

CASE NO.:
Appeal (civil) 39 of 2000

PETITIONER:
USHA HARSHAD KUMAR DALAL

RESPONDENT:
ORG SYSTEMS AND ORS.

DATE OF JUDGMENT: 06/01/2000

BENCH:
S.P. KURDUKAR & SYED SHAH MOHAMMED QUADRI

JUDGMENT:
JUDGMENT

2000 (1) SCR 57

The Judgment of the Court was delivered by S.P. KURDUKAR, J. Leave granted.

This civil appeal arises out of an order dated December 8/9, 1997, passed by the learned single Judge of the Bombay High Court on Chamber Summons (for short Ch/S) taken out by the appellants defendant Nos. 2, 7, 8, 11 and 13 to 26. By this Ch/S the appellants sought a direction to the respondent No. 1 i.e.. M/s. ORG Systems to handover quiet, vacant and peaceful possession of the premises in their occupation forthwith. The dispute in this Ch/S is restricted to the fourth floor premises in 'Shreenikatan'. It is alleged by the appellants that M/s. ORG Systems have been in illegal and unauthorise occupation of the premises in question as they have been inducted in the premises when the property was in possession of the Court Receiver without leave of the court.

It would be necessary to summarise briefly a few facts to indicate as to how the present Ch/S was required to be taken out by the appellants.

Usha Harshadkumar Dalai filed Suit No. 120 of 1978 on the Original side of the Bombay High Court for partition of the said property against Manibhai Jhaverbhai Patel & Ors. seeking partition and possession of her share in the said property. Obviously since it was a suit for partition amongst the co-owners the first respondent, namely, M/s. ORG Systems as well as second respondent Suhrid Geigy Trading Limited were not arrayed as defendants since they were not concerned with the partition of the joint family property. The appellant took out a Notice of Motion No. 115/78 in the said suit for various interim reliefs including the appointment of the Court Receiver. The learned single Judge vide its order dated 13th February, 1978, passed an ad interim order whereby Court Receiver, the Bombay High Court, was appointed as a Receiver of the suit property with a direction to take possession of the suit property and manage the same and do all other incidental things in relation thereto. Admittedly when the Court Receiver came to be appointed the premises in question was found to be in actual possession of Suhrid Geigy Trading Limited and, therefore, the Receiver took symbolic possession without disturbing the possession of Suhrid Geigy Trading Limited. The ad interim order was confirmed by the learned single Judge on July 24, 1978.

On September 7, 1970 (prior to suit) a Leave and Licence Agreement between the co-owners of a building called Shreeniketan Building was entered into with Suhrid Geigy Trading Limited whereby the said Suhrid Geigy Trading Limited was permitted to occupy the premises in question admeasuring 4850 square feet on terms and conditions set out therein. The relevant clause of the said agreement is as under:

"7. If the Licencees shall be desirous of having this licence renewed for further term of five years and shall at least three months before the

expiration of the period of the Licence have given to the Licensors in writing a notice of their intention to take such renewed licence, the Licensors shall upon receiving such notice and if there shall not be at the time of such request by the Licensees any existing breach, non-performance or non-observance of any of the covenants and conditions on the part of the Licensees herein contained grant to the Licensees a fresh Licence of the Licensed Premises for a further period of 5 years at the same Licence fee or compensation (at the rate of Rs. 1,50 paise per sq. ft. for part of fourth floor) hereby demised and upon the same terms and conditions as are herein contained provided how-ever that such fresh licence shall not contain a covenant for renewal." There does not seem to be any dispute that the said agreement was not renewed for any further period. Other relevant clause in the said agreement is as under :

"11. The Licensees shall be entitled to give the licensed Premises or any part thereof terms and conditions not inconsistent with the provisions hereof to their subsidiary associate concerns or affiliate Companies and establishments in Sarabhai Group of Companies including Suhrid Geigy Limited, Karamchand Prem-chand Private Limited, Ahmedabad Mfg. & Calico Printing Co. Ltd. Sarabhai Sons Private Limited, Sarabhai Management Corporation Ltd., Sarabhai Technological Development Syndicate Pvt. Ltd., Bakubhai Ambalal Private Limited, Shilpi Advertising Ltd., Sercon Pvt, Ltd., Sarabhai M. Chemicals Ltd., Standard Pharmaceuticals Ltd., Systrocix Ltd., Synbiotics Ltd., Telerad Private Limited, Travelers Ltd., for use by way of sub-licence without being required to obtain the licensors consent to such sub-licence and the Licensees shall continue to be responsible to the Licensors for the performance and discharge of their obligations hereunder".

