

Joginder Nath Gupta vs Satish Chander Gupta on 14 February, 1983

Equivalent citations: 1983(1)SCALE770, (1983)2SCC325, AIRONLINE 1983 SC 8, 1983 (2) SCC 325

Bench: A.N.Sen, D.A. Desai

ORDER

1. Special leave granted.

2. This is a matter in which we ordinarily would not have interfered but for some special circumstances 'which have been pointed out to us. In CR. No. 6079 (W) of 1981 the learned Single judge of the Calcutta High Court made an order appointing Mr. Mrinal Kanti Roy, a learned Advocate of the Calcutta High Court as a Receiver over the petitioner, Satish Chander Gupta in respect of business styled as M/s. Gangadin Gupta, not for the purpose of carrying on the business but for the purpose of having overall control over the accounts of the same. It appears from the record that after the learned Judge decided to appoint a Receiver Mr. Mrinal Kanti Roy was selected with the concurrence of parties. The learned Judge fixed the remuneration of the Receiver.

3. This order was challenged by the respondent herein in FMAT No. 2610 of 1982. A division Bench of the Calcutta High Court admitted the appeal and on oral application granted ex-parte and interim stay of the order of the learned Single Judge appointing the Receiver by the Order dated September 7, 1982 and confirmed the same by the order dated September 21, 1982. The appeal is yet to be heard. This appeal is directed against the order of the appellate Bench granting stay of the order appointing Mr. Mrinal Kanti Roy as Receiver.

4. Ordinarily this Court is loathe to interfere at the interlocutory stage unless its restraint to intervene may lead to miscarriage of justice.

5. Numerous contentions were sought to be advanced by the learned Counsel on either side. As the matter is pending before the learned Single Judge, we keep our fingers crossed and decline to delve into contentions which await adjudication on merits. But we are of the opinion that till the appeal preferred by the respondent is heard, the division Bench ought not to have granted the stay so that the Receiver's appointment becomes infructuous. Such an approach practically disposes of the appeal. Let us illustrate. Pursuant to the order of the learned Single Judge Mr. Mrinal Kanti Roy was appointed as Receiver and he started functioning. This becomes clear from the grievance voiced by M.K.K. Venugopal, learned Counsel for the respondent against the method functioning of the Receiver Suppose the appeal is dismissed, which would revive the order of the learned Single Judge appointing the Receiver. Now keep in view the zigzag course the proceedings would follow; the Receiver is appointed and he has entered his office and started functioning. Under the interim order of appellate Bench he would stand discharged. If the appeal of the respondent in the High Court

fails, the order appointing Receiver would be revived. This is very unhelpful.

6. We are of the opinion that till the appeal of the respondent is disposed of the Receiver should continue. Receiver's roll is supervisory. If he is shown to be Intermeddling direction could have been obtained to put him in proper check. When disposing of the appeal of the respondent on merits, the High Court if it thinks proper may interfere with the order of the learned Single Judge. But an interim order staying an interim order leads not only to confusion but multiplicity of proceedings. When the notice for confirming the ex-parte order of stay came up, the High Court could have if deemed urgent disposed of the appeal. But in any event stay of an interim order created more problem than it solved.

7. It is in this background that we consider it proper to give some direction. The appeal of the respondent is pending and the appellate Court may dispose of the same wholly uninfluenced by the directions herein given.

8. Till the appeal of the respondent is heard and disposed of Mr. O.P. Sharma and Mr. Ranwijay Bhattacharya, both learned Advocates on record for the respective parties in the Calcutta High Court are appointed joint Receivers subject to the same limitation and conditions to which the original order was made by the learned Single Judge. In order words, both of them are appointed as Receivers not for the purpose of carrying on the business but for the purpose of having over all control of the accounts of the business. This would ipso facto necessitate the termination of appointment of Mr. Mrinal Kanti Roy as Receiver, which by this order we hereby do, subject to the condition that the remuneration till today or till the new Receivers take over charge will be paid to him.

9. A serious objection was taken to the time of the visit of the Receiver to the business premises of the respondent. In order to avoid such a situation, the Receivers will visit the business premises not earlier than 7.00 p.m. on any day to make whatever inquiry which they wish to make. We are told that both the Receivers will not claim any remuneration. We order accordingly. This order will operate upto and inclusive of the day the appeal is heard and disposed of by the Division Bench. Any further direction in this behalf may be sought from the High Court. There will be no order as to costs.

10. The appeal is disposed of accordingly.