

Supreme Court of India

Shree Ram Urban ... vs Court Receiver, High Court Of ... on 9 May, 1947

Author:J.

Bench: Chandramauli Kr. Prasad, Pinaki Chandra Ghose

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5528 OF 2014
[Arising out of SLP(C) No.30298 of 2010]

Shree Ram Urban Infrastructure Ltd.
(Formerly known as Shree Ram Mills Ltd.) Appellant

:Versus:

The Court Receiver, High Court of Bombay Respondent

J U D G M E N T

Pinaki Chandra Ghose, J.

1. Leave granted.

2. This appeal has been preferred against the Judgment and order dated 16th September, 2010 passed by the High Court of Judicature at Bombay in Civil Revision Application No.452 of 2009, dismissing the Civil Revision Application filed by the appellant-tenant. The brief facts, necessary for the disposal of this appeal are thus: An immovable property known as “Dev Ashish” is a tenanted property situated at Padam Tekri, Peddar Road, Bombay (hereinafter referred to as the “suit property”). The respondent herein was appointed by the Bombay High Court to take charge of the suit property in Suit No.234 of 1987, which was filed on the original side of the Bombay High Court, in terms of prayer clause (a) of the Notice of Motion which reads as follows:

“(a) That pending the hearing and final disposal of above suit, the Court Receiver, High Court, Bombay or some other fit and proper person be appointed as a Receiver of an immovable property known as “Dev Ashish” situate on Sub-Plot No.1 of Plot No.C.S.S.755 at Padam Tekdi, Pedder Road, Bombay 400 026, with all powers under Order XL, Rule 1 of the Code of Civil Procedure, 1908, including the owner to recover, receive and collect the rent, income and profits thereof.”

3. The respondent, being the Court Receiver in the aforesaid suit, issued Notice dated July 26, 2001 to the appellant herein to pay compensation at the rate of RS.1,75,000/- per month from 1.4.2000 and to vacate the suit premises. The appellant replied to the said notice of the respondent stating that the respondent has been appointed to control the suit premises and has no right and power to determine the tenancy of the appellant. Meanwhile, the appellant was declared as a sick company under the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'the SICA').

4. The respondent instituted a suit against the appellant-defendant before the Court of Small Causes, Bombay which was decreed in favour of the respondent. Being aggrieved by the said decree, the appellant-defendant filed an appeal before the Appellate Bench of the Small Causes Court, being Appeal No.837 of 2003. This appeal was dismissed by judgment and order dated June 12, 2009. The appellant-defendant, therefore, filed a revision petition before the High Court of Bombay under Section 115 of the Code of Civil Procedure, being Civil Revision Application No.452 of 2009. The said civil revision application was dismissed by the Bombay High Court vide its judgment and order dated 16.9.2010. Aggrieved by the said judgment and order dated 16.9.2010, this appeal, by special leave, has come up before this Court.

5. Mr. Ranjit Kumar, learned senior counsel appearing on behalf of the appellant, challenged the order on the grounds, firstly, that the Court Receiver did not obtain leave of the court in filing the suit and without such leave, the eviction suit is liable to be dismissed. Secondly, he contended that the notice was issued on July 26, 2001 asking the appellant to vacate the suit premises immediately, therefore, the notice was defective in view of the provisions of Section 106 of the Transfer of Property Act. On this ground also, he contended that the suit is liable to be dismissed. Thirdly, he contended that the suit is also bad since the owners are the trustees and are not made parties to the suit.

6. In support of his contention with regard to the first point that the suit was liable to be dismissed as it was filed by the Court Receiver without obtaining leave of the Court, he relied upon the decision of the courts in C.T. Davis & Ors. vs. Drobomoyi Gupta & Ors.[1] He also relied upon the decisions in Ram Ranjan Chakravarti vs. A.B. Miller[2], Everest Coal Company (P) Ltd. vs. State of Bihar & Ors.[3], Anthony C. Leo vs. Nandlal Bal Krishnan & Ors.[4], Krishna Kumar Khemka vs. Grindlays Bank P.L.C. & Ors.[5], Balkrishna Gupta & Ors. vs. Swadeshi Polytex Ltd. & Anr.[6], and Harinagar Sugar Mills Ltd., vs. M.W. Pradhan[7].