Before the expiry of the licence period of five years on 1st February, 1973, an amendment in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Rent Act) was introduced whereby all subsisting licensees became protected tenants and were governed by the provisions of the Bombay Rent Act. Section 15(1) of the Bombay Rent Act provides that subject to any contract to the contrary it shall not be lawful for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner. The Bombay Rent Act provides that a landlord shall be entitled to recover possession of any premises if the Court is satisfied that the tenant has unlawfully sub-let the whole or part of the premises or assigned or transferred in any other manner his interest therein. The Leave and Licence Agreement came to be terminated on September 7, 1975 and the occupation of the said premises by Suhrid Geigy Trading Limited was governed by the provisions of the Bombay Rent Act.

Some of the co-owners took out Ch/S No. 436 of 1996 on 17th April, 1996, bringing to the notice of the High Court that when the Court Receiver took symbolic possession the Suhrid Geigy Trading Ltd. was in occupation but now the said premises are being occupied by the first respondent ORG Systems. The applicants in the said Ch/S sought appropriate orders from the court directing the Court Receiver to submit a report to the High Court and recover possession of the said premises from the first respondent ORG Systems. The High Court while passing the order directed the Court Receiver to submit a report relating to the use, occupation and possession of the premises in question. On April 22, 1996, the Court Receiver submitted the report stating therein ;

- (a) The sign board on the said premises was in the name of ORG Systems.
- (b) The Section Officer met one Mr. Patwardhan, the accounts officer of the said ORG Systems and one Mr. R. Veershlindgam an employee of ORG Systems, both of whom expressed their inability to state the manner in which the said ORG Systems came to occupy the said premises.
- (c) Both the officers, however, informed the Section Officer that the entire premises were in the possession of ORG Systems under their lock and

keys and they would furnish relevant documents on April 18, 1996. The Section Officer submitted his report to the court Receiver on 20th April, 1996.

(d) The Court Receiver thereafter submitted his report to the court annexing a letter dated March 16, 1994, addressed by one S.G. Pharmaceuticals stating that the said S.G. Pharmaceuticals and the said ORG Systems were companies within the Sarabhai Group.

While opposing the Ch/S the first respondent ORG Systems filed four affidavits stating therein :

That Suhrid Geigy Trading Limited gave exclusive possession of the said premises to ORG Systems, In November 1979, the name of Suhrid Geigy Trading Limited changed to S.G. Chemicals and Pharmaceuticals Ltd. By an order dated 27th March, 1981 passed by the Gujarat High Court, a scheme of amalgamation was approved whereby the said S.G Chemicals and Pharmaceuticals Ltd. (Transferor) was amalgamated into Ambalal Sarabhai Enterprises Ltd. (Transferee). Pursuant to the said amalgamation of S.G. Chemicals and Pharmaceuticals Ltd. with Ambalal Sarabhai Enterprises Ltd. in March 1981, ORG Systems which was the electronics division of Ambalal Sarabhai Enterprises Ltd. was given possession of the said premises. The amalgamation scheme was sanctioned by the Gujarat High Court by an order dated 24th December, 1987 and because of this amalgamation scheme their possession cannot be said to be unauthorised. The first respondent ORG Systems also raised a contention that the present Ch/S was taken out after a lapse of 16 years which would indicate that the applicants in the Ch/S or any other co-owner had no objection to the possession of ORG Systems of the premises in question, It was also contended that as the Court Receiver alone could take appropriate action in accordance with law, the applicants had no right to take out such Ch/S.

Both the parties in support of their rival contentions filed the affidavits. The learned Single Judge of the High Court vide judgment and order dated 8/9th December, 1997, held as under:

"Hence, so far as chamber summons is concerned, the same is not maintainable and, therefore, stands rejected. Respondents are directed not to create further subletting either in favour of their sister concerns or third party."

It is this order passed by the learned Single Judge on Ch/S which is the subject matter of challenge in this appeal.

The entire reasoning of the impugned judgment is based upon the judgment of this Court in Anthony C. Leo v. Nandlal Bal Krishnan and Ors., [1996] 11 S.C.C. 376.

In the opinion of the learned single Judge the dispute of the present nature could not be resolved by summary proceedings (Ch/S) but the Court Receiver has to adopt the proper procedure under the Bombay Rent Act.

