

AMAL KUMAR GHOSH & ORS.

v.

BASANTA KUMAR ALMAL
(Civil Appeal No. 4035 of 2010)

APRIL 28, 2010

[R.V. RAVEENDRAN AND R.M. LODHA, JJ.]

RECEIVERS:

Receiver appointed by court – Conduct of – Suit for specific performance – Decreed in terms of settlement arrived at between parties – Receiver appointed – Balance sale consideration deposited with Receiver, who was to comply with the instructions – Receiver partly complied with the instructions and acted contrary to the other instructions – Application seeking a direction to Receiver to render accounts and make payments of the amounts due to applicant-appellants – Dismissed by High Court – HELD: High Court has not dealt with the crucial aspect as to whether the Receiver discharged his obligations – Paragraph 7 of the ‘Terms of Settlement’, which required the balance amount to be paid to applicant-appellants was not complied with – Receiver should have either complied with the terms of settlement or should have complied with the instructions issued by applicant-appellants – He did neither – On the other hand, he has chosen to release the amount to the first respondent acting on the request of his counsel – Neither the consent decree nor the appellants’ authorization required the amount to be paid to the ‘purchasers’ or the first respondent – There was also no order of the court to pay the amount to first respondent – High Court has not examined these aspects – The order of High Court is set aside and the matter is remitted to it to examine afresh the entire issue as to whether the Receiver had discharged his functions properly and complied with the

- A *directions – High Court will also decide as to who is entitled to the amount and pass appropriate orders – High Court shall give full opportunity to the second respondent to explain his conduct as Receiver, and decide the issue uninfluenced by the prima facie findings recorded by this Court in regard to*
- B *his conduct in dealing with the funds entrusted to him - Receivers.*

- C *Receivers appointed by courts – Monitoring of their functions by courts – HELD: When courts appoint Receivers either during pendency of the proceedings or post decree, the courts should ensure that the Receivers submit periodical reports and that once their assigned task is completed, they are discharged – If it is not done, it will cause unnecessary hardships and may give room for avoidable irregularities –*
- D *Each court will have to keep track of Receivers (as also commissioners) appointed by it and ensure that they duly perform their functions in time and thereafter discharge them – Suit for specific performance.*

- E *Receivers appointed by courts – Functions and responsibilities of – Explained – HELD: Receivers are expected to submit periodical accounts/reports to the court with copies to parties – If their assigned task is completed, they should seek discharge – They cannot continue as Receivers for decades, without doing anything and holding on to the*
- F *amounts entrusted to them in trust – If a Receiver pays the amount belonging to vendor- defendant, to someone else without the authority of the court or authorization from the vendor-defendant, it will amount to gross negligence or wilful default on his part – Consequently, he may become*
- G *personally liable – If the part of the sale price which he was holding, is lost by payment to a wrong person, he will be answerable to the court and the vendor for the amount – Suit for specific performance.*

- H *CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4035 of 2010.*

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From the Judgment & Order dated 8.12.2008 of the High Court at Calcutta in G.A. No. 2498 of 2008. A

Ranjan Mukherjee, Sanjay Kr. Ghosh, Rupali S. Ghosh, Avijit Bhattacharjee for the Appellants.

K.V. Viswanathan, Siddharth Gautam, Goodwill Indeevar, Rana Mukherjee, Uttara Babbar for the Respondent. B

The Order of the Court was delivered by

O R D E R

R.V. RAVEENDRAN, J. 1. Leave granted. We have heard learned counsel for the appellants, the first respondent and the Receiver appointed by the High Court, who was impleaded on the direction of this Court as the second respondent. C