7. Lastly, Mr. Ranjit Kumar, learned senior counsel, contended that the Board for Industrial Financial Reconstruction (hereinafter referred to as 'the BIFR') declared the appellant-company as a sick company under the SICA. Therefore, without obtaining permission from the BIFR, the suit could not be proceeded with. Learned senior counsel further pointed out that in the case of Ram Ranjan Chakravarti (supra), it has been held that the Receiver of the High Court does not represent the owner of an estate. He is an officer of the Court and as such, cannot sue or be sued except with permission of the Court. In Shyam Lal Gomatwala vs. Nand Lal & Ors.[8], it had been concluded by the Court that the permission of the Court was necessary before institution of a suit by the Court Receiver.

8. Mr. Ranjit Kumar, learned senior counsel, also relied upon the decisions in *Mt. Mahrana Kunwar vs. E.V. David*, Official Receiver[9] and *C.T. Davis & Ors. vs. Drobomoyi Gupta & Ors.* (supra) and contended that in the said decisions it has been held: firstly, that the action for ejectment from the suit property cannot be maintained by only some of the owners of the undivided estate; and secondly, it has been held that to authorize the Court Receiver to issue Court notices determining the tenancy, an authority has to be obtained from the Court. However, in the case of *Everest Coal Co.(P) Ltd.*(supra), it has been held that when a court puts a Receiver in possession of property, the property comes under the custody of the Court and the Receiver merely acts as an agent of the Court. The Court Receiver represents neither party, being an officer of the court, and for this reason ordinarily the court accords the permission to sue and failure to secure such leave to sue till the end of lis may prove fatal. He also drew our attention to a decision reported in *Shanta Ram Hirachand Danez vs. Narayan Bapusa Fulpagar*[10]. In the said decision the court held that filing of the suit without obtaining leave of the court is an irregularity and can be cured in law and is not fatal. But the suit filed by the Court Receiver without obtaining permission does not render the proceedings in the suit ultra vires if leave is obtained even after filing of the suit by the Court Receiver. He tried to contend on the question of service of notice that Section 106 is restricted to cases where the Court Receiver has let out the premises and further the Court Receiver cannot have the implied authority to sue a protected tenant in occupation and according to him, it is necessary to have the leave from the court before filing the suit and it can also be overcome only if the leave is obtained when the lis is pending.

9. With regard to the trust property, his contention is that the trust property vests in all the trustees. It is, therefore, apparent that all the trustees have to decide whether or not the suit is to be filed on behalf of the trust. In the present case, it is not disclosed anywhere that the notice of termination was served at the behest of all the trustees. He further pointed out that it is to be noted that the order appointing the Receiver as already recorded by the court that prima facie there was a dispute in respect of appointment of trustees on the Trust and about dealing of the property by the Trust and in these circumstances, the court thought it fit to appoint a Court Receiver considering the facts and circumstances of this case.

10. Per contra, Mr. Soli Sorabjee, learned senior counsel appearing on behalf of the respondent-Court Receiver, submitted that the Court Receiver has a right to take all steps in the matter since the Court Receiver has been appointed with full powers to administer the property which is custodia legis and furthermore, he has acted in the matter in his capacity as a Receiver. He also drew our attention to Order XL Rule 1 of the Code of Civil Procedure, 1908, which is reproduced hereinbelow:

“1. Appointment of receivers.- (1) Where it appears to the court to be just and convenient, the court may by order—

(a) appoint a receiver of any property, whether before or after decree;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver; and

(d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the court thinks fit....”

