

(1994) 09 CAL CK 0026

In the Calcutta High Court

Case No : Appeal No. Nil of 1994, Suit No. 163 of 1991

Amal Kumar Ghatak

APPELLANT

Vs

M/s. S.K. Enterprises Pvt. Ltd. and others

RESPONDENT

Date of Decision : 21-09-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 49 Rule 3, Order 6 Rule 17, Order 7 Rule 10, Order 7 Rule 11
Income Tax Act, 1961 — Section 230A
Specific Relief Act, 1963 — Section 10
Transfer of Property Act, 1882 — Section 54

Citation : AIR 1995 Cal 91 : (1994) 2 CALLT 455

Hon'ble Judges : Umesh Chandra Banerjee, J;R. Bhattacharyya, J

Bench : Division Bench

Advocate : S.B. Mukherjee, Mrs. U.B. Mukherjee, Tarun Aich and Ram Banerjee, for the Appellant; C.R. Dutta, P.C. Sen, Ahin Chowdhury, Prabir Roychowdhury, Jyotirmoy Bhattacharjee and Mr. Debasish, for the Respondent

Judgement

R. Bhattacharyya, J.—The uncontroverted facts and the proceedings connected therewith have spiralled up to this Court for decision about the fate of the Mission Hill Tea Estate admittedly lying situate within the District of Darjeeling, West Bengal.

2. The sensitive facts of the case are that the defendant No. 1, Shri Amal Kumar Ghatak, was plunged into debt and incurred huge loan from M/s. United Bank of India, the defendant No. 2 and to wipe out the loan he intended to sell the Tea Estate. In consequence, he entered into an agreement for sale of the Tea Estate on 9-2-1986, supplemented by the execution of irrevocable power of attorney on 18-2-1986 and the general power of attorney on 17th of April, 1986, respectively, the chief aim of which was to assume control and management of the Tea Estate. Following the agreement, the plaintiffs paid Rs. 5,00,000.00 in earnest.

3. The agreement for sale contained various clauses for transfer, management

and maintenance of the Tea Estate and the sale would be completed within one year from date. Some of the important clauses of the said agreement are set forth below as they would be necessary for the purpose of appreciation and decision of the case:

"(a) The total consideration of the property (being the Tea Estate) have been Worked out at Rs. 55,00,000/- (tentatively) i.e., the decretal amount that may be passed by this Hon''ble Court in the suit filed by the pro forma defendant plus Rs. 6,00,000/- tentatively being statutory and other liabilities of the first defendant as described in the schedule to the agreement plus the total amount that may have to be paid as bonus to the workers of the said Tea Estate for the year 1985 plus a sum of Rs. 6,00,000/- to be paid by the plaintiff No. 1 to the first defendant.

(b) The first defendant would make over possession of the Tea Estate to the plaintiff No. 1 on February 16, 1986.

(c) On and from the date of delivery of possession of the Tea Estate the defendant No. 1 would not interfere in the management and control of the said Tea Estate and the plaintiff No. 1 would be absolutely free to run the Tea Estate and to incur expenses as may be found necessary.

(d) The plaintiff No. 1 would execute a conveyance within one year from the date of the agreement provided however, that the time of completion of the conveyance would stand extended until the permission of the Government to effect transfer would be obtained by the defendant No. 1 at his costs;

(e) The plaintiff No. 1 shall appropriate all profit and loss arising out of the said Tea Estate on and from 1st January, 1986.

(f) The defendant No. 1 would execute and register an irrevocable General Power of Attorney in favour of two Directors of the plaintiff No. 1 so that the latter's authority to manage the said Tea Estate may not be called in question. The said General Power of Attorney would not be revoked by the defendant No. 1 until execution and registration of the conveyance by him in favour of the applicant company.

(g) The defendant No. 1 would execute and register the conveyance in favour of the plaintiff No. 1 after obtaining necessary permission from the Additional District Magistrate, Darjeeling and other requisite permission and certificates including the income tax Clearance Certificate Regulation under S. 230A of the Income Tax Act, 1961 and permission from the Additional District Magistrate, Darjeeling.

(h) Notwithstanding any breaches of the covenants or conditions stated in the agreement, the agreement would not be terminated or determined for any reason whatsoever until the consideration money be refunded by the defendant No. 1 to the plaintiff No. 1 to the extent that the same would have been paid to him."

