

CASE NO.:
Appeal (civil) 3908 of 1999

PETITIONER:
Prabodh N. Shah

RESPONDENT:
S.B.I. & Ors.

DATE OF JUDGMENT: 08/08/2003

BENCH:
Shivaraj V.Patil & D.M. Dharmadhikari.

JUDGMENT:

J U D G M E N T

Dharmadhikari J.

The appellant claims to be in occupation as tenant of premises described as Shop No. 828 in Parekh Market, Opera House, Bombay. M/s Nikhil Diamonds [Respondent No. 4 herein] admittedly owns amongst others the said premises in the market.

The three Banks [respondents no. 1, 2 & 3 herein] filed Suit No. 607 of 1995 in High Court of Bombay on its Original Side for recovery of loans advanced by them to respondent no. 4 and its partners [respondents no. 5 to 11].

The Banks as plaintiffs in the said Suit sought appointment of Court Receiver under Order 40 Rule 1 Code of Civil Procedure (hereinafter referred to as 'the Code' for short) for safe custody and proper management of the properties of the defendants. The Single Judge of the High Court rejected the prayer. In appeal the division bench of the Bombay High Court by its Order dated 03.11.1995, accepted the prayer of the Banks and appointed a Court Receiver on the properties which include the premises in question.

M/s Nikhil Diamonds and their partners as owners of the building and the premises therein through their counsel appearing before the division bench stated that premises described as Shop No. 828 situated at Parekh Market, Opera House, Bombay, was in possession of the appellant as a 'licensee/tenant since nearly ten years'. The division bench while passing the order appointing Court Receiver, expressed surprise how third parties got into possession of the premises. The division bench then recorded the statement of Respondent Nos. 4 to 11 and directed the Court Receiver that if he would find third parties in possession of the premises of the building, he would appoint them as agents on usual terms including security and compensation. The relevant part of the order dated 03.11.1995 of the division bench, deserves to be reproduced which reads as under :-

"In this usual Bank suit we find that the liability is virtually undisputed, which runs into more than Rs.8.00 crores. In these circumstances, the appointment of Receiver at least in respect of the properties mortgaged or agreed to be mortgaged must follow. We, therefore, appoint the Court Receiver, High Court, Bombay, as the receiver in respect of the properties described in Exhibit "C-1" and Exhibit "G" with a further direction to appoint the Ist Defendant as the agent in respect of the said properties provided the Ist Defendant is willing to accept the agency on usual terms, but without security.

During the course of arguments Mr. Mehta submitted that Shop No. 826 is in possession of P. Manish & Co. and Shop No. 828 is in possession of one Mr. P.N. Shah. When we asked Mr. Mehta as to how these two parties have come in occupation of the premises, Mr. Mehta explained that as far as Shop No. 826 is concerned, there is some oral understanding of exchange between P. Manish & Co. , and so far as Shop No. 828 is concerned, Mr. Shah is a licensee/tenant since nearly 10 years, we are not at all satisfied with the explanation of Mr. Mehta. In case the Receiver finds third parties in possession, it will be open for the Receiver to appoint those third parties as agents on usual terms including security and compensation.

[Portion highlighted for emphasis]

Pursuant to the above order the Court Receiver took symbolic possession of the properties on 27.3.1996. After hearing the appellant and other occupants of the premises he submitted a report to the Court recommending enhancement of the occupation charges of the premises in possession of the appellant to Rs. 12,500/- per month. For the purpose of fixing the above amount as occupation charges or royalty, the Court Receiver relied on the Valuation Report submitted by the Valuer.

The present appellant along with other affected occupants filed Chamber Summons for setting aside the directions of the Court Receiver made on 12.5.1998. The appellant's contention before the Court was that he being statutory tenant on a rent of Rs.2500/- per month and fixation of rent being subject regulated by the Bombay Rents Hotel and Lodging House Rates (Control) Act, 1947 (now repealed and succeeded by the Maharashtra Rent Control Act, 1999) the Court Receiver, who had limited power to manage and administer the suit property, had no right to increase the rent five times from Rs.2500/- to Rs. 12,500/- per month.

The learned Singh Judge by his order dated 4.8.1998 rejected objection of the appellant to the report of the Court Receiver and upheld enhancement of occupation charges of the premises on the ground that the appellant's status as tenant of the premises had not been accepted by division bench of the Bombay High Court when it passed the order dated 3.11.1995 appointing Court Receiver. According to the learned Singh Judge, the order of the division bench dated 3.11.1995 was binding and he could not go 'beyond the said order and the observations made therein.' He also took into consideration the fact that the appellant and the other occupants, who claimed to be tenants, did not file any suit for declaration of their status and rights as tenants of the premises. The court also confirmed the quantum of royalty fixed by the Court Receiver on the basis of the Valuation Report submitted by the Valuer. The division bench of the High Court of Bombay also by its impugned order dated 28.4.1999, rejected his appeal. The appellant, therefore, is before this Court in this appeal.