11. He pointed out that Order XL Rule 1(d) has specifically given all such powers as to bringing and defending the suits and for the realization, management, protection and preservation of the property which the Receiver held on behalf of the court. According to Mr. Sorabjee, learned senior counsel, the Court Receiver should be able to take all steps necessary to preserve and protect the property as a prudent owner of the property would take. He also drew our attention to the order appointing the Receiver and contended that if a tenant is in arrears of rent or if the leased property after recovery of possession can fetch more income to the estate, the Court Receiver is entitled to take steps in the matter and can file a suit for recovery of possession. He further contended that in the instant case, the suit premises are outside the purview of the Rent Act. He also relied upon the old decisions in *Huri Dass Kundu vs. J.C. Macgregor, Receiver, High Court*[11] and submitted that the court held that the terms of the order appointing the Receiver are sufficient to confer on him the power to bring a suit to eject a tenant. He also relied on the decision in *Jagat Tarini Dasi vs. Naba Gopal Chaki*[12], wherein it was held as follows:

“The receiver, as an officer of the Court, which has taken control of the property, is for the time being, and for the purpose of the administration of the assets, the real party interested in the litigation; there is no substantial reason, therefore, why the suit should not be instituted in his own name. We may further add that there are numerous cases in the books, from which it appears that a receiver, who has authority to sue, has been allowed to do so in his own name without any objection raised on that ground; see, for instance, *Shunmugam v. Moidin* [(1884) ILR 8 Mad 229], *Gopala Sami v. Sankara* [(1885) ILR 8 Mad 418], *Sundaram v. Sankara* [(1886) ILR 9 Mad 334], *Drobomoyi Gupta* [318] v. *C.T. Davis* [(1887) ILR 14 Cal 323], *Huri Dass Kundu v. J.C. Macgregor* [(1891) ILR 18 Cal 477] and *W.R. Fink v. Buldeo Dass* [(1899) ILR 26 Cal 715]. It follows, therefore, that the view, that a Court may authorize a receiver to sue in his own name, and that a receiver, who is authorized to sue, though not expressly in his own name, may do so by virtue of his appointment with full powers under section 503 of the Civil Procedure Code, is supported by principle and authority, and is consistent with existing practice. We must, consequently, hold that the second ground taken on behalf of the appellant cannot be sustained.”

12. A Division Bench of the Calcutta High Court in *Kassim Mamooji vs. K.B. Dutt & Anr.*[13], has held that the present Code empowers the Court to confer upon a Receiver all such powers as to bringing and defending suits as the owner himself has. It would suffice to quote the following:

“Originally a Receiver could not sue; this is shown by the decision of Phear, J., in *Wilkinson v. Gangadhar Sirkar* [1871 6 Beng. LR 486]. That decision was in 1871. In 1877, however, was passed the Civil Procedure Code of that year; and in it was contained the provision which now finds a place in O. 40 R. 1, of the present Code (see S. 503 of the Code 1877). The present Code empowers the Court to confer upon a Receiver all such powers as to bringing and defending suits as the owner himself has.”

13. In the aforesaid decisions, it has been held that the words of Order XL Rule 1 cannot give any narrower construction for holding that the Code does not empower the Receiver to bring a suit for recovery of possession of immovable property. In support, he has relied on all the aforesaid decisions.

14. After considering and analyzing all the decisions, in our opinion, we cannot give a narrower construction with regard to the rights/authority given to the Receiver under Order XL Rule 1(d). We have also considered the appointment order in the present case. In our opinion, the Receiver was given full powers under the provision of Order XL Rule 1(d) as rightly shown by Mr. Sorabjee, learned senior counsel and, therefore, the ruling relied upon by Mr. Ranjit Kumar, learned senior counsel for the appellant, cannot be of any help to him and, accordingly, we reject such contention of Mr. Ranjit Kumar, learned senior counsel, and hold that in the facts and circumstances of this case, the Receiver has acted in the matter for the purpose of administering the property. Even we have seen that the Supreme Court in *Harinagar Sugar Mills Co. Ltd.* (supra) has held that a Receiver was appointed pending a suit for partition and the Receiver filed a winding-up petition for realization of debt. It was contended that the Receiver had no power to institute a petition for winding-up of a company. The Supreme Court conceding that winding-up order is not a normal alternative to sue but held that it is a form of equitable execution covered by clause (d) of Rule 1(1) of Order XL of the Code and as such steps could be taken by the Receiver. It is also to be noted that the power must be conferred on the Receiver by the Court either expressly or by necessary implication, as the case may be. In the facts of this case, the Receiver acted to safeguard the interest of the trustees for preserving the estate. We also feel that the Receiver acted in the matter as ought to have been done by the trustees to preserve the estate.

