

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2475-2476 OF 2015
(Arising out of SLP (Civil) Nos.22705-22706 of 2013)

M/s. Sherali Khan Mohamed Manekia ...Appellant(s)

versus

The State of Maharashtra
and others
Respondent(s)

...

JUDGMENT

M.Y. Eqbal, J.:

Leave granted.

2. In the instant appeals by special leave the appellant assailed the order dated 14th January, 2013 passed by the learned Single Judge of the Bombay High Court in Court Receiver's Report No.25 of 2007 and Additional Report No. 383 of 2012, whereby the High Court while disposing of the

Report of the Court Receiver held that after the disposal of First Appeal No. 767 of 1998 and dismissal of the special leave petition, the Receiver deemed to have been discharged.

3. It appears that the suit property was declared as evacuee property and the same was purchased by the appellant in an auction sale as far back as on 15.6.1964. In the year 1980, the appellant filed a suit being Civil Suit No. 37 of 1980 before the District Judge, Thane Court seeking specific performance of the sale of the property and possession and interim relief of injunction restraining the defendants therein from carrying on further construction on the suit property. The appellant further made a prayer for appointment of Receiver.

4. The trial court rejected the prayer for appointment of Receiver by order dated 3.5.1980 and against that, appellant moved the High Court in First Appeal, which was finally

heard and order dated 22.7.1980 was passed appointing the Court Receiver. The High Court while making appointment of the Receiver directed to take possession of the suit property. All the persons who were in actual possession of any part of the suit property were continued to remain in possession. The Receiver was directed to collect rent and compensation as the case may be from all the persons in actual possession after verifying from them their present right to remain in possession. The High Court further directed that the Receiver should take suitable direction from the court if he was presented with any particular difficulty.

5. Indisputably, the suit was finally disposed of on 4.2.1998. While disposing the suit, the trial court gave liberty to the plaintiff-appellant to move the High Court for directions for taking possession of the suit property from the Court Receiver so appointed by the High Court.

6. As against the judgment and decree of the trial court, First Appeal was filed being F.A. No.767 of 1988, which was finally heard and dismissed by the High Court vide judgment dated 22.12.2004. The special leave petition filed against the judgment of the High Court was also dismissed on 19.2.2007.

7. It further reveals from the record that the Court Receiver so appointed submitted Report No.25/2007 before the High Court seeking directions with regard to the encroachment on the suit property and handing over possession to the appellant. The Court Receiver also submitted Additional Report No.383 of 2012. The High Court after taking into consideration these Court Receiver's reports, passed the impugned order holding that the receiver shall be deemed to have been discharged after the dismissal of the first appeal by the High Court, followed by dismissal of the Special Leave Petition by the Supreme Court.

8. Assailing the impugned order, Mr. Shyam Divan, learned senior counsel appearing for the appellant, submitted that even after the disposal of the appeal, affirming the judgment and decree of the trial court, the Court Receiver continues in his office till he is discharged and fulfills all the incidental obligations that are cast upon him by virtue of his appointment and till he renders account to the Commissioner of Accounts.

9. The short question, therefore, that falls for consideration is as to whether after the disposal of the appeal, the Court Receiver stands discharged or whether he continues in his office till an order of discharge is passed by the Court?

10. The High Court in the impugned order observed:

“The directions cannot be issued only on assumption that this Court was monitoring the matter for all these years irrespective of disposal of the Appeal from Order. That may be the understanding of parties, but before me nothing has been placed which would enable me to hold that

from 1983 till this report was filed in the year 2007, this Court had issued any directions or had passed any orders indicative of control over the Court Receiver. In fact the Court Receiver's reports and paragraphs of which have been reproduced by me hereinabove, would indicate that it is only the correspondence and meetings of parties with the Court Receiver or his representative that have been referred to. The Court Receiver seems to be now for the first time informing the Court of such meetings and contents of letters. He has not sought any direction for all these decades and because the parties were engaging and involving him in correspondence, does not mean that the Court has in any way continued him. If it is the understanding of parties that the Court Receiver continues, then, that cannot be proved only by his correspondence. The Court Receiver, High Court of Bombay, on account of his own limitation and lack of understanding may be under an impression that he continues as a Receiver of the immovable property despite disposal of the Appeal from Order, main suit, First Appeal and thereafter, the proceedings before the Honourable Supreme Court. If that is the understanding which he has given to parties or parties have given to him and he entertains correspondence and holds meetings, by itself and without anything more cannot assist the Plaintiffs/Decree Holders. The Court cannot issue any directions on such reports and filed belatedly. In fact the Plaintiffs/Decree Holders understood that they have to proceed to execute and enforce the Decree for possession in their favour by adopting appropriate proceedings. Even then they have continued the correspondence and persuaded the Court Receiver to file reports before this Court, does not mean that the Court is obliged to take cognizance of the same.

