

## ALLAHABAD HIGH COURT

Seth Loon Karan Sethiya

Vs.

Capt. I.N. John

F.A.F.O. No. 439 of 1959. , from order of Civil, J. Agra,

(R.N. Gurtu and S.N. Dwivedi, JJ.)

07.12.1959. 05.05.1960

### JUDGMENT

**Dwivedi, J.**

1. These appeals raise common questions and are accordingly being disposed of by a common judgment.

2. In a suit about (inter alia) the Mill No. 3, to which the appellant was a party, a preliminary decree was passed, and pending the preparation of the final decree a receiver was appointed. Pending appeal from the preliminary decree in this Court the receiver granted a lease to a person, from whom the appellant took the sub-lease. When the period of that lease was about to expire, the appellant claimed an extension of the lease on account of the labour strikes in the Mill. The lease was extended up to March 31, 1959 and the court directed him to vacate the Mill. He prayed for time to wind up his business, and the court gave him fifteen days' time. The court also fixed April 27, 1959 for auctioning a fresh lease. On that date the appellant stated to the court that 'in the event the lease of the Mill No. 3 is not granted to him, he shall deliver vacant possession of Mill No. 3 to the prospective lessee within 15 days'. Before auctioning the lease the court announced its terms, two of them being the two years' period of the lease and the advance deposit of the lease-money for the entire term by the highest bidder. The appellant's highest bid of Rs. 2800/- was accepted by the court. The appellant's prayer that he should be permitted to deposit one year's lease money within fifteen days and the balance amount of the second year's lease money in the succeeding fortnight was granted by the court. The court then passed the following order

".... The formal lease deed shall be executed after the two years' lease money is deposited in advance by Seth Loonkaran Sethiya, I want to make it clear that in case within 15 days from this date half of two years' advance lease money or the remaining amount in the next

15 days is not deposited by Seth Loonkaran Sethiya, the lease shall be granted to the next highest bidder. The entire amount shall be deposited in court."

3. At his request time was extended up to May 12, 1959, but there was again a default, and on May 23, 1959 the court ordered the receiver to take charge of the Mill. On May 26, 1959 the appellant requested that the receiver should take possession after three days, but his request was not granted. The first appeal is directed against that order.

4. The appellant continued to hold possession of the Mill for some months by obtaining a conditional stay order in appeal. On his failure to perform the condition the stay order stood discharged. The lower court, by its order dated December 7, 1959, then directed the receiver to obtain possession of the Mill from the appellant, and the second appeal is directed against this order.

5. It is contended that a lease having been settled with him the appellant could be evicted only in a suit and not in a summary proceeding in the case. We are unable to accept the contention.

6. When a lease has been executed, the lessee may ordinarily be evicted from the demised property only by a regular suit. The receiver is as much subject to the law of the land as any one else. But in this case a lease (which was necessary under the law for creating lessee rights, the lease being for a term of two years) was not executed and registered in favor of the appellant, because he did not pay up in advance two years' lease money and failed to discharge his obligation to the court, by whom the appellant's highest bid was accepted. By giving an undertaking to the court that he would vacate the Mill in favour of the prospective lessee and by bidding in the court-auction the appellant in our view, submitted himself to the jurisdiction of the court. The appellant could therefore be ejected by summary process, instead of by a suit.

7. We shall now examine the cases cited at the bar. Learned Counsel for the respondents relied upon *Chandra Sekhar Prosad v. Hari Harendra Sahi*<sup>1</sup>; *Ramayya Servai v. Saina Ayyar*<sup>2</sup>, *T.K. Sivarajan v. Official Receiver, Quilon District Court*<sup>3</sup>, and *Bhagban Sahu v. Basarathi Sahu*<sup>4</sup>,

8. In *Chandra Sekhar Prosad Singh's* case, 10 Ind Cas 898 (Cal) the judgment debtor, who refused to return the amount taken by him from the receiver, was directed by summary process by the court to pay back the money. It was said that the receiver was an officer of the court and that under the court's order it was his duty to collect the income of the property in litigation and to bring the money into court to the credit of the suit to be applied on the court's directions. The learned Judges then observed.

"It is the plain duty of the judgment-debtor not to intercept any portion of this sum. If therefore, as a matter of fact, any part of the income has found its way into the hands of the judgment-debtor and is improperly retained by him, the Court has ample jurisdiction

to compel him to refund the same to the Receiver. As instances of cases in which a Court has interfered, by summary process, to require restoration of the property (or recovery of value thereof) abstracted from the possession of the Receiver and wrongfully retained, reference may be made to *Erie Rail Road Co. v. Heath*<sup>5</sup>, *Scliuldz v. Lupt*<sup>6</sup>, and *Parkar v. Pocock*<sup>7</sup>, (If the contrary view were adopted, the discharge of the duties of the Receiver under the

direction of the Court would be impracticable."

