

M/S. SHERALI KHAN MOHAMED MANEKIA

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v.

THE STATE OF MAHARASHTRA AND OTHERS

Civil Appeal Nos. 2475-2476 of 2015

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FEBRUARY 27, 2015

[M.Y. EQBAL AND KURIAN JOSEPH, JJ.]

Code of Civil Procedure, 1908 – Or. 40 – Court receiver – Continuance of – After disposal of the appeal – Permissibility – Held: Ordinarily the function of Receiver comes to an end with the final decision of the case – However, even after the final decision the Court has discretion to take further assistance of the Receiver – In the instant case, since the decree-holder had kept the decree in execution for recovery of possession, the executing court could have taken assistance of the Receiver only for affecting delivery of possession and not more than that.

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Dismissing the appeals, the Court

HELD: When a Receiver is appointed pending suit or appeal, the prime objective is to preserve the property by taking possession or otherwise and to keep an account of rent and profits that may be realized by the Receiver and to submit it before the court till the *lis* is finally decided. Ordinarily the function of receivers comes to an end with the final decision of the case. However, even after the final decision, the Court has the discretion to take further assistance of the Receiver as and when the need arises. In the instant case, the appellants have already put the decree in execution for

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- A recovery of possession. Therefore, the Executing Court while executing the decree may take assistance of the Receiver or by appointing new Receiver or Commissioner for effecting delivery of possession in accordance with law and not more than that. In the facts and circumstances of the case, there is no error in the impugned order passed by the High Court. [para 14-15] [836-G-H; 837-A-D]

- C *Halsbury Laws of England*, 3rd Edn. Vol. 32; *Law of Receiver*, 4th Edn. by James L. High – referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2475-2476 of 2015.

- D From the Judgment and Order dated 14.01.2013 of the High Court of Judicature at Bombay in Court Receiver's Report No. 25 of 2007 and Additional Report No. 383 of 2012 in Appeal from Order No. 221 of 1980 in C. A. No. 11569 of 1980.

- E Shyam Divan, Ayaz Bilawala, Manish Parikh, Mahesh Agarwal, Rishi Agrawala, E. C. Agrawala, Pratush Panjwani for the Appellant.

- F Aniruddha P. Mayee, Charuddatta Mahindrakar, A. Selvin Raja, Vinay Navare, Satyajeet Kumar, Keshav, Abha R. Sharma, Asha Gopalan Nair, Sushil Karanjkar, Ratan G. Wasekar, K. N. Rai for the Respondents.

The Judgment of the Court was delivered by

M.Y. EQBAL, J. 1. Leave granted.

- G 2. In the instant appeals by special leave the appellant assailed the order dated 14th January, 2013 passed by the learned Single Judge of the Bombay High Court in Court Receiver's Report No.25 of 2007 and Additional Report No. 383 of 2012, whereby the High Court while disposing of the Report of the Court Receiver held that after the disposal of First Appeal No. 767 of 1998 and dismissal of the special
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leave petition, the Receiver deemed to have been A
discharged.

3. It appears that the suit property was declared as
evacuee property and the same was purchased by the
appellant in an auction sale as far back as on 15.6.1964. B
In the year 1980, the appellant filed a suit being Civil Suit
No. 37 of 1980 before the District Judge, Thane Court
seeking specific performance of the sale of the property and
possession and interim relief of injunction restraining the C
defendants therein from carrying on further construction on
the suit property. The appellant further made a prayer for
appointment of Receiver.

4. The trial court rejected the prayer for appointment
of Receiver by order dated 3.5.1980 and against that, D
appellant moved the High Court in First Appeal, which was
finally heard and order dated 22.7.1980 was passed
appointing the Court Receiver. The High Court while making
appointment of the Receiver directed to take possession of
the suit property. All the persons who were in actual E
possession of any part of the suit property were continued
to remain in possession. The Receiver was directed to
collect rent and compensation as the case may be from all
the persons in actual possession after verifying from them
their present right to remain in possession. The High Court F
further directed that the Receiver should take suitable
direction from the court if he was presented with any
particular difficulty.