4. In the meantime, the suit instituted by the United Bank of India on-10-1-86 being Suit No. 29 of 1986 ended in a decree for a sum of Rs. 49,50,000/- plus a further sum of Rs. 50,000/- with interest at the rate 6% per annum and assessed cost. The decree was modified and the amount in the decree was increased to Rs. 53,85,719.50 paise. The plaintiffs in view of the agreement for sale dated 9-2-86 paid a considerable amount to the bank but the liability is still remained outstanding. In due course, the factum of agreement for sale was duly notified to the prescribed authorities and the plaintiffs went into possession of the Tea Estate.

5. In the Hypothecation Suit (29 of 1986) instituted by Bank, the Receiver was appointed on consent of the parties by an order of the Court dated 18th of March, 1986, who was in symbolic possession of the Tea Estate, although there was some embargo for the Receiver not to dispose of the property to the exclusion of leave of the Court.

6. There was a duel of correspondence between the plaintiffs on one hand and the defendant No. 1 on the other demanding performance of his obligation under the agreement. It is needless to repeat, that steps were taken for settlement of all outstanding dues that accrued against the Mission Hill Tea Estate of which the defendant No. 1 was aware of. The defendant No. 1 had ceased to be in active control of Tea Estate on and from 14th of February, 1986. The property was under the possession of the Receiver on the strength of an order of the Court and the said Tea Estate, therefore, was in custodia legis, i.e., in the custody of the Court.

7. On 22-2-91, the plaintiffs to their utter dismay learnt from the letters that passed between them that the Power of Attorney dated 17th of April, 1986, was revoked which is not revocable in view of the irrevocable Power of Attorney. The cordial relation between the plaintiffs and the defendant No.1 commenced eroding and ultimately they were booked with an information by the Superintending Manager that possession of the Tea Estate was taken delivery of, having recourse to force by the defendant No. 1 on 26-2-1991 contrary to the terms and conditions of the Agreement for Sale concerning the tea garden. Various acts were perpetrated by the defendant No. 1, for which, the plaintiffs were constrained to file suit on 11-3-1991 to enforce the agreement for sale dated 9th of Feb. 1986, claiming, inter alia, the following reliefs:

a) "Specific performance of the agreement dated 9th Feb. 1986, being Annexure "A" hereof against the defendant No. 1 by executing and registering the necessary deed of conveyance in respect of the said Mission Hill Tea -- Estate after getting necessary permission from the appropriate authorities required for such execution and registration:

b) In case the defendant No. 1 fails to execute and register the deed of conveyance then the Registrar be directed to execute and register such deed of conveyance in the name of and on account of the defendant No. 1 after taking

necessary permission from the appropriate authorities for such execution and registration;

c) A decree for permanent injunction against the defendant No. 1 from revoking and/or cancelling the power of attorney dated 18th Feb. 1986 or 17th April, 1986 being Annexure "C" and "C-1" hereof or in anyway interfering with the management of the plaintiffs;

d) A decree for mandatory injunction against the defendant No. 1 not to revoke or cancel the said powers of attorney as mentioned in prayer "C" hereof;

e) Receiver;

f) Injunction."

8. An interlocutory application was moved for both viz. for taking the plaint off the file and the appointment of Receiver for administration of business of the Tea Estate lying within the District of Darjeeling, West Bengal. But the Id. trial Judge by his dictated order dated 8th of October, 1993, passed an order for management of the Tea Estate.

9. The defendant No. 1 filed an application for taking the plaint off the file dated 24th of August, 1992, principally, in short, on twin grounds -- (a) the suit is for land, and it (b) involved the question of possession of the tea garden, for which, court is not possessed of any jurisdiction and divested of its jurisdiction to entertain, try or determine the suit or pass any interim order therein. It is manifest from the application of 24th of August, 1992, that the plea of jurisdiction was asserted in the written statement put in by the defendant No. 1. The violation of the agreement by the defendant No. 1 is a myth who, according to his assertions in the application, has laid the blame at the door of the plaintiffs for violating the clauses of the agreement disentitled them to any relief.

10. In the premise, the question arose, in the background of the facts disclosed, as to whether the plaint should be taken off the file.