<sup>1</sup>10 Ind Cas 898 (Cal)    <sup>3</sup> AIR 1953 Tran Coch 205    <sup>5</sup>8 Fed. Cas. 762; In re Day, 34 Wit 638

<sup>2</sup> AIR 1947 Mad 92    <sup>4</sup> AIR 1954 Oris 178    <sup>6</sup>77 N.Y. Sup. 493    <sup>7</sup>1874) 30 LT (N.S.) 458

9. In Servai's case, AIR 1947 Madras 92 the Court appointed a receiver during the pendency of the suit but permitted some of the defendants to hold possession of the suit properties oil condition of their paying certain sums to the receiver. They did not however pay the sums even though directed by the court, which thereupon struck out their defense. While holding that the order striking out defense was illegal the learned Judges said :

"Ordinarily, the receiver must be left to take his own steps to recover possession from the persons in possession. If the defendant did not pay the amount in spite of repeated orders it may be that he rendered himself liable to be proceeded against for contempt of court. The proper procedure would have been to direct the receiver to take possession forthwith and to take over proceedings for recovery of the amount due from the defendant."

10. In Sivarajan's case, AIR 1953 Tranvancore Cochin 205 the receiver granted one year's lease. On the expiry of the term of the lease the lessee refused to hand back possession, and the court directed his dispossession by summary process. On appeal the order of the court was sustained by the High Court for two reasons. Firstly, it was said that the lessee could be evicted by summary process In view of his undertaking that he would hand back possession on the expiry of the lease-period. Secondly, it was said that the lessee has submitted to the jurisdiction of. the court by filing an application for six months' time to vacate the property.

11. In Bhagban Sahu's case, AIR 1954 Orissa 178 a property was sold by the receiver, but the purchaser did not pay the entire purchase price. The court directed by summary proceeding the, recovery of the purchase price. On appeal the order was maintained by the High Court.

12. It may be observed that the facts of all these cases are not similar to the facts of the case before us; nevertheless certain principles emerge from them which support our conclusion.

13. The cases of *Casamajor v. Strode*<sup>8</sup>, *Walton v. Johnson*<sup>9</sup>, also lend some support to our conclusion. In the first case it was held that a purchaser under a decree, by the mere act of purchase, submitted himself to the jurisdiction of the court as to all matters connected with that character. The Court granted an injunction to prevent the purchaser, who had not paid the purchase-price, from committing waste. In the second case a tenant, inducted by the receiver,

was enjoined upon by motion, after his tenancy was determined by notice, not to remove hay and straw. It was held that the tenant having entered into an agreement with the court itself by means of the receiver, it was not necessary to file a bill against him.

14. Learned counsel for the appellant placed reliance on *Krista Chandra Ghose v. Krista Sakha Chose*<sup>10</sup>, and *Manak Chand v. Panna Lal*<sup>11</sup>, In the first case a motion to set aside a lease executed by the receiver was dismissed by Woodroffe, J. who held that the property having been conveyed to the lessee, a suit was the proper remedy. In the second case also

<sup>8</sup>(1823) 57 ER 152    <sup>10</sup> ILR 36 Cal 52

<sup>9</sup>(1848) 60 ER 654    <sup>11</sup> AIR 1951 Raj 152

the order of the trial judge which directed,

on the application of the receiver, the lessee, who had consummated his rights, to pay rent at a particular rate to the receiver and deposit arrears of rent in court within a week, was set aside by the High Court, and it was held that a suit was the proper remedy. In the case at hand the appellant has not carried out his part of the bargain, and no lease has yet been executed, So that lease rights have not accrued in favor of the appellant. The two cases are accordingly distinguishable on facts.

15. We are of opinion that in the special circumstances of this case the lower court had to power to pass the impugned orders.

16. The next argument for the appellant that the court should relieve him against forfeiture of the lease in view of its onerous terms is also untenable. Firstly, the terms have not been shown to be onerous and the appellant had voluntarily accepted those terms, without any imposition, undue influence or oppression. Secondly, the lease, not yet in existence, is not really being forfeited. He is being dispossessed because he has Persistently defaulted in paying in advance the two years' lease-money in spite of several indulgences having been given to him by the court.

17. These appeals are accordingly dismissed with costs. The stay orders made in these appeals are discharged. The amounts deposited by the appellant will be withdrawn by the receiver and will be adjusted in acceptance with the terms or the orders of the trial Court and this Court in stay applications. The receiver will be at liberty to obtain directions and clarifications from this Court if necessary with respect to all the amounts deposited.

Appeals dismissed.