5. Indisputably, the suit was finally disposed of on G
4.2.1998. While disposing the suit, the trial court gave liberty
to the plaintiff-appellant to move the High Court for
directions for taking possession of the suit property from
the Court Receiver so appointed by the High Court.

A 6. As against the judgment and decree of the trial court,
First Appeal was filed being F.A. No.767 of 1988, which was
finally heard and dismissed by the High Court vide judgment
dated 22.12.2004. The special leave petition filed against
B the judgment of the High Court was also dismissed on
19.2.2007.

C 7. It further reveals from the record that the Court
Receiver so appointed submitted Report No.25/2007 before
the High Court seeking directions with regard to the
encroachment on the suit property and handing over
possession to the appellant. The Court Receiver also
submitted Additional Report No.383 of 2012. The High Court
after taking into consideration these Court Receiver's
reports, passed the impugned order holding that the receiver
D shall be deemed to have been discharged after the
dismissal of the first appeal by the High Court, followed by
dismissal of the Special Leave Petition by the Supreme
Court.

E 8. Assailing the impugned order, Mr. Shyam Divan,
learned senior counsel appearing for the appellant,
submitted that even after the disposal of the appeal,
affirming the judgment and decree of the trial court, the
Court Receiver continues in his office till he is discharged
and fulfills all the incidental obligations that are cast upon
F him by virtue of his appointment and till he renders account
to the Commissioner of Accounts.

G 9. The short question, therefore, that falls for
consideration is as to whether after the disposal of the
appeal, the Court Receiver stands discharged or whether
he continues in his office till an order of discharge is passed
by the Court?

H 10. The High Court in the impugned order observed:
"The directions cannot be issued only on assumption

SHERALI KHAN MOHAMED MANEKIA v. THE STATE 833
OF MAHARASHTRA [M.Y. EQBAL, J.]

that this Court was monitoring the matter for all these years A
irrespective of disposal of the Appeal from Order. That may
be the understanding of parties, but before me nothing has
been placed which would enable me to hold that from 1983
till this report was filed in the year 2007, this Court had B
issued any directions or had passed any orders indicative
of control over the Court Receiver. In fact the Court
Receiver's reports and paragraphs of which have been
reproduced by me hereinabove, would indicate that it is only
the correspondence and meetings of parties with the Court C
Receiver or his representative that have been referred to.
The Court Receiver seems to be now for the first time
informing the Court of such meetings and contents of letters.
He has not sought any direction for all these decades and
because the parties were engaging and involving him in D
correspondence, does not mean that the Court has in any
way continued him. If it is the understanding of parties that
the Court Receiver continues, then, that cannot be proved
only by his correspondence. The Court Receiver, High Court
of Bombay, on account of his own limitation and lack of E
understanding may be under an impression that he
continues as a Receiver of the immovable property despite
disposal of the Appeal from Order, main suit, First Appeal
and thereafter, the proceedings before the Honourable
Supreme Court. If that is the understanding which he has F
given to parties or parties have given to him and he
entertains correspondence and holds meetings, by itself and
without anything more cannot assist the Plaintiffs/Decree
Holders. The Court cannot issue any directions on such
reports and filed belatedly. In fact the Plaintiffs/Decree G
Holders understood that they have to proceed to execute
and enforce the Decree for possession in their favour by
adopting appropriate proceedings. Even then they have
continued the correspondence and persuaded the Court
Receiver to file reports before this Court, does not mean H

A that the Court is obliged to take cognizance of the same.