15. In *Kurapati Venkata Mallayya & Anr. vs. Thondepu Ramaswami & Co. & Anr.*[14], a four-Judge Bench of this Court held that the Receiver has a right to institute a suit when the authority has been given to the Receiver to preserve the estate. Such authority is wide enough to empower the Receiver, as he thought necessary, for preserving the estate and such authority, in our opinion, includes to institute a suit. as has been held by this Court.

16. We have considered all the points which have been urged by Mr. Ranjit Kumar, learned senior counsel appearing on behalf of the appellant. We are not able to accept his contention that the Receiver without leave of the court, cannot file a suit in the factual matrix of this case. We have also taken into account that obtaining of leave of the court before filing of the suit cannot be fatal and the same can be cured in law and is merely an irregularity. We have also considered the decision of this Court in *Kurapati Venkata Mallayya & Anr.* (supra) and find that when authority has been given to

the Receiver to preserve the estate, it empowers the Receiver, i.e., for preserving the estate, he has a right to institute the suit and, accordingly, in the light of the said judgment, we express our opinion and accept the reasoning given by the High Court that the Receiver had the authority to institute a suit for preserving the estate. Therefore, we do not accept the contention of Mr. Ranjit Kumar, learned senior counsel, on such question. The second point urged by Mr. Ranjit Kumar, learned senior counsel, is that the suit is bad with regard to Section 106 of the Transfer of Property Act. We have duly considered the said question, and we find that the suit was filed after six months from the date of the notice issued under Section 106 of the Transfer of Property Act, by the Receiver and furthermore, after the amendment of Section 106(3) which reads as follows:

“(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.” We have noticed that the High Court duly considered the question of notice and correctly came to the conclusion that the Legislature wanted to plug the loopholes and to redress the mischief by making a change in the law.

Therefore, if the notice is short of the period specified in sub-section (1) but the suit or proceeding is filed after the expiry of the period mentioned in sub-section (1), the notice shall not be deemed to be invalid. Clearly, in this matter, the notice was issued on July 26, 2001 and the suit was actually filed on February 6, 2002 – after six months and, therefore, the notice cannot be declared or deemed to be invalid.

17. The third question which is tried to be urged before us, in our opinion, has no substance since the Court Receiver is holding the properties as custodia legis and has acted in the matter as reasonable prudent trustees used to do in this matter and such action on the part of the Court Receiver is nothing but for preservation of the property in question, therefore, the contention of Mr. Ranjit Kumar on that ground also, cannot have any substance. [See Harinagar Sugar Mills Co. Ltd. (supra)].

18. Although the point tried to be taken by Mr. Ranjit Kumar, learned senior counsel, is that the appellant is a sick company but we do not find that such point was ever urged before the High Court and, furthermore, it appears that admittedly the tenancy was about the residential premises. Therefore, in our opinion, such point cannot have any substance at this stage.

19. In these circumstances, we find that the reasoning given by the High Court does not warrant any interference by this Court. Accordingly, we find no merit in this appeal and the same is hereby dismissed. However, there shall be no order as to costs.

.....J.

(Chandramauli Kr. Prasad)J.

(Pinaki Chandra Ghose) New Delhi;

May 9, 2014.

- [1] (1887) ILR 14 Cal 323
- [2] (1884) ILR 10 Cal 1014
- [3] (1978) 1 SCC 12 = 1958 SCR 333
- [4] 1996 (11) SCC 376
- [5] 1990 (3) SCC 669
- [6] 1985 (2) SCC 167
- [7] 1966 (3) SCR 948
- [8] AIR 1944 All 220
- [9] AIR 1924 All. 40
- [10] AIR 1999 Bom 16
- [11] (1891) ILR 18 Cal 478
- [12] (1907) ILR 34 Cal 305
- [13] AIR 1916 Cal 51
- [14] AIR 1964 SC 818