11. Mr. Mukherjee, at the very thresh hold of his argument to canvass the cause has submitted that the suit is pre-eminently a suit for land within the realm of Clause 12 of the letters patent divesting the Court of its jurisdiction to adjudicate upon the dispute. It is admitted on all hands that the Mission Hill Tea Estate is situated within the District of Darjeeling, West Bengal, and its being a suit for land, this Court cannot stretch its hand to assume jurisdiction. Mr. Mukherjee is very much vocal that the agreement for sale dated 9th of February, 1986, predominantly proves that it is a suit for land. The anatomy of the different clauses of the agreement for sale though speaks of rights and obligation of the parties, yet the same is inseparably and inextricably connected with the Mission Hill Tea Estate which comes within the pale of Clause 12 of the letters patent. It is manifest from the prayers that it is a suit for enforcement of agreement dated 9th of Feb. 1986, and whatever right, title and interest the defendant No. 1 have or had would devolve upon the plaintiffs subject to execution of sale deed

followed by registration within the one year, if, this prayer is analysed, in the perspective of the factual exposure of the case, there could be no shred of obscurity that the plaintiffs have given publicity in their plaint and also in other application about the existence of the agreement acknowledging the performance of obligation on their part.

12. Mr. Mukherjee has challenged the propriety of the jurisdiction on the ground that the instant suit is very much concerned with the right, title, interest and possession of the Mission Hill Tea Estate lying beyond the jurisdiction of this Court and, as such, this Court is precluded from exercising any jurisdiction to adjudicate upon the dispute. Possession is a material factor, as submitted by Mr. Mukherjee which involves the Tea Estate lying for beyond the jurisdiction of this Court. Mr. Mukherjee has placed strong reliance on *Moolji Jaitha & Co. v. Khandesh Spinning*, AIR 1950 FC 83, *Maharaja Probirendra Mohun Tagore Vs. State of Bihar and Another*, , *Hindusthan Gas and Industries Ltd. and Another Vs. Adhish Chandra Sinha*, , *United Commercial Bank Vs. Sanatan Bastushilpa Pratisthan Pvt. Ltd.*, , *Tridandeeswami Bhakti Kusum Sraman Maharaj and Others Vs. Mayapore Sree Chaitanya Math and Others*, , *Sm. Dhiraj Bala Karia Vs. Jethia Estate Pvt. Ltd.*, , *Debabrata Tarafder Vs. Biraj Mohan Bardhan*, ; *Bengal Glass and Silicate Works Vs. Lalit Mohan Bijlani and Another*, ; *Brijmohanlal Rathi Vs. Smt. Gita Devi Rathi and others*, .

13. Apart from the above, he has relied on two unreported judgments dated March 30, 1987, in Suit No. 354 of 1984, *D.L. Miller & Company v. Anita Chowdhury* and the Judgment in Suit No. 621 of 1987 dated 28th of June, 1994, *A.S. Overseas Pvt. Ltd. v. Shri Iswar Chintaharan Shiv Thakur* and copies whereof are on record.

14. In analysing the decisions of the aforementioned cases, he is very much emphatic to bolt the claim of the plaintiffs that the duty is fastened on the court to look at the primary object of this suit which has to be decided by applying the acid test that the relief sought for by a party to be the governing factor which can be granted to the party where the adjudication of title relating to any land or building or other immovable property or possession, control or management thereof has not been solicited directly or in a circuitous way. It stems out, as submitted by Mr. Mukherjee, that it is a suit for possession of Mission Hill Tea Estate including its management and control which is the sheet anchor of Agreement for Sale. The agreement for sale is a label where acquisition of title, management and possession of the Tea Estate does not admit exclusion.

15. In fact, the plaintiffs will step into the shoe of the defendant No. 1 relating to all rights and incidence of the Mission Hill Tea Estate.

16. A legitimate view may be taken by referring to Section 54 of the Transfer of Property Act where agreement for sale does not create any interest in land under the Indian Law which creates so far the English Law is concerned. But where, as here, interest in the Tea Estate remains with the defendant No. 1 until a

document of title is executed and registered.

17. The power of attorney which is an off spring of the agreement for sale overtly and covertly deals with the question of possession and management of the tea garden bringing the case within the fold of suit for land which remains outside the ordinary civil jurisdiction of the Hon"ble Court, Calcutta. As such, the exercise of jurisdiction by this Court is impermissible. If the Clause 12 of the Letters Patent is operative in the filed, as in the instant case, Order 7, Rule 11 of the CPC is not, in our view, attracted. Even, if we look at Clause 12 of the Letters Patent, the words "dismissal" and "rejection" are meticulously silent. Thus, when the suit is not entertainable in view of Clause 12 Letters Patent, the question of "dismissal" or "rejection" of plaint is an issue beside the subject broached for decision.

