

(1994) 02 SC CK 0144

In the Supreme Court Of India

Case No : Civil Appeals Nos. 473-474 Of 1985

Mahendra

APPELLANT

Vs

Padmakar Jagannath Dongare

RESPONDENT

Date of Decision : 10-02-1994

Acts Referred:

Citation : (1995) 4 SCC 676 Supp

Hon'ble Judges : S. P. Bharucha, J;M. K. Mukherjee, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. These are appeals by special leave by a tenant who has been evicted on a the grounds of arrears of rent. They arise in an unusual circumstances.
2. The appellants were tenants of M/s M.D. Cycle Industries Private Limited of premises situated at the Hadapsar Industrial Estate, Hadapsar Village, Hadapsar, Pune. The area that each of the appellants occupied and the rent that each of the appellants was required to pay was different; for the rest, the facts of both appeals are similar and may be stated in relation to Appeal No. 473 of 1985.
3. The landlord, a private limited company, had obtained loans from the State Bank of India upon the pledge and hypothecation of moveable property. The Bank filed a suit against the landlord (being Special Suit No. 392 of 1972 in the court of the Civil Judge, Senior Division, Pune for a decree of Rs 3,21,303.75 and for sale of the pledged and hypothecated goods described in the schedule to the plaint. No immovable property was alleged to have been mortgaged or charged and no order in that behalf was prayed for. On 7/11/1973, the Bank made an application in the suit for appointment of a Receiver of the moveable and immovable properties, mentioned in the schedule to the application. The immovable property included the property in which the premises let to the appellants were situated. The application was made on the ground that it was likely that the private limited company would, with a view to defeat or to delay

the Bank's claim, dispose of its properties. The court of the Civil Judge gave to the private limited company an opportunity to furnish an undertaking and security and, on its failure to do so, appointed the respondent to the appeals before us (P.J. Dongare) Receiver of the moveable and immovable property mentioned in the schedule to the application. On 30/3/1976, the court of the Civil Judge decreed the suit of the Bank. It held that a charge for the amount was created on the articles described in the schedule to the plaint which, as aforesaid, did not include the immovable property in which the premises let to the appellants were situated. The respondent, as Receiver appointed as aforesaid, filed a suit against appellants on 13/1/1977 seeking their eviction from the premises let to them on the ground that they were in arrears of rent. That suit was decreed on 26/11/1982 and the appeal filed by the appellants therefrom was dismissed on 9/10/1984.

4. At this stage, it is relevant to mention that on 29/3/1978, the private limited company was ordered to be wound up by the High court at Bombay and the Official Liquidator was appointed, liquidator thereof. On 23/3/1983, the High court ordered that the special suit filed by the Bank against the private limited company before the court of the Civil Judge stood transferred to the High court. On 2/7/1984, the appellants brought to the notice of the court in which their appeal against the ejectment decree was pending the aforesaid facts and prayed that the hearing of the appeal be stayed or reasonable time granted to obtain orders from the Official Liquidator. In reply to the appellants' application the Bank stated that the Official Liquidator had filed an application in the High court in the winding-up petition aforementioned whereon the High Court had passed an order and transferred all pending proceedings in the court of the Civil Judge, in respect of the suit filed by the Bank against the private limited company to the High court. The Bank, therefore, supported the appellants' prayer that the hearing of the appeal should be stayed until appropriate orders were received from the High court. This application was not separately dealt with but was taken notice of in the judgment delivered in the appeal on 9/10/1984. The judgment stated that it appeared that some liquidation proceedings had been taken at Bombay and that sufficient time had been given to the appellants to obtain orders from the High court or the Official Liquidator but, in spite thereof, nothing had been done.

5. The appellants preferred a writ petition before the High court at Bombay impugning the aforementioned order in appeal. It was contended, inter alia, that the court should have considered the fact that the immovable property in which the premises let to them were situated did not form part of the property charged or hypothecated by the private limited company to the Bank. The writ petition was summarily dismissed. This appeal by way of special leave is directed against the order of summary rejection. The appellants have remained in occupation by reason of stay orders obtained herein.

6. From the perusal of the plaint filed by the Bank against the private limited

company it is clear that the immovable property in which the premises let to the appellants are situated was not mortgaged or hypothecated to the Bank and that the Bank had sought no relief there-against. The judgment and order of the Civil Judge decreeing the suit also indicates that no order was made at the stage of the final disposal of the suit in regard to the said immovable property. Even assuming, therefore, that the Receiver appointed at an interim stage of the suit continued after its disposal, the Receiver could exercise powers only with regard to the property in respect of which the decree was passed, namely, the pledged and hypothecated moveable property and not with regard to the immovable property in respect of which no order in the decree was made. The Receiver was, therefore, not entitled, after the decree had been passed, to act as Receiver of the immovable property and to file a suit against the appellants for eviction therefrom.

7. We must, therefore, allow the appeal and set aside the orders rejecting the writ petition, dismissing the appellants' appeal and decreeing the suit filed by the Receiver.

8. We are told that pursuant to the interim orders of this court, the appellants have been depositing rent, but we do not know with whom Such deposits could have been made for the reason we now state. Mrs. Jayshree Wad, learned counsel for the respondent-Receiver (P.J. Dongare) informed us that he had died and she had no further instructions from the local advocate at Pune, The appeal has, therefore, not been contested. We direct that the appellants shall pay to the Official Liquidator of the private limited company all arrears of rent and shall make payment to him of current rent as and when it becomes due.

9. We make it clear that the Official Liquidator shall, if entitled in law so to do, be at liberty to take such proceedings against the appellants as he may be advised to do.

10. The appeal is allowed. The order of summary rejection of the appellants' writ petitions are set aside. The suits filed by the respondent-Receiver against the appellants for eviction are dismissed. There shall be no order as to costs.