Learned Senior Counsel appearing for the appellant assails the order of the High Court. It is submitted that the appellant was not a party to the suit. He was not heard on his claim of being a tenant of the premises when the Division bench by its order dated 01.11.1995 appointed a Court Receiver and ensured the occupants of the premises to be appointed as agents on usual terms of security and compensation. It is submitted that the appellant being not a party to the suit and to the appeal by which the Court Receiver was appointed, the order dated 3.11.1995 of the division bench did not bind the appellant.

The learned counsel, further contends that powers of the Court Receiver are governed by Order 40 of the Code. The Court Receiver

has only powers to administer and manage the property during pendency of the suit. The Court Receiver has no power to alter the terms of subsisting tenancy and the rights in that regard of landlord and tenant which are regulated by Bombay Rent Legislation. Strong reliance is placed on the decision of this Court in the case of Anthony C. Leo vs. Nandlal Bal Krishnan & Ors [1996 (11) SCC 376].

On the opposite side learned counsel appearing for the respondents/Banks opposes the appeal. In reply it is submitted that the borrowers who are defendants to the suit filed by the Banks for recovery of loan have inducted the appellant and other occupants in the premises of the building to create obstruction in the recovery of dues of the Banks. It is submitted that the action is collusive between the borrowers and the occupants of the premises. It is also submitted that although the appellant was not a party to the suit and the appeal in which the Court Receiver was appointed, he was fully heard by the Court Receiver while fixing the royalty or occupation charges for the premises. He cannot now be heard to say that the quantum of royalty fixed is disproportionate and contrary to his legal rights under Bombay Rent Act. The decision of this Court in the case of Anthony C. Leo (Supra) is sought to be distinguished on the ground that in this case status of the appellant as tenant is itself in dispute and he has not been recognized as tenant by Division Bench of the High Court. On behalf of the respondents, reliance is placed on another decision of this Court in the case of Usha Harshadkumar Dalal vs. ORG Systems & Ors. [2000 (1) SCC 742].

After hearing learned counsel appearing for the parties and on appreciation of the nature of the controversy involved, we have formed an opinion that the subject matter of the dispute concerning the present appellant deserves to be remitted to the High Court on its Original Side for a fresh determination. It may be in a summary way on the claim of the appellant to the status of tenant in the premises in question.

It is undeniable that in the order dated 3.11.1995 of the Division Bench passed in appeal appointing a Court Receiver, the statement of the defendants was recorded that the appellant is in occupation of Shop No.828 as a licensee/tenant since nearly ten years. The Division Bench summarily rejected such claim of the appellant being tenant without any further enquiry or investigation. The appellant was not a party to the suit before the single Judge or the appeal before the Division Bench.

When the Court Receiver after hearing the parties by his report dated 12.5.1998 fixed the royalty for the shop in occupation of the appellant at Rs. 12,500/- per month, the appellant approached the Court for taking out Chamber Summons. In the Chamber Summons, which was filed with a prayer to set aside the report of the Court Receiver, the appellant took a clear plea that the monthly rent which he was paying to the landlord was Rs.2500/- and such rent could not have been increased by the Court Receiver in contravention of the provisions of Bombay Rent Act which regulates fixation of rent between the parties. The learned counsel appearing for the appellant has pointed out to us specific pleadings in its Chamber Summons raised on the provisions of Section 7 of the Bombay Rent Act and ground urged on the limited powers of the Court Receiver under O.40 of the Code.

The learned single Judge accepted the report of the Court Receiver and rejected the Chamber Summons solely on the ground that in the order of the Division Bench dated 3.11.1995 the statement on behalf of the defendants of the appellant's status as tenant in the premises had not been accepted. The other ground

mentioned by the learned single Judge in rejecting the Chamber Summons is that the appellant, who claims to be a tenant, did not file any suit for declaration of his right and status with regard to Shop No.828.

From the resume of the above facts, it is clear that neither before the Division Bench when it passed the order dated 3.11.1995 nor before the learned single Judge in the course of decision of the Chamber Summons pursuant to the Court Receiver's report, the appellant had a fair chance of establishing even prima facie in a summary way, his status in the premises as tenant with right of being protected against increase of rent under the provisions of the Bombay Rent Act. The learned single Judge was clearly wrong in stating in the impugned order dated 4.8.1998 that the order of the Division Bench dated 3.11.1995 was binding on the appellant and the court could 'not go beyond the said order and the observation made therein.' As has been found above, the Division Bench at the time of summarily rejecting by its order dated 3.11.1995 the defendants' claim of the occupation of the appellant as tenant did not notice or hear the tenant in the appeal. The order of the Division Bench, therefore, could not have been held to be binding on the appellant to conclusively negate his claim to the status of tenant to the premises in question. The learned single Judge was also in error in holding that such a claim of the appellant to the status of tenant was not liable to be considered as he had not filed any suit for declaration of his right and status.