18. Mr. Sen to refute the claim of Mr. Mukherjee, has vigorously contended that the application in fact has been filed for the rejection of the plaint. A relief has been intended under the pretence that it is a suit for land, under the garb of Order 7, Rule 11(a)(b)(c) and (d). To crown success, Mr. Sen is eloquent that the claim of the defendant No. 1 does not answer the provisions of Order 7, Rule 11 of the C.P.C. The suit instituted has disclosed a cause of action, relief has been properly valued and the suit is not barred. Therefore, there could be no discretion left to the Court to uphold the claim of the defendant No. 1, in view of the relief sought for, as agitated in the plaint, founded on agreement for the sale, the object of which is to enforce the agreement simpliciter. It does not afford any jurisdiction to the Court for trial of controversies in the suit. His other argument is that the defendant was not in possession, for which, the plaintiffs refrained from praying a decree for recovery of possession. But, this argument does not hold ground as in a suit for specific performance of a contract the prayer for recovery of possession is inconsequential, for which, we do not burden our judgment with decisions.

19. Further it is noticeable, as alleged by the plaintiffs that possession of the suit property was taken delivery of by the Receiver on 18-8-1993, who is in symbolic possession of the same. It has also been agitated by the plaintiffs throughout that the defendant No. 1 took possession of the Tea Estate and, thereafter, the instant suit was filed. It has a serious impact on the case. Independent of the agreement for sale or in complete prima facie repudiation of agreement for sale, recovery of possession becomes imminent. There could be no escape from the position that the Receiver was in symbolic possession and anterior to such symbolic possession the defendant No. 1 rightly or ,wrongly was in possession which became the custodia legis for an order of the Court which appointed a Receiver. There is a fundamental distinction and difference between the symbolic possession and actual physical possession. Symbolic possession does not bring the case of a party in possession to an end. Actual possession survives in a case when the possession is in the immediate occupancy and control of the party. Actual possession means combination of animus and corpus.

20. Mr. Sen is meticulously in his submission to blow off the effect of argument of Mr. Mukherjee that the prayer for possession is extraneous by the reason of seeking relief for specific performance of contract. The possession all along remained with the defendant No. 1 which was handed over to the plaintiffs on 14-2-1986 that is almost with the execution of the Power of Attorneys both general and irrevocable flowing from the Agreement of Sale. The possession thereafter the plaintiffs having lost and they rushed to the court for enforcement of agreement in suit No. 163/ 91.

21. In the premises, if the property remains outside the original civil jurisdiction of the High Court and the plaintiffs being in possession, as submitted, clause 12 of the Letters Patent, cannot whittle away the claim for specific performance where the possession of land is very much inherited. Clause 12 of the Letters Patent does not create any insurmountable barrier in view of the factual score of the case to adjudicate upon the controversy. But, it has been foreshadowed by the petition dated 24-8-1991, in particular, from the prayer column (b) where the defendant No. 1 craved for, "the plaint relating to the suit be rejected and taken off the file" forestalls the argument of Mr. Sen that the relief sought for in letter has been made under the canopy of Order 7, Rule 11(a)(b)(c) of the Civil Procedure Code.

22. Over and above, it is found on the own showing of the plaintiffs that they were dispossessed from the garden at least before Feb. 27, 1991 as adumbrated in paragraph 31 of the plaint of Suit No. 163 of 1991. Such possession is mala fide or bona fide is a matter for investigation and the restoration of alleged original state of affairs, in absence of prayer for recovery of possession, projects a different scenario. It should not be lost sight of the fact that the Receiver was appointed in the hypothecation suit being suit No. 29 of 1986 and by an order of Hon'ble Mr. Justice Ajit Kumar Sengupta a Receiver was directed to take possession of the Tea Estate. Even the order of His Lordship of the Hon'ble Mr. Justice Ajit Sen Gupta dated 7th of Feb. 1992, holding that the plaintiffs have been dispossessed was not upheld by the apex court but the same was set aside.

23. The appellant Amal Kumar since suffered an order of appointment of Receiver dated 7-2-1992, preferred an appeal against that order which, however, stood dismissed on 15-9-1992.

24. Thereafter, Amal Kumar approached the Supreme Court for reversal of the order dated 15-9-1992, in connection with Appeal No. 107/92 arising out of Suit No. 29 of 1986 where the Supreme Court passed a direction dated 19-7-1993 directing the Receiver to continue and to discharge his functions in the light of the directions of the High Court and in the event of paucity of funds with the Receiver for performance of any function, the Receiver would require the petitioner in the event of respondent No. 3 failing to provide the same, to provide those funds. An account of such payments, if any, made by the petitioner shall be kept by the Receiver to enable further directions being made by the Court in this behalf.

