

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). _____ OF 2024

(@ SLP (C) No. _____ OF 2024

(@ Diary No. 51132/2023)

HITESH BHURALAL JAIN

...Appellant(s)

Vs.

RAJPAL AMARNATH YADAV & ORS.

...Respondent(s)

O R D E R

1. Delay condoned.
2. Leave granted.
3. This Civil Appeal by way of Special Leave Petition is against the order passed by the High Court in Commercial Appeal from Order No. 8 of 2023 in Notice of Motion No. 417 of 2022 in Commercial Suit No. 24 of 2022 dated 08.08.2023. The short issue for consideration before us is whether the High Court was justified in appointing a receiver with respect to the suit scheduled property or not.
4. The facts to the extent that are relevant for our consideration are that the appellant's father is said to have established an HUF inter alia comprising the suit

schedule property. Appellant's father as karta entered into a development agreement with M/s Karmvir Intelligent Housing Pvt. Ltd. for the re-development and reconstruction of the suit schedule property.

5. The appellant contends that he filed a suit for declaration that he is entitled to 1/4th share in the suit schedule property. The suit is numbered as Suit No. 606 of 2016 and is pending disposal. The appellant also states that the High Court by order dated 10.12.2015 directed maintenance of status quo between the parties. It is necessary to mention at this very stage that the learned senior counsel appearing for the respondents, Mr. Devashish Bharuka, has objected to the existence of said interim order of status quo. However, we are not concerned with this issue for the purpose of the present proceedings.

6. The appellant further contends that his brother entered into an agreement with respondent no.1 for permanent alternative accommodation with respect to Shop No. 8 in the suit property. The appellant's contention is that the said respondent is not a part of the declared tenants as indicated in the original development agreement dated 18.10.2017. The appellant also refers to the filing of a contempt petition as well as an application for depositing of rents before the court, which proceedings are also not relevant for our purpose.

7. It is in the above referred background that Respondent No. 1 filed a suit being Commercial Suit No. 24 of 2022,

inter alia seeking a declaration of permanent alternative accommodation as per the agreement dated 18.10.2017. Pending disposal of the suit, the respondent no. 1 also moved a notice of motion inter alia seeking an order of injunction against alienating, transferring or encumbering the property and also for appointment of a court receiver.

8. By order dated 16.03.2022, the City Civil Court, Borivali, partly allowed the notice of motion and restrained the defendants from creating third party interest by selling or transferring Shop No. 8 pending disposal of the suit. All other prayers were specifically rejected by the City Civil Court.

9. Questioning the order of the City Civil Court, respondent no. 1 preferred a Commercial Appeal to the High Court and by the order impugned before us the High Court passed the following order:-

“10. We have heard the Learned Counsel for the parties, perused a copy of the pleadings as also the relevant documents annexed to the Plaint, and which have been relied upon by the Parties. We find that the Trial Court, after carefully considering the same, has come to the conclusion that the Appellant has made out a strong prima facie case. Admittedly, these findings have not been challenged or questioned by the Respondents.

11. Additionally we find that there is no substance in the contention of Respondent No.4 that the Appellant is not entitled to the said shop, since the Appellant's name does not figure in the list of tenants for three reasons viz. (a) the Trial Court has considered the documents including the Development Agreement and

only thereafter came to a conclusion as to the Appellant's prima facie entitlement; (b) the order of the Trial Court has not been challenged by Respondent No.4; and (c) that Respondent No. 2 and 3 are signatories to the said Permanent Alternate Accommodation Agreement. Hence, we find that would not lie in the mouth of the Respondents to, at this stage and in these circumstances, question the entitlement of the Appellant.

12. Now coming to the prayer sought for by the Appellant, given the prima facie conclusion reached by the Trial Court with which we fully concur, a strong prima facie case has indeed been made out by the Appellant for appointment of Court Receiver. We find that the Respondents' conduct in dealing with the property in the manner which has been done would certainly prejudice the rights of the Appellant in the event the Appellant succeeds in the Suit. Therefore, we deem it appropriate, at this stage, in addition to temporary injunction granted by the Trial Court, to also appoint a Court Receiver to take formal possession of the said shop. The Court Receiver may do so on the usual terms. We also find that given the fact that this is a commercial premises from where the Appellant earns his livelihood it is fit to expedite the hearing of the present suit, and it is therefore accordingly expedited.

