

(2001) 11 SC CK 0060

In the Supreme Court Of India

Case No : Civil Appeal No: 7912-7913 of 2001

Gagandeep Pratishthan Pvt. Ltd. and Others

APPELLANT

Vs

Mechano and Another

RESPONDENT

Date of Decision : 20-11-2001

Acts Referred:

Constitution of India, 1950 — Article 1366
Code of Civil Procedure, 1908 — Section 107

Citation : AIR 2002 SC 204 : (2001) AIRSCW 4853 : (2001) 6 ALT 63 : (2001) 9 JT 591 : (2002) 2 PLR 352 : (2001) 8 SCALE 205 : (2002) 1 SCC 475 : (2001) 8 Supreme 269 : (2002) 1 UC 191

Hon'ble Judges : N. Santosh Hedge, J; Doraiswamy Raju, J

Bench : Division Bench

Advocate : V.R. Reddy and Abhishek Manu Singhvi, G.S. Chatterjee and Raja Chatterjee, for the Appellant; Haradhan Banerjee and V.D. Khanna, for the Respondent

Final Decision : Disposed Of

Judgement

1. Leave granted.

2. By the impugned orders, the High Court appointed a Receiver to ascertain the availability of 1040 sq. ft. of floor space in the building in question. By the said order, it also restrained the appellants herein from changing the status quo existing on the date of the impugned order in regard to the said area. When the SLPs from which these appeals arise, came up for preliminary hearing before this Court on 6.11.2000, this Court was pleased to issue notice and pass an order, staying all further proceedings before the High Court until further orders.

3. When the matters were taken up for hearing today, Mr. V.R. Reddy, learned senior counsel appearing for the appellants, questioned the jurisdiction of the High Court to make the impugned orders at the threshold without deciding the question of delay in filing the appeal as well as the objections as to the maintainability of the appeal which according to him was raised by the appellants

herein. According to the learned counsel since the question of maintainability goes to the root of the jurisdiction of the Court to entertain the appeal as well as to pass the impugned orders the same are liable to be set aside.

4. On behalf of the respondents, it is contended by Mr. Haradhan Banerjee, learned counsel that the order in question was justly passed by the High Court, duly taking into consideration the prevailing circumstances and the Receiver appointed by the court has already submitted his report.

5. We notice that the impugned order was passed on 29.9.2000 and at the time of passing of the order the High Court had taken note of the fact that it still had not decided the application for condonation of delay, yet it passed the order because of the urgency involved in the matter and because of the fact that it was not in a position to decide the appeal finally, As a matter of fact we notice from the order, that the High Court had decided to dispose of the appeal finally which it could not do so because of the impending vacation of the Court at that time. Hence, it thought it fit to make the impugned interim order without considering the preliminary questions.

6. In view of the peculiar facts of this case without going into the merits of the contentions raised by the counsel for the appellants, we think it is just and fair that we should not at this point of time interfere with the impugned order though the High Court could have avoided passing such orders in proceedings where the maintainability itself was being seriously questioned, be that as it may, we at this stage think it appropriate that the High Court should consider the question of condonation of delay and the objection of the appellants herein in regard to maintainability of the appeal first, before proceeding with the appeal any further, we also think it to be just and proper that any further interim orders if necessary in the appeal before the High Court in regard to the suit property should be made only after deciding the question of delay and maintainability of the appeal and the order already made should be confined to the appointment of a Receiver and filing of his report only, meaning thereby that the impugned order be confined to the appointment of receiver for the purpose of filing his report as directed by the Court and nothing beyond that, at this stage.

7. With these observations, without expressing any opinion on the merits of the objections raised by the appellants, we dispose of these appeals. No order as to costs.