2. The first respondent herein filed a suit for specific performance against the appellants herein. That suit was dismissed by a learned single Judge of the High Court in the year 1981. The first respondent filed an appeal against the dismissal of the suit before the Division Bench of the High Court. During the pendency of the appeal, the parties (first respondent and appellants) arrived at a settlement and in terms of the said settlement, the suit was decreed on 5.8.1986. Under the terms of settlement, the appellants agreed to sell 90 Kottahs of land to the first respondent or his nominees at a price of Rs.10,000/- per Kottah. Clauses 3, 6 and 7 of the 'Terms of Settlement' which are relevant, are extracted below: D

"3. Immediately after the filing of these terms of settlement, the plaintiff shall pay to the defendants a sum of Rs.3,00,000/- (Rupees Three Lacs only) in part payment of the consideration and the balance sum of Rs.6,00,000/- (Rupees Six Lacs only) shall be paid of the time of completion of the conveyance and if several deeds of conveyance are executed for the parts of portions of the said premises then and in that event the said amount of E F G H

A consideration shall be apportioned and such amount as apportioned shall be paid of the time of execution of each deed of conveyance after taking into account the advance payment of Rs.3,00,000/- (Rupees Three Lacs only) paid by the plaintiff.

B 6. After approval of the title by the plaintiff if the defendants fail to obtain a certificate under section 230A of the Indian
C Income Tax Act, 1961 or fail to obtain also permission of the competent authority if required under the provisions of the Urban Land (Ceiling Regulations) Act, 1976 as
D required then and in that event, Mr. Dip Narayan Mitra is appointed Receiver over and in respect of the said property without authority and without remuneration and is directed to execute a Deed or Conveyance and/or conveyance in favour of the plaintiff or his nominee as provided for under these terms of settlement.

E 7. Simultaneously with the execution of the Deed or Conveyance in accordance with these terms of settlement as hereinafter mentioned the plaintiff shall make over to the defendants or to the Receiver as the case may be the balance consideration money less any amount which may be paid or deducted by the plaintiff on account of municipal taxes and other outgoings in respect of the said property in accordance with these Terms of Settlement. *In that event, the balance consideration is made over to the Receiver the same shall be made over by the Receiver to the defendants and upon such payment the Receiver shall stand discharged and filing of the account by the Receiver shall be dispensed with.*

G (emphasis supplied)

In pursuance of clause (6) of the Terms of Settlement, the second respondent herein was appointed as Receiver. In pursuance of the settlement, after payment of Rs.3,00,000/- to

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the appellants, the balance sale consideration of Rs.6,00,000/ - was deposited with the Receiver. A

3. By letters dated 7.10.1986, 11.12.1986 and 22.12.1986, the appellants informed the Receiver that, in pursuance of the consent decree, they had transferred the suit premises to eleven nominees of the first respondent under different deeds of sale and gave the following instructions to the Receiver in regard to Rs.6,00,000/- deposited by the purchasers : B

"It has been agreed between us and Mr. Basant Kumar Almal that out of the said amount of Rs.6,00,000/- lying presently with you a sum of Rs.3,00,000/- will be paid to Park Services Pvt. Ltd. of 119, Park Street, Calcutta towards payment of the statutory liability and other outgoings in respect of the said premises and such payment shall be a full and effectual discharge of the payment to be made by you. Out of the balance sum of Rs.3,00,000/- you are requested to prepare three cheques of Rs.1,00,000/- each in the names of Amal Kumar Ghosh, Debabrata Ghosh and Subrata Ghosh respectively." C D E

(emphasis supplied)

4. In pursuance of the said three letters, the Receiver paid Rs.300,000/- to the appellants at the rate of Rs.1,00,000/- each. The Receiver issued a certificate dated 2.1.1987 to the appellants wherein he confirmed receipt of the instructions of the appellant as follows: F

"As advised and agreed, I have retained a sum of Rs.3,00,000/- (Rupees three lakhs only) for payment to Park Services Private Limited of No.119, Park Street, Calcutta on account of statutory liabilities and other outgoings in respect of Premises No.8/2 Palm Avenue, Calcutta in terms of three letters dated 7th October, 1986 written by Sri Amal Kumar Ghosh, 11th December, 1986 G H

A written by Sri Debabrata Ghosh and 22nd December, 1986 written by Sri Subrata Ghosh to me.”