25. It is apposite to mention, that the plaintiffs of Suit No. 163 of 1991 committed successive defaults in making payment to the Bank, though directed. The Supreme Court, thereafter, on 29-9-1993, passed a direction in Civil Appeal No. 5108 of 1993, arising out of SLP (Civil) No. 3081 of 1993 setting aside the orders dated 1-3-1991 and 7-2-1992 made by the learned single Judge of this Court and the order of the Division Bench of this Court dated 15-9-1992.

26. The apex court also afforded liberty to the parties to the pending suit for specific performance to apply in that suit for any relief for an interlocutory nature as they may be advised to seek therein and if that is done, the High Court will dispose of the application as expeditiously as possible coupled with an order to maintain status quo.

27. The possession as spoken to by the plaintiffs could be achieved in respect of the property that lies beyond the territorial jurisdiction of the Court. It is not a suit for enforcement of the agreement but something more which included, amongst others, the immediate management, title to the property and the possession. A mere right under the document was not afforded but possession and immediate management were very much involved. Even, the plaintiffs have sedulously cultivated in prayer "C" of the plaint of Suit No. 163 of 1991 "or in any way interfering with the management of the plaintiff. Does not the prayer indicate that it involves the title and possession?

28. The transaction of business from the registered office of the company at Calcutta has been taken to be a ground for creating jurisdiction is a misnomer. It cannot afford any jurisdiction to this Court as the specific performance of contract has been sought for as appears from the Agreement for Sale. It runs as follows:

"All that piece of parcel of land measuring an areas of 952.50 acres situated within P.S. Garubathan Distirct Darjeeling, Tauzi No. 1083 Mouza Mission Hill Tea Garden allowed 10 be retained vide G.O. No. 5348-L Ref. dated 24-4-1968 covered by 30 years lease granted by the Governor of West Bengal in favour of Shri A.K. Ghatak under-registered instrument No. 2694 of 1977 date 17-6-1977 including all structures, factory shed, plant and machinery tools and implements (Vide Annexure I) structures bungalows house staff quarters etc."

29. In the background of the above, the registered office at Calcutta is neither a sword to cut down the claim of the defendant No. 1 nor it can be used as a shield or armour to out manoeuvre the claim of the defendant No. 1. The plaintiffs become the prisoner of their own argument when considered with the recitals in the plaint of Suit No. 163 of 1991 and the power of attornery is executed in quick succession. They outweigh the argument of Mr. Sen. Much water has passed underneath the bridge. But Agreement for Sale, Irrevocable Power of Attorney and general power of Attorney are meticulously silent about the registered office at Calcutta. It is well settled that in interpreting a deed in case of dispute about the subject matter of transfer, it is the schedule of the property which will prevail

over all other considerations in respect of subject matter of transfer. It is crystal clear that Agreement was, "Sale of aforesaid Mission Hill Tea Estate of the said Company on grounds stated in the said agreement for sale". Thus, the question of partial cause of action arose here is a far cry in wilderness.

30. Mr. Sen has studiously relied on Bhajja Vs. Mohammad Said Khan to equate the claim of the defendant No. 1 with the dismissal of the suit. It has been indicated that dismissal of suit and rejection of plaint are not substitute for each other. Order 7, Rule 11 is an appealable order while dismissal of suit ended in a decree. The present suit, we have already indicated, was challenged on the ground of devoid of jurisdiction to adjudicate upon the claim. Order 7, Rule 11 embraces the relief for rejection of the plaint. But, by operation of Clause 12 of the letters patent the suit stands as a bar if it relates to a suit for land or building, as in the instant case.

31. Mr. Sen has next taken inspiration from Ahmed Hossein Vs. Mt. Chembelli and Others, to contend that court has got immense power to amend the plaints when it discloses no cause of action. If a legalistic view is taken of Order 6, Rule 17 and Order 7, Rule 11, where the jurisdiction has been challenged about the entertainability of the suit as its being a suit for land, the operation of Order 7, Rule 11 is not attracted. Mr. Sen has placed strong reliance on In re: In Re: Chunduru Venkata Subrahmaniyam, to contend that rejection of plaint can be equated with the dismissal of the suit. But the Full Bench of Andhra Pradesh did not approve of the same. Thus, the claim of the defendant No. 1 could be distinguished as dismissal of the suit and rejection of plaint stand on different pedestal.