10. Mr. Shishir Deshpande, learned counsel appearing for the appellant has submitted that there is no justification whatsoever for appointment of a court receiver. He also relied on the order of status quo dated 10.12.2015 to contend that the order of the receiver is uncalled for. He also contended that the respondent no. 1 is not the original tenant and that he has no assigned rights under the original development agreement.

11. On the other hand, Mr. Devashish Bharuka, learned senior counsel appearing for the respondent(s) supported the order passed by the Division Bench of the High Court and submitted that it protects and balances the interests of both the parties pending disposal of the suit.

12. Having considered the matter, we are of the opinion that there are interim orders in the suit filed by the appellant as well as orders of injunction passed by the City Civil Court on 16.03.2022 in the present suit filed by respondent no. 1. The order of injunction sufficiently protects the respondent no. 1.

13. It is a well settled principle that the court would not appoint a receiver until and unless there are certain compelling reasons. Respondent No.1 has not indicated any special circumstance in the notice of motion requiring the need to appoint a receiver. In fact the City Civil Court having considered the prayer for appointment of a receiver, has specifically rejected the same by holding that an order of injunction is sufficient to protect the interests of the respondent no. 1.

14. The High Court has not given any reason for extending the relief of appointment of a court receiver, which was specifically rejected by the City Civil Court. In para 12 of the order impugned before us, the High Court merely states that, *"a strong prima facie case has indeed been made out by the Appellant for appointment of Court Receiver. We find that the respondent(s) conduct in dealing*

with the property in the manner which has been done would certainly prejudice the rights of the appellant." Except for employing the expression *prima facie* case and *conduct*, there is no indication whatsoever as to how the property would deteriorate without the intervention of the court receiver. Needless to say, that mere recording of the expressions '*prima facie* case' and '*conduct*' by themselves are not sufficient. Further, the *prima facie* case as indicated by the City Civil Court related only to the grant of injunction and not about the appointment of a receiver.

15. In view of the above, we are of the opinion that the order passed by the High Court appointing a Court receiver is not justified in the facts and circumstances of the case. We, therefore, allow the Appeal arising out of SLP (C) Diary No. 51132 of 2023 and set aside the order passed by the High Court in Commercial Appeal From Order No. 8 of 2023 in Notice of Motion No. 417 of 2022 in Commercial Suit No. 24 of 2022 dated 08.08.2023 and restore the order passed by the City Civil Court in Notice of Motion No. 417 of 2022 dated 16.03.2022.

16. We would also direct that the Commercial Suit No. 24 of 2022 shall be taken up and disposed of as expeditiously as possible. Learned counsel for appellant has requested consolidation of the present Commercial Suit No. 24 of 2022 with the other pending suits. As the proceedings from the other pending suits are not before us, we leave it to the appellant to move an appropriate application before the

court of competent jurisdiction.

17. The appeal is allowed and there shall be no order as to costs.

18. Pending application(s), if any, shall stand disposed of.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[MANOJ MISRA]

NEW DELHI;
NOVEMBER 12, 2024

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 51132/2023

[Arising out of impugned final judgment and order dated 08-08-2023 in CAFO No. 8/2023 passed by the High Court of Judicature at Bombay]

HITESH BHURALAL JAIN

Petitioner(s)

VERSUS

RAJPAL AMARNATH YADAV & ORS.

Respondent(s)

IA No. 263137/2023 - CONDONATION OF DELAY IN FILING

IA No. 263138/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 265951/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

Date : 12-11-2024 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE MANOJ MISRAFor Petitioner(s) Mr. Shishir Deshpande, AOR
Mr. Chitra Parande, Adv.
Mr. Nilakanta Nayak, Adv.
Mr. Amit Yadav, Adv.For Respondent(s) Mr. Devashish Bharuka, Sr. Adv.
Ms. Pooja Yadav, Adv.
Ms. Sarvshree, AOR

Ms. Pallavi Barua, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. Delay condoned.
2. Leave granted.
3. The Civil Appeal is allowed in terms of the Signed Order.
4. Pending application(s), if any, shall stand disposed of.

(KAPIL TANDON)
COURT MASTER (SH)(NIDHI WASON)
COURT MASTER (NSH)

(Signed Order is placed on the file)