

# RAJASTHAN HIGH COURT

Manakchand

Vs.

Pannalal

Civil Revn. No. 230 of 1950

(Nawalkishore, J.)

13.04.1951

## ORDER

### **Nawalkishore, J.**

1. The only question calling for determination in this revn. is whether the learned Dist., J., was competent in law to direct Manakchand petitioner to deposit the sum of Rs. 1482/8/- on account of rent on the appln. filed by the receiver to that effect on 10-9-1949.

2. This matter has arisen out of a suit for dissolution of partnership and rendition of accounts between Manakchand on the one hand and Indermal and Manmohan on the other. During the course of the suit 19-12-1947, Ramratan was appointed as a receiver and in that capacity he took charge of the property of the firm including the shop which was subsequently taken on rent from him by Manakchand on Rs. 125/- per mensem. Rent was not paid and accordingly, the receiver applied to the Ct. of the learned Dist., J., that orders regarding the recovery of the total amount due on account of rent may be passed against Manak Chand. A notice was issued to Manakchand and he raised a number of objections, the most important being that he was in possession of only one-third of the shop. It appears that after the receiver had taken possession he sold the movable property inside his shop consisting of almirahs etc. in open auction and these were purchased by Manakchand on 11-10-1948. Manakchand accordingly also alleged that although he had purchased all these articles, possession had not been given to him. Thereafter, it appears that Manakchand applied to the learned Dist., J., several times requesting him to pass orders. Ultimately the receiver stated that Manakchand's allegation that he was in possession of only one-third portion of the

shop was wrong and that as a matter of fact, he had taken possession of the entire shop except one-fifteenth portion which was still with him. He also admitted that possession of the almirahs etc. had not been given as the Bahies of the firm were locked up there. The learned Dist., J., appointed his reader as a comr. and directed him to go to the spot and report how far Manakchand's allegations to the effect that he was in possession of only one-third portion of the shop was correct. The reader's report which is on the record is in favour of Manakchand. In spite of this fact, without any material from the side of the receiver, beyond an appln. by him, the learned Dist. J. passed an order on 28-6-1950 directing Manakchand to pay rent at the rate of Rs. 115/- per mensem and deposit Rs. 1482/8/- within a week, failing which his movable property was ordered to be attached and sold.

3. Manakchand has filed this revn. against the aforesaid order of the Dist. J. and it is contended on his behalf that apart from the fact that this order is not based on any material on the record, it was altogether without jurisdiction as the learned Dist. J. was not legally competent to act in a summary manner in a matter like this and that the receiver should instead have been directed to file a suit against Manakchand for the recovery of the rent alleged to be due from him. Mr. Pannalal, who has since been appointed as the receiver in place of Ramratan, displayed his helplessness in the matter and has not been able to assist this Ct. one way or the other. The point involved is simple and it is obvious that the receiver is as much subject to the law of the land and the procedure as any other litigant and accordingly, it is not open to him to move the Ct. in this manner and obtain orders of this character. There seems to be no doubt whatsoever that the order passed by the learned Dist. J. suffers from all kinds of irregularities and was altogether without jurisdiction and, therefore, cannot be allowed to stand. I, accordingly, accept this revn. and set aside the order dated 28-6-1950 passed by him. The costs incurred by the petitioner in this Ct. shall be paid by the receiver.

4. In this petn. Manakchand has also impleaded Indermal and Manmohan, two other patnrs. of the firm for the dissolution of which the suit has been instituted. They are obviously not interested in this dispute between him and the receiver and, accordingly, are entitled to costs from Manakchand. The counsel for Manmohan, however, states that he has incurred no costs. Accordingly, Mr. Manakmal, counsel for Indermal, is entitled to costs and these I assess at Rs. 25/-.

Revision allowed.