To my mind these are thoroughly misconceived proceedings and the remedy of the Plaintiffs/Decree Holders lies elsewhere. They cannot insist on the Court passing orders only because of continued correspondence and meetings with the Court Receiver. The Court has not authorized him nor has he sought permission of the Court authorising him in any manner to continue in possession of the suit property. If parties and equally the Court Receiver do not deem it fit to approach this Court for all these years and seek its intervention or interference, then, all the more they cannot in the exercise that is now carried out, insist on directions to be given to the Court Receiver. Equally, the Court Receiver cannot pray for any direction. If the Court Receiver continues to be in possession and wants to handover possession to the parties claiming under the Decree, then he is at liberty to move the Executing Court. If the plaintiffs/Decree Holders desire any directions being given to the Court Receiver, then it is for them to seek appropriate reliefs and directions in the pending execution proceedings. It is open to the Court Receiver or parties to do so. This Court after the disposal of the Appeal from Order has nothing before it which could be said to be pending. The First Appeal is disposed of long time back. The Reports are filed in proceedings which are no longer pending, but are disposed of finally. Neither the parties nor the Court Receiver sought any further directions from the Court.”

G 11. In paragraph 49 of the order the High Court noted the following:-

H “Therefore, the record of that case was perused by the learned judge in its entirety and he found that the order

was passed discharging the Court receiver on 26.11.1992 and at the same time continuing him for certain period to enable parties to file the Appeal from the said order. The Appeals were filed, but same were dismissed by a Division Bench and the Special Leave Petition which was filed before the Supreme Court also came to be dismissed on 27.07.1993. The issue was whether the Court Receiver became functus officio right from the date when the order was passed on 26.11.1992 discharging the Court receiver or whether the Court Receiver continued to be in charge of the property on account of pendency of his reports before the Court and for the other reasons pointed out by the counsel for the Plaintiffs and Defendant No.2 therein."

12. Normally, when a Receiver is appointed on an interlocutory application without any limit of time, it is necessary to provide for the continuance of his appointment in the final judgment. In Halsbury Laws of England, 3rd Edn., Vol. 32 (Lord Simond) at page 386 says :-

"When a receiver is appointed for a limited time, as in the case of interim orders, his office determines on the expiration of that time without any further order of the court, and if the appointment is 'until judgment or further order' it is brought to an end by the judgment in the action. The judgment may provide for the continuance of the receiver, but this is regarded as a new appointment. If a further order of the court, though silent as to the receivership, is inconsistent with a continuance of the receiver, it may operate as a discharge."

When a receiver has been appointed on an interlocutory application without any limit of time, it is not necessary to provide for the continuance of his

- A appointment in the final judgment The silence of the judgment does not operate as a discharge of the receiver or determination of his powers. So also the appointment of a receiver by the judgment in an administration action need not be continued by the order, no further consideration."
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13. In *Law of Receiver*, 4th Edn. by James L. High, the following observation appears at page 985:-

- C "the functions of a receiver usually terminate with the termination of the litigation in which he was appointed. And when the bill upon which the appointment was made is afterwards dismissed upon demurrer, the duties of the receiver cease as between the parties to the action..... And although as between the parties to the litigation his functions have terminated with the determination of the suit, he is still amenable to the court as its officer until he has complied with its directions as to the disposal the funds which he has received during the course of his receivership....But an order of discharge does not necessarily follow, in all cases, because of the determination of the suit, and the court may, upon sufficient cause shown, either discharge or continue the receiver, according to the exigencies of the case."
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14. In our view, when a Receiver is appointed pending suit or appeal, the prime objective is to preserve the property by taking possession or otherwise and to keep an account of rent and profits that may be realized by the Receiver and to submit it before the court till the lis is finally decided. Ordinarily the function of receivers who are appointed comes to an end with the final decision of the case. However, even after the final decision, the Court has the discretion to take further assistance of the Receiver as
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SHERALI KHAN MOHAMED MANEKIA v. THE STATE 837
OF MAHARASHTRA [M.Y. EQBAL, J.]

and when the need arises. In the instant case, admittedly, A
the appellants have already put the decree in execution for
recovery of possession. We are, therefore, of the opinion
that the Executing Court while executing the decree may
take assistance of the Receiver or by appointing new
Receiver or Commissioner for effecting delivery of B
possession in accordance with law and not more than that.

15. In the facts and circumstances of the case, we do
not find any error in the impugned order passed by the High
Court. The Civil Appeals are, therefore, of no merit and are C
dismissed.

Kalpana K. Tripathy

Appeals dismissed.