

(2010) 09 BOM CK 0120

Bombay High Court

Case No: Civil Revision Pplcation No. 452 of 2009

Shree Ram Mills Ltd. (Now
known as Shree Ram Urban
Infrastructure Limited)

APPELLANT

Vs

The Court Receiver, High Court

RESPONDENT

Date of Decision: Sept. 16, 2010

Acts Referred:

- Civil Procedure Code Amendment Act, 1877 - Section 503
- Civil Procedure Code, 1908 (CPC) - Order 40 Rule 1(1)
- Transfer of Property Act, 1882 - Section 106, 106(1), 106(2), 106(3)

Citation: (2011) 1 ALLMR 197 : (2011) 2 BomCR 745 : (2011) 1 CivCC 51

Hon'ble Judges: J.H. Bhatia, J

Bench: Single Bench

Advocate: R.A. Thorat, Vaibhav Sugdare, Samsher Garud and Uma Vyavaharkar,
instructed by Khaitan and Jayakar, for the Appellant; N.V. Walawalkar, instructed by G.S.
Godbole, for the Respondent

Final Decision: Dismissed

Judgement

J.H. Bhatia, J.

The plaintiff in T.E & R. Suit No. 60/63 of 2002 is the Court Receiver appointed by the High Court as such in Suit No. 234 of 1987 filed on the Original Side of the High Court. Besides other properties, the plaintiff was also Receiver for the suit property known as "Dev Ashish", situated on Plot No. 1 bearing CTS No.755 at Padam Takri, Peddar Road, Mumbai. The defendant, who is a revision applicant before this Court, was a tenant in the suit property. As the defendant is a public limited company with paid-up share capital of Rs. 1 crore, it did not have any protection under the Maharashtra Rent Control Act, 1999. In view of this, the plaintiff issued a notice dated 26.7.2001 terminating the tenancy of the defendant with immediate effect and called upon the defendant to vacate the premises and hand over the same and

also asked him to pay the mesne profits. As the defendant failed to vacate the premises, the Court Receiver filed the suit for eviction and possession. The suit was decreed and the defendant was directed to hand over vacant possession. The defendant challenged the decree by filing Appeal No. 837/2003. The appeal also came to be dismissed by the impugned judgment and order dated 12.6.2009.

2. The learned Counsel for the defendant-revision applicant urged two grounds against the decree. Firstly, according to him, the Court Receiver, who filed the suit in his own name, had not obtained leave of the Court which had appointed him as such, to file eviction suit against the defendant and on this ground itself, the suit is liable to be dismissed. Secondly, the notice was issued on 26.7.2001, requiring the defendant to vacate the premises immediately and thus, the notice was defective in view of the provisions of Section 106 of the Transfer of Property Act and on this ground also the suit is liable to be dismissed. On the other hand, the learned Senior Counsel for the plaintiff/respondent contended that the Court Receiver was appointed by this High Court with full powers under Order 40(1)(d) and this power included to sue or be sued and, therefore, the leave to file the suit was inbuilt in the order of his appointment. Therefore, there was no need to seek separate leave for filing the suit for eviction against the defendant. The learned Senior Counsel also contended that in view of the provisions of Sub-section (3) of Section 106 of T.P. Act, the notice shall not be deemed to be invalid under Sub-section (1), if the suit is filed after expiry of the requisite period of notice.

3. In support of his contention, about need of special leave for filing the suit, the learned Counsel for the revision-applicant placed reliance upon A.B. Miller, Officiating Receiver of the High Court v. Ram Ranjan Chakravarti, Indian Decisions, New Series Vol. V 10 Cal. 1016 wherein the Calcutta High Court, in the Judgment dated 8.8.1984, had held that it is an elementary matter that the Receiver of the High Court does not represent the owner of an estate and as he is an officer of the Court, he cannot sue or be sued except with the permission of the Court. The same principle was laid down with more detailed reasons by the Supreme Court in [Everest Coal Company \(P\) Ltd. Vs. State of Bihar and Others](#), . The Supreme Court observed thus in para 7 and approved the law stated by Mulla.:

7. Mulla with characteristic clarity, has condensed the whole law correctly:

A receiver cannot sue or be sued except with the leave of the Court by which he was appointed receiver. A party feeling aggrieved by the conduct of a receiver may seek redress against him in the very suit in which he was appointed receiver, or he may bring a separate suit against the receiver in which case he must obtain the leave of the Court.

