 16th July 1992 addressed by the Advocates for the Applicant to the Plaintiffs, including Plaintiff No.5. The said letter states that, as discussed, the said clause 12A had been inserted in the Agreements and sought the confirmation of the Plaintiffs in respect of the same. The said letter shows that the same has been confirmed by the Plaintiffs by affixing their signatures on the said letter. Plaintiff No.5, Cleuts Gonsalves, has also signed that letter confirming the addition of that clause. In the light of the same, at this stage, it cannot be accepted that there was a material alteration by adding clause 12A without the consent of the Plaintiffs.

23. The submission of Mr. Gonsalves-Plaintiff No.5, that the Court Receiver should not be discharged as the Conveyance Deed has not been executed in respect of the said property, also cannot be accepted. As stated above, it was provided in the Consent Terms that the Court Receiver would be discharged on the sale of the property, which has already taken place and the full consideration has been paid. Further, as stated herein above, the Court Receiver has been directed not to collect rents from the tenants i.e. the Applicants, and, therefore, no purpose whatsoever would be served in continuing the Court Receiver as the Receiver in respect of the property.

24. In these circumstances, the following Orders are passed :

i) Interim Application is made absolute in terms of prayer clause (c) which reads as under :

“c) This Hon'ble Court be pleased to discharge the Court Receiver in respect of the property mentioned in Schedule I to the Plaint i.e. All that piece or parcel of land together with the Building standing thereon bearing survey no.149, Hissa No.4, C.T.S No.1382, of Village Marol, Taluka Andheri, Bombay Suburban District and assessed by Bombay Municipal Corporation under Assessment No. KE-11337(3) 86 GA 7 of Village Marol, admeasuring about 1792.3”

ii) It is declared that symbolic possession of the Court Receiver comes to an end and the Court Receiver's Board can be removed from the suit property.

iii) The Court Receiver be permitted to adjust the amount of Rs. 32108.48 lying in the suit account towards costs, charges and expenses of the Court Receiver and the Applicant is directed to pay the deficit amounts towards the costs, charges and expenses of the Court Receiver.

iv) The cost of the Court Receiver of Rs. 5000, for preparing this Report, will also be paid by the Applicant.

v) The Applicant to pay the aforesaid amounts within a period of 4 weeks from which the Applicant takes inspection of the final statement of accounts.

25. Interim Application and Court Receiver's Report are disposed of in the aforesaid terms. No Order as to costs.

[FIRDOSH P. POONIWALLA, J.]