32. Mr. Sen has next relied on Debendra Nath Chowdhury Vs. Southern Bank Ltd., to contend that the decree for specific performance will result in ultimate possession being given or obtained does not convert it into a suit for land, for in that case the suit for land would not have been grouped as a class by itself apart from the class governed by test of the cause of action or the test of the place of residence or place of business of the defendant in Clause 12 of the letters patent. This aspect of the matter, was considered by Their Lordships when the suit was not alone for specific performance of contract to execute and register the document of title but coupled with a prayer for alternative relief. Their Lordships did not consider the matter in isolation but in conjunction with each other. We cannot help reiterating the prayer of the plaintiff in Suit. No. 163 of 1991 where it has been studiously canvassed, the plaintiff claim:

"A decree for permanent injunction against the defendant No. 1 from leaving and/or cancelling the power of Attorney dated 12th of February, 1986, or 17th of April, 1986, being Annexure "C" and "C1" hereof or in any way interfering with the management of the plaintiffs".

33. Thus, it has been signally proved that the management and the possession of the Mission Hill Tea Estate have been sought for by the plaintiffs. It does not

become a suit for specific performance simpliciter. In our view, the case of Debendra Nath Chowdhury Vs. Southern Bank Ltd., instead of helping the plaintiffs helps the defendant No. 1. In view of the change in circumstances, some of which we have listed above, and we are of the opinion that Chapter 12 letters patent is very much alive to the claim of the defendant No. 1. We have scrutinised the plaint with abundant caution where from the primary object of the suit appears to be glaring about which there could be no bone of contention.

34. In view of the contents of the plaint and peculiar feature of the case, we are of the view, that relief cannot be accorded to the plaintiffs without adjudicating the question of title to the Mission Hill Tea Estate which included within its fold the possession, control and management. The relief as sought for by the plaintiffs in the suit, in our view, brings the question to be decided by the Court dwelling on title, possession, control and management of the Mission Hill Tea Estate. Therefore, it becomes a suit for land within the meaning of Clause 12 of the Letters Patent and as such, this Court does not have the jurisdiction to entertain, try and determine the instant suit.

35. The application accordingly succeeds. The Registrar, Original Side, High Court, Calcutta is directed to return the plaint to the Advocate-on-Record of the plaintiffs for being presented before the appropriate Court. We are conscious of the fact that Order VII, Rule 10 in terms does not apply in the exercise of ordinary or extra-ordinary civil jurisdiction (vide Order XLIX, Rule 3), but this order of return of plaint is being passed to subserve the ends of justice as otherwise the plaintiffs would be unnecessarily saddled with further expenses on account of court fees.

36. In the view we have taken as above, question maintaining the application for appointment of a Receiver in this Court does not and cannot arise. The application, therefore, fails and is dismissed. All interim orders are vacated. No order as to costs.

37. Be it recorded here that this order of dismissal would not in any way prejudice the rights of the plaintiffs to move before the appropriate Forum.

38. The Receiver and the Special Officer stand discharged from further acting in the matter and both Receiver and the Special Officer are directed to make over possession of the Tea Estate forthwith to such person or persons from whom the possession of the tea garden was obtained in terms of the order dated 1st March, 1991. The Receiver and the Special Officer shall be entitled to a further remuneration of Rs. 25,000/- and Rupees 20,000/ - respectively and the remuneration as above be retained from out of the funds in the hands of the Receiver. The expenses incurred by the Receiver and Special Officer amounting to Rs. 20,000/- be also retained by them from out of the funds lying in their hands. The Receiver shall file his accounts in the Department within one week after the Long Vacation.

39. The other application pending before this Court by the financing company is

also dismissed with liberty, however, to move afresh before the appropriate forum on the self-same cause of action. There shall be no order as to costs.

40. By reason of the order of dismissal of the application for appointment of Receiver, as above, the pending appeal preferred against the ad interim order passed by Hazari, J. is also allowed. The order under appeal is set aside without, however, any order as to costs.

41. In fine, be it recorded that we have not gone into the merits of the matter and all issues raised in all the applications including the application of the financing company SRF Finance Ltd. as also in the suit are left open for being adjudicated before the appropriate forum.

42. Prayer for stay of operation of this order is made by Mr. Roy Chowdhury, but the same is refused.

43. All parties including the Registrar, Original Side, the Receiver and the Special Officer are to act on a signed copy of the operative part of this judgment and let the signed copy of the operative part of this judgment be made available to the parties.

Umesh Chandra Banerjee, J.

44. I agree.

45. Order accordingly.