The two decisions in the cases of Anthony C.Leo and Usha Harshakumar Dalal (supra) support the contention advanced on behalf of the appellant that he was entitled to a hearing on his claim even though in a summary way by the court in the proceedings of the suit taken pursuant to the report of the Court Receiver recommending enhancement of occupation charges of the premises in question.

The case of Anthony C.Leo was on different facts where the Court Receiver sought a direction from the court seeking permission to remove certain additional constructions and fixtures made to the tenanted premises by the tenant in occupation of the property but which was in charge of the Receiver for management and maintenance. Accepting the objection of the tenant to the proposed action of Court Receiver's action this court observed: "It appears to us that since the court must be presumed to be fully unbiased in deciding the allegation of unauthorised and illegal activities of a tenant causing prejudice against the lawful owner in the matter of preservation and maintenance of the property pendente lite, the necessity of adjudication of such dispute by another court by bringing a legal action before it, as a matter of course, is neither necessary nor expedient. It however, should be made clear that if for the purpose of deciding the dispute of unauthorized and illegal activity affecting maintenance and preservation of the property in custodia legis it becomes necessary to determine any right claimed under a statute or flowing from some action inter parties as may be pleaded and required to be decided, it is only desirable that the court would refrain from such determination in the summary proceeding initiated before it on the complaint of the receiver or a party to the suit and the court will direct the receiver to seek adjudication of the dispute before a competent court by bringing appropriate legal action. Save as aforesaid, it will not be correct to contend that in no case the court exercising control and supervision of the property in suit by appointing a receiver will be incompetent even to pass direction against a third party for the purpose of preservation of the property, once such third party pleads defence in justification of his action. The question of summary adjudication by the court appointing the

receiver or relegating the receiver to a regular suit for adjudication of the dispute concerning third party will depend on the nature of dispute and the defence claimed by the third party."

After making the above observation, this Court directed the Court Receiver to initiate appropriate proceedings against the tenant under the Rent Act.

The decision of two-Judge Bench in Anthony C.Leo's case (supra) was considered and explained by three-Judge Bench of this Court in the case of Usha Harshadkumar Dalal (supra). It is held that it is not in every case where the occupant claims tenancy and protection under the Bombay Rent Act that the Court Receiver can be directed to resort to the remedies under the said Act. The action of the Court Receiver has to be judged by the court with reference to specific pleadings of the parties and proof produced in support thereof. The relevant observations in the case of Usha Harshadkumar Dadal (supra) on this aspect deserve reproduction:-

"The above observations in our opinion is the ratio of the judgment in Anthony C.Leo case and it would not be correct to read the said judgment to mean that if the trespasser or any person who obtains the possession after the Receiver took over symbolic possession or actual possession of the property and if such person pleads that he is a tenant the only remedy for the Court Receiver is to approach the Rent Court under the Bombay Rent Act. For instance, a person who is put in possession as an agent of the Receiver inducts a stranger and if such a third person claims a tenancy the question is whether the Receiver should be directed to adopt the proceedings under the Bombay Rent Act for appropriate declaration and reliefs. If such a course is required to be followed, in our opinion, the very object of order 40 Rules 1 and 3 of the Code of Civil procedure would be defeated. The High Court in our opinion has totally misread and misinterpreted the ratio of Anthony C.Leo case. We must, however, make it clear that we are not laying down a broad proposition that in every case the Receiver can resort to a summary proceeding of this nature. The question would have to be decided by the court with reference to the pleadings of the parties and the proof thereof. On a perusal of the judgment of the High Court we find that the High Court has not considered the various rival contentions raised by the parties in their pleadings. The High Court also not considered the effect of non-renewal of the leave and licence agreement after the expiry of its period nor has it considered the effect of Sections 15 and 15A of the Bombay Rent Act. The High Court has also not considered what would be the effect of changes in the composition of Suhrid Geigy Trading limited after the Receiver took the symbolic possession. All these various factual and legal contentions will have to be considered bearing in mind the provisions of the Bombay Rent Act as well as the Companies Act."

From the two decisions of this Court mentioned above, the legal position is clear that the claim to the status of tenant raised by the appellant is required to be considered on its own merits - may be in a summary way - by the High Court for deciding the question whether the action of the Court Receiver in enhancing the royalty payable for the premises was correct or not and whether the Receiver or the appellant should be directed to resort to appropriate legal remedies on the disputed claim of the appellant to the status of tenant of the premises in question.

For the aforesaid reasons, the appeal succeeds. The impugned order of the learned single Judge, only to the extent of his decision concerning shop No.828 in occupation of the appellant, is set aside. The appellant's case is remitted to the learned single Judge of the High Court of Bombay on Original Side for a fresh decision on the

basis of pleadings in the Chamber Summons filed by the appellant and the report of the Court Receiver.

Since the matter arises out of the report of the Court Receiver fixing the royalty or occupation charges for the use of disputed premises, the High Court shall make endeavour to take the decision on the present contested issue as early as possible.

In the circumstances, we leave the parties to bear their own costs in this appeal.

JUDIS