

CASE NO.:
Appeal (civil) 2043 of 2008

PETITIONER:
TAYABBHAI M. BAGSARWALLA & ANOTHER

RESPONDENT:
MAHALAXMI METAL INDUSTRIES & OTHERS

DATE OF JUDGMENT: 12/03/2008

BENCH:
S.B. SINHA & P.P. NAOLEKAR

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO. 2043 OF 2008
(ARISING OUT OF S.L.P.(C) NO. 23263 OF 2005)

1. Leave granted.
2. This appeal is directed against a judgment and order dated 29.9.2005 whereby and whereunder a learned Single Judge of the Bombay High Court held as under:

\023(a) The Court Receiver is hereby discharged in respect of the premises, in case he has taken possession of the said premises pursuant to the orders passed by this Court in A.O. No. 1406 of 1991 or by the City Civil Court, in B.C.C. Suit No. 1407 of 1991, from any of the applicants or their officers.

(b) Consequently the Court Receiver shall take steps to hand over the respective premises if in his possession as at present and by identifying the same in presence of the concerned applicant and the respondent Nos. 3 and 4.

(c) So far as the applicant No. 1 is concerned the Court Receiver shall determine the amount of royalty payable by it and the said amount shall

be remitted by the said applicant within a period as determined by the Court Receiver. It is clarified that determination of the royalty amount shall be in keeping with the orders passed by this Court from time to time.

(d) The Court Receiver to take all further steps as are required to be taken on his discharge in respect of the premises covered by this order.

(e) Needless to mention that the Court Receiver shall issue notice to all these parties for discharge as well as handing over of the respective premises.\024

3. The basic fact of the matter does not appear to be much in dispute. Appellants herein are the owners of the suit premises. Respondent No.5 was a tenant either of the whole of the suit property or a part thereof. According to Respondent No. 5, Respondent Nos. 1 to 4 are its sub-tenants whereas respondent Nos.1 to 4 are claiming over the suit premises independently.

4. A fire broke out in the suit premises on 25.8.1985 and one of its portions go

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destroyed in the fire. As respondent No.5 and/or its sub-tenants started raising constructions on the said premises or a part of it, the appellants filed a suit for injunction restraining

respondent No. 5 from carrying on the construction activities in violation of the Building Rules framed under the Bombay Municipal Corporation Act. By an order dated 15.2.1991, the City Civil Court, Bombay granted ad interim injunction. Some notices to stop unauthorized construction were also issued by the Bombay Municipal Corporation. By an order dated 29.11.1991, the City Civil Court appointed a Receiver who admittedly took possession of the suit premises and thereafter sealed it.

5. Learned senior counsel appearing for the Receiver states before us that the possession had been taken principally from respondent No. 5 and not from respondent Nos. 1 to 4. However, the claim of respondent Nos. 1 to 4 appears to be that they had been continuing in possession of part of the suit premises for a long time and on or about 9.8.1994, pursuant to the order of the Court dated 8.8.1994, they were dispossessed by the Court Receiver.

6. Respondent No.1 contends that by reason of order dated 15.6.1995 passed by the High Court in Civil Application No. 5660 of 1994, it was appointed as an agent of the Court Receiver. It appears that by order dated 3.7.1996, the High Court held that the City Civil Court

had no jurisdiction to entertain and try the suit filed by the appellants. Although the suit was directed to be returned but it appears that the same has not been done as yet and it is not presented before an appropriate court. However, the contempt proceedings are still pending. It appears that at several stages, the High Court of Bombay and this Court had passed orders. It furthermore appears that the Director of Respondent No. 5 was sentenced to one month's imprisonment for violation of this Court's orders.

7. In the Contempt Proceedings, Respondent No. 5- tenant was not impleaded as a party. One of the contentious issues raised on behalf of the appellants before us is the jurisdiction of the Court to delegate its power in favour of the Receiver to handover possession to the parties from whom the possession had been taken. Another contention raised by Mr. Shyam Divan, learned senior counsel appearing on behalf of the appellants is that respondent Nos. 1 to 4 are not recognized by his clients. It was furthermore contended that in any event, keeping in view the fact that the High Court is yet to pass orders in regard to the directions for demolition of the unauthorized construction issued by the Bombay Municipal Corporation as well as the effect of raising of construction in violation of the orders of injunction as also during the period when the Receiver had taken possession and, thus, the High Court committed a serious error in passing the impugned judgment.

8. We find some contentious issues here. The Court, in our opinion, in a given case, in exercise of its inherent power, in the event it is found that its order of injunction had been breached, may direct the parties to be placed in the same position as if the order of injunction had not been violated. Furthermore, if the Court is in seisin of the matter in regard to direction for demolition, there was no occasion for it to pass an order for handing over the suit premises to the Respondents at this stage. It was, in our view, premature to direct handing over of possession to the parties purported to be in possession of a part of the premises in suit, although, according to the Receiver, no such possession had been taken over from respondent Nos. 1 to 4.

9. We may also place on record that the learned counsel appearing on behalf of the Receiver categorically stated before us that in 1991, the building comprised of ground floor, mezzanine floor and first floor in part but in 1994

when the possession was taken over, even the entire first, second and third floors have been constructed. The effect of the said statement may also have to be considered by the High Court.

10. We may, however, hasten to add that although we have made observations in regard to the jurisdiction of the High Court, it is for the High Court to pass appropriate orders keeping in view the effect of its order dated 3.7.1996 wherein it held that the City Civil Court had no jurisdiction to entertain and try the suit of the appellants. We are informed that the plaint has not yet been taken back and presented before an appropriate court having jurisdiction in the matter.

11. We are, therefore, of the opinion that the interest of justice will be sub-served if the impugned judgment of the High Court is set-aside and the matter is remitted to the High Court for consideration of the matter afresh. We order accordingly.

12. Respondent No. 5 shall be impleaded as a party in the proceedings before the High Court. All contentions of the parties shall remain open. Keeping in view the fact that the matter is pending for a long time, we would

request the High Court to consider the desirability of disposing of the matter as expeditiously as possible preferably within a period of eight weeks' from the date of receipt of a certified copy of this order. We would also request the High Court to consider the desirability of hearing all connected matter together, if possible, including the validity of the demolition proceedings.

13. The appeal stands disposed of accordingly. No costs.