There is no statutory provision which requires a party to take the leave of the Court to sue a receiver. The rule has come down to us as a part of the rules of equity, binding upon all Courts of Justice in this country. It is a rule based upon public policy

which requires that when the Court has assumed possession of a property in the interest of the litigants before it, the authority of the Court is not to be obstructed by suits designed to disturb the possession of the Court. The institution of such suits is in the eye of the law a contempt of the authority of the Court, and therefore, the party contemplating such a suit is required to take the leave of the Court so as to absolve himself from that charge. The grant of such leave is made not in exercise of any power conferred by statute, but in the exercise of the inherent power which every Court possesses to prevent acts which constitute or are akin to an abuse of its authority.

Therefore, there is no doubt that the Receiver cannot sue or be sued except with the leave of the Court by which he was appointed as such.

4. The learned Senior Counsel for the plaintiff/respondent relied upon several authorities in support of his contention that when the appointment order of the Receiver itself indicates that he had been empowered to sue or be sued for the purpose of preservation, protection or management of the property for which he is appointed Receiver, there will be no need to seek leave again from the Court appointing him to file the suit. In *Kassim Mamooji v. K.B. Dutt and Anr.* AIR 1916 Cal. 51, the Calcutta High Court observed thus:

Ordinarily, no doubt, a suit to recover possession of property can only be brought by him in whom there is a present title to it, and by his appointment no property becomes vested in a Receiver.

But this rule, like all others is subject to modification by the Legislature and the only question for our consideration is whether in India there has not been such a modification in favour of a Receiver.

It is profitless to discuss the English cases on the subject or to seek for guidance from American decisions; in England there is no such statutory rule as there is here, and I have no means of ascertaining what the American Law is.

Moreover, there is ample material in Indian enactments and authorities to afford a clue to the solution of the problem propounded. Originally a Receiver could not sue; this is shown by the decision of Phear, J., in *Wilkinson v. Gangadhar Sirkar (r)*. That decision was in 1871. In 1877, however, was passed the CPC of that year; and in it was contained the provision which now finds a place in Order 40, Rule 1, of the present Code (see Section 503 of the Code of 1877). The present Code empowers the Court to confer upon a Receiver all such powers as to bringing and defending suits as the owner himself has.

This provision is shown by decisions in Calcutta, Madras and Bombay to have been understood by those Courts as authorising suits by Receivers, and though I am not aware of any judgment in Allahabad to the same effect, I have not met with any decision in a contrary sense.

The words of Order 40, Rule 1, warrant this view, and I see no reason for putting a narrower construction on the words, or for holding that they do not empower Receivers to bring a suit for recovery of possession of immovable property, even though it may involve the setting aside of a voidable instrument executed by one of the owners who thereby purports to deal with the entire interest.

5. The learned Senior Counsel pointed out that before the Courts below the defendant had placed reliance upon *Drobomoyi Gupta v. Davis* (1) 1887 14 Cal. 323 in support of the contention that when the Receiver had not taken leave of the Court appointing him, he had no power to give notice to quit or to sue for compensation. This Judgment was clarified by Lower Burma High Court in *Meer Mahomed v. J. Homasjee* AIR 1917 Lower Burma 9(1). The short judgment reads thus:

The ground on which revision is asked for is that the Receiver had no power to give notice to quit or to sue for compensation for use and occupation without special leave of the Court, the authority relied upon being *Drobomoyi Gupta v. Davis* (1). In that case however it is expressly stated that there would have been no difficulty in the Receiver's way if the order of his appointment had given him full powers under the provisions of Section 503 Civil P.C. corresponding to Order 40 Rule 1(d) under the Code of 1908. A reference to the appointment order in the present case shows that, with two exceptions which do not apply to this suit, the Receiver was given full powers under the provisions of Order 40, Rule 1(d) and therefore the ruling relied upon is not applicable here. The application is dismissed.