Some of the basic and admitted facts of the case before us are that under the Leave and Licence agreement dated September 7, 1970, the premises in question was given to Suhrid Geigy Trading Ltd, for a period of five years. This licence was never renewed. During the subsistence of this Leave and licence Agreement, Bombay Rent Act came to be amended and such of the licencees who were in possession pursuant to a valid licence on 1st of February, 1973 shall be deemed to have become the tenant of the landlord in respect of the premises or any part thereof in its possession (Section 15A inserted by Maharashtra 17 of 1973). When the Receiver took the symbolic possession, Suhrid Geigy Trading Limited was in occupation and by virtue of section 15A of the Bombay Rent Act such a Licensee shall be deemed to be a tenant. The first respondent came in possession in 1979 pursuant to the amalgamation scheme approved by the Gujarat High Court on December 24,

1987. In view of these admitted facts the question is as to whether induction of the first respondent in the premises without leave of the court and/or without any intimation to the Court Receiver will be valid or otherwise. It is well settled principle that when a Court Receiver is appointed in respect of any property it is said to be in custodia legis and court holds the property for the benefit of the true owner. The Court Receiver acts on behalf of the court. Even the court receiver will have no power to deal with such property without the leave of the court. It is the duty of the Court Receiver to maintain the status quo and also to protect the property from being put to waste or allow it to diminish its value. The Court Receiver cannot encumber the property in any manner without the leave of the court. It is the obligation of the Court as well as the Court Receiver to preserve and maintain the property as far as possible and practicable in the same form when it was taken in possession. If these principles are borne in mind, in our view, it is quite clear that when the possession of the property was taken by the Court Receiver in 1978, Suhrid Geigy Trading Limited was in occupation and the Court Receiver took symbolic possession thereof. It must be presumed that Suhrid Geigy Trading Limited was very much aware of the appointment of the Court Receiver. In Anthony C. Leo's case (Supra) admittedly the tenant was in occupation of the premises before the Court Receiver took symbolic possession. The tenant had committed certain breaches and had resorted to unauthorised and illegal activity prior to the filing of the civil suit. The landlord who had a cause of action under the Bombay Rent Act did not file any proceedings under the said Act for necessary reliefs before the appropriate forum. The landlord filed a suit on the original side of the Bombay High Court and got the Receiver appointed for the suit property. In that suit the landlord took out a Ch/S to evict the tenant on the ground that he has committed breach of lease agreement inasmuch it carried out construction of lofts and put up two stand-type boxes on the outer wall for storage of gas cylinders and air-conditioning units. In the Ch/S it was prayed that the Court Receiver be directed to remove the said lofts and the said box-type stands. The High Court granted the relief to the landlord in the said Ch/S and it was against this order the tenant had filed the appeal in Court, Therefore, the admitted position that flows from Anthony C. Leo's case is that the landlord had a cause of action before the filing of the civil suit in the High Court to initiate proceedings for appropriate reliefs under the Bombay Rent Act in the competent court but he did not do so. When the Receiver came to be appointed in the suit filed by the landlord on the original side obviously he could not have better rights to enforce the cause of action accrued under the Bombay Rent Act. It is in these circumstances this Court in paragraph 34 has observed as under :

"34. 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 unauthorised 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 partes 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."

The above observations in our opinion is the ratio of the judgment in Anthony C. Leo case (Supra) 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 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 follow, in our opinion, the very object of Order XL Rule 1 & 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's case (supra). We must, however, make it clear that we are not laying down a broad proposition that in every case the Receiver can resort to the 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 perusal of the judgment of the High Court we find that the High Court has not considered various rival contentions raised by the parties in their pleadings. The High Court has also not considered the effect of non-renewal of the Leave and Licence Agreement after the expiry of its period nor it had 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 Subrid 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 Companies Act.

Mr. C. Mukund, learned Advocate appearing for the first respondent, however, urged that the judgment in Anthony C. Leo's case (supra) squarely applies to the facts of the present case and the rights of the first respondent cannot be adjudicated by taking recourse to the summary proceedings. The Court Receiver if so advised may adopt the proper proceedings under the Bombay Rent Act before the competent court. He urged that the judgment of the High Court does not call for interference. We see no substance in any of these contentions.

In the result the impugned judgment and order dated 8/9.12.1997 passed by the learned single Judge of the High Court on Ch/S No. 436 of 1996 is quashed and set aside and the matter is remitted back to the High Court for disposal in accordance with law.

In the circumstance there will be no order as to costs.