To my mind these are thoroughly misconceived proceedings and the remedy of the Plaintiffs/Decree Holders lies elsewhere. They cannot insist on the Court passing orders only because of continued correspondence and meetings with the Court

Receiver. The Court has not authorized him nor has he sought permission of the Court authorising him in any manner to continue in possession of the suit property. If parties and equally the Court Receiver do not deem it fit to approach this Court for all these years and seek its intervention or interference, then, all the more they cannot in the exercise that is now carried out, insist on directions to be given to the Court Receiver. Equally, the Court Receiver cannot pray for any direction. If the Court Receiver continues to be in possession and wants to handover possession to the parties claiming under the Decree, then he is at liberty to move the Executing Court. If the plaintiffs/Decree Holders desire any directions being given to the Court Receiver, then it is for them to seek appropriate reliefs and directions in the pending execution proceedings. It is open to the Court Receiver or parties to do so. This Court after the disposal of the Appeal from Order has nothing before it which could be said to be pending. The First Appeal is disposed of long time back. The Reports are filed in proceedings which are no longer pending, but are disposed of finally. Neither the parties nor the Court Receiver sought any further directions from the Court."

11. In paragraph 49 of the order the High Court noted the following:-

"Therefore, the record of that case was perused by the learned judge in its entirety and he found that the order was passed discharging the Court receiver on 26.11.1992 and at the same time continuing him for certain period to enable parties to file the Appeal from the said order. The Appeals were filed, but same were dismissed by a Division Bench and the Special Leave Petition which was filed before the Supreme Court also came to be dismissed on 27.07.1993. The issue was whether the Court Receiver became functus officio right from the date

when the order was passed on 26.11.1992 discharging the Court receiver or whether the Court Receiver continued to be in charge of the property on account of pendency of his reports before the Court and for the other reasons pointed out by the counsel for the Plaintiffs and Defendant No.2 therein.”

12. Normally, when a Receiver is appointed on an interlocutory application without any limit of time, it is necessary to provide for the continuance of his appointment in the final judgment. In Halsbury Laws of England, 3rd Edn., Vol. 32 (Lord Simond) at page 386 says :-

“When a receiver is appointed for a limited time, as in the case of interim orders, his office determines on the expiration of that time without any further order of the court, and if the appointment is ‘until judgment or further order’ it is brought to an end by the judgment in the action. The judgment may provide for the continuance of the receiver, but this is regarded as a new appointment. If a further order of the court, though silent as to the receivership, is inconsistent with a continuance of the receiver, it may operate as a discharge.”

When a receiver has been appointed on an interlocutory application without any limit of time, it is not necessary to provide for the continuance of his appointment in the final judgment. The silence of the judgment does not operate as a discharge of the receiver or determination of his powers. So also the appointment of a receiver by the judgment in an administration action need not be continued by the order, no further consideration.”

13. In Law of Receiver, 4th Edn. by James L. High, the following observation appears at page 985:-

“the functions of a receiver usually terminate with the termination of the litigation in which he was appointed. And when the bill upon which the appointment was made is afterwards dismissed upon demurrer, the duties of the receiver cease as between the parties to the action..... And although as between the parties to the litigation his functions have terminated with the determination of the suit, he is still amenable to the court as its officer until he has complied with its directions as to the disposal the funds which he has received during the course of his receivership....But an order of discharge does not necessarily follow, in all cases, because of the determination of the suit, and the court may, upon sufficient cause shown, either discharge or continue the receiver, according to the exigencies of the case.”

14. In our view, when a Receiver is appointed pending suit or appeal, the prime objective is to preserve the property by taking possession or otherwise and to keep an account of rent and profits that may be realized by the Receiver and to submit it before the court till the lis is finally decided. Ordinarily the function of receivers who are appointed comes to an end with the final decision of the case. However, even after the final decision, the Court has the discretion to take

further assistance of the Receiver as and when the need arises. In the instant case, admittedly, the appellants have already put the decree in execution for recovery of possession. We are, therefore, of the opinion that the Executing Court while executing the decree may take assistance of the Receiver or by appointing new Receiver or Commissioner for effecting delivery of possession in accordance with law and not more than that.

15. In the facts and circumstances of the case, we do not find any error in the impugned order passed by the High Court. The Civil Appeals are, therefore, of no merit and are dismissed.

JUDGMENT

.....J.
[M.Y. Eqbal]

.....J
[Kurian Joseph]

New Delhi

February 27, 2015