6. Order 40 Rule 1(d) reads thus:

1. Appointment of receivers - (1) Where it appears to the Court to be just and convenient, the Court may by order -

(a)....

(b)....

(c)....

(d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

It shows that the Court may, while appointing receiver confer upon the Receiver all such powers as to bringing and defending suits and for realisation, management, protection, preservation and improvement of the property as also for collection of rents and profits thereof. Besides the above two authorities from the Calcutta and Lower Burma High Courts, there are several other authorities from the Bombay High Court also which go to support the contention of the learned Counsel for the

plaintiff.

7. In [Achut Sitaram Patwardhan Vs. Shivajirao Krishnarao Gaikwad](#), Division Bench of this High Court was required to consider the import and effect of the provisions of Order 40(1)(d). After quoting the said rule, This Court observed thus:

These words, in our opinion, are wide enough to empower the Court to authorize a receiver to bring any suit in his own name, the object of which is to preserve, collect or realize the property in suit, and where the receiver is authorized in this behalf, he may sue in his own name. The grounds upon which the suit is based seem to me to be immaterial. If the owner can bring a suit to recover his own property and has a cause of action to do so, it is difficult to see why the receiver, who has the same powers as the owner has to bring a suit and who is authorized by the Court in that behalf, cannot bring such a suit. The receiver appointed, in my opinion, when properly authorized, would have the same powers as the owner as regards the property; and if the owner could not have sued for possession of the property, the receiver could not. But if the owner could bring a suit and has a cause of action, then I think the receiver would be entitled to sue on the cause of action, subject of course to his being authorized by the Court in that behalf. The objects for which a receiver is appointed are the preservation and realization of the subject matter of the litigation pending the determination of the rights of the parties. He is appointed for the benefit of all the parties concerned in the litigation and is the representative of the Court and the parties interested in the litigation. If the joint family can sue to recover possession of the family property, there is no reason why the receiver cannot.

8. Again in [Harinagar Sugar Mills Ltd. Vs. M.W. Pardhan](#), the Division Bench of this Court considered the effect of the provisions of Clause (d) of Order XL Rule 1 and observed thus in para 8:

(8) In our view, the position in India is more clear and unambiguous. Order XL of the CPC deals with appointment of receivers and under Rule 1, a receiver could be empowered to bring and defend actions and for the realization, management, protection, preservation and improvement of the property. It is well settled that once a receiver is appointed by a Court under Order XL Rule 1 of the CPC with all the powers mentioned in Clause (d) of Sub-rule (1), the property in respect whereof such a receiver is appointed is in the custodia Legis and no party to the litigation except the receiver is entitled to deal with the property of which he is appointed a receiver. It is also well-settled that such a receiver appointed by the Court is entitled to file a suit in his own name....

This Judgment of the Bombay High Court was challenged by the defendant before the Supreme Court by SLP and the Supreme Court dismissed the appeal. In [Harinagar Sugar Mills Ltd. Vs. M.W. Pradhan](#), while confirming the Judgment of this Court, after quoting the order of the appointment of Receiver, the Supreme Court

held thus:

In exercise of the said power, the Court appointed the respondent as the Court Receiver on October 20, 1961, of the properties belonging to the joint family in the suit. The material part of the order reads:

...It is further ordered that the Court Receiver be and he is hereby appointed Receiver of the properties belonging to the joint family in suit and all the books of accounts papers and vouchers with all necessary powers under Order XL, Rule 1 of the C.P.C. including power to vote and/or exercise all the property rights in respect of shares belonging to the joint family in the several joint stock companies mentioned in the plaint including power to file suit....

Under this order, all the necessary powers under Order XL, Rule 1 of the C.P.C. were conferred upon the Receiver, including the right to file suits....

9. From the authorities relied upon by the learned Counsel for both the parties, it becomes clear that without the leave of the Court, the Receiver cannot sue or be sued in his own name, but it is clarified by the several judgments of this High Court, Calcutta and Lower Burma High Courts and finally by the Supreme Court that when the powers to sue or be sued are conferred on the Receiver, while appointing him, that will be sufficient authority for him to sue if need be, for protection preservation, management of the property, etc.

10. In the present case, the Notice of Motion No. 211 of 1987 in Suit No. 234/1987 shows that several reliefs were sought. Out of them prayer Clause (a) is relevant. It reads thus:

(a) That pending the hearing and final disposal of above suit, the Court Receiver, High Court, Bombay or some other fit and proper person be appointed as a Receiver of an immovable property known as "Dev Ashish" situate on Sub-Plot No. 1 of Plot No. C.S.S.755 at Padam Tekdi, Pedder Road, Bombay 400 026, with all powers under Order XL, Rule 1 of the Code of Civil Procedure, 1908, including the power to recover, receive and collect the rent, income and profits thereof.

The order dated 23.7.1990 passed by this Court in the said Notice of Motion reveals that the Motion was made absolute in terms of the prayer and thus it is clear that while appointing the Court Receiver, this Court had conferred all the powers on the Court Receiver under Order XL Rule 1(d) and thus he gets the powers to sue or be sued and, therefore, there was no need for the Court Receiver to again seek leave from the Court to file suit for eviction.

11. The next objection is about validity of the notice terminating the tenancy. Section 106(1) of the Transfer of Property Act reads thus:

106(1) Duration of certain leases in absence of written contract or local usage - (1) In the absence of a contract or local law or usage to the contrary, a lease of immovable

property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months" notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days" notice.

Admittedly, in the present case, tenancy was about residential premises and it has to be deemed to be a lease from month to month. The lease could be terminated by service of 15 days notice. As per Sub-section (2), the period of 15 days commences from the date of the receipt of notice. In the present case, the Court Receiver issued the notice on 26.7.2001 and by that notice, he terminated the lease with immediate effect and required the defendant to vacate the premises and to hand over possession forthwith. Thus, it can be said that the notice of 15 days was not given as required under Sub-section (1). On this ground, the notice could be invalid. However, having taken note of the fact that because of the technical reasons, the landlords suffer and the suits are dismissed after long litigation, the Parliament made amendment in Section 106 in the year 2002. Earlier Section 106 was substituted by the amended Section. Sub-section (3) in the newly incorporated Section 106 reads thus:

(3) A notice under Sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that Sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

From this, it becomes clear that the Legislature wanted to close the loophole and to redress the mischief by making change in the law. Therefore, if the notice was short of the period specified in Sub-section (1), but the suit or proceeding is filed after the expiry of the period mentioned in Sub-section (1), the notice shall not be deemed to be invalid. In the present case, though the notice was issued on 26.7.2001 and clearly it was short of the period of 15 days, the suit was actually filed on 6.2.2002 i.e. six months after the notice was served. Therefore, in view of the provisions of Sub-section (3) of Section 106 of T.P. Act, notice cannot be declared or deemed to be invalid. Had the suit been filed before expiry of 15 days from the date of service of that notice, the matter would be different and the suit would be liable to be dismissed, but in this case, though a mistake was committed while issuing the notice, that was rectified by filing the suit after expiry of the period of notice.

12. In view of the legal position, I find no substance in both the contentions of the learned Counsel for the defendant/revision applicant. Therefore, the Revision Application stands dismissed.

13. At this stage, the learned Counsel for the revision-applicant seeks stay to this order for eight weeks. The request is opposed on behalf of the respondent. However, in the interest of justice, the decree shall not be executed for a period of

six weeks from this day, subject to condition that the revision-applicant shall not create any third party interest in the property.