(emphasis supplied)

B 5. But the Receiver did not pay the sum of Rs.3,00,000/- to Park Services Pvt. Ltd. On the other hand, out of the said sum, he paid a sum of Rs.1,08,341.64p. by cheque dated 13.1.1987 to the Calcutta Municipal Corporation towards the property tax due in respect of the premises and deposited the balance in a fixed deposit.

C 6. On 6.12.1998, the appellants wrote to the Receiver requesting for a 'Statement of Account' and also information as to whether the Receiver had incurred any expenses in respect of statutory liabilities etc. on their behalf. This brought D forthwith a reply dated 28.12.1998 from the Receiver informing the appellants that as on that date, as Receiver, he was holding a sum of Rs.5,29,717/- in fixed deposit towards the balance. Thereafter, the appellants wrote to the Receiver on 8.1.1999 requesting for payment of the amount. The Receiver replied on E 21.1.1999 that he will release the amount to the appellants on their obtaining a 'no objection certificate' from Parks Services Pvt. Ltd. The appellants did not furnish 'no objection certificate' from Park Services Pvt. Ltd., but again wrote a letter dated 24.3.2005 calling upon the Receiver to pay the amount that was F held by him as Receiver.

G 7. The Receiver sent a reply dated 28.3.2005 to the appellants stating that whatever amount that had been lying with him had been made over by him to Mr. R.L. Gaggar, Solicitor and Advocate representing the purchasers of the premises in H compliance with Mr. R. L. Gaggar's letter dated 1.8.2002 and, therefore, as far as he was concerned, the chapter was closed and he stood discharged. A copy of the letter dated 1.8.2002 sent by Mr. R.L. Gaggar, Solicitor acting on behalf of the 'purchasers' to the Receiver stated that as per the consent decree, the balance amount had to be paid to appellants and

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the Receiver will stand discharged on such payment and filing of the account. Having said so, Mr. R.L. Gaggar requested the Receiver to encash the fixed deposit amount and pay the same to him and confirmed that he will receive the same on behalf of the purchasers. It is pursuance of this letter, that the Receiver paid a sum of Rs.9,23,998/36 (which was the balance amount with accrued interest till that date) to Mr. R.L. Gaggar on 23.8.2002.

8. In these circumstances, the appellants made an application to the High Court seeking a direction to the Receiver to render accounts and make payments of the amounts due to them. The High Court, after hearing the parties and the Receiver, passed the impugned order dated 8.12.2008, holding that the reference to Park Services Pvt. Ltd. in the appellants' letters dated 7.10.1986, 11.12.1986 and 22.12.1986 was in discharge of the obligation of the appellants to the first respondent in terms of the consent decree on account of municipal taxes and other outgoings and therefore the application was liable to be dismissed. The said order is challenged in this appeal.

9. The order of the High Court discloses that the High Court has not dealt with the crucial aspect as to whether the Receiver discharged his obligations. Paragraph 7 of the 'Terms of Settlement' required the balance amount to be paid to the appellants. That was not complied with. It is true that by letters dated 7.10.1986, 11.12.1986 and 22.12.1986, the appellants had instructed the Receiver to pay Rs.3,00,000/- to Park Services Pvt. Ltd. towards statutory liabilities and other outgoings in regard to the property. But the Receiver did not comply with the said instructions as he admitted that the sum of Rs.3,00,000/- was not paid by him to the Park Services Pvt. Ltd.. Nor did Park Services Pvt. Ltd make a demand for payment of the said amount by the Receiver. There is also no explanation from the Receiver as to why he directly paid Rs.1,08,341.64p. to the Calcutta Municipal Corporation as that

A was not part of the instructions in the letters dated 7.10.1986,
11.12.1986 and 22.12.1986. The Receiver should have either
complied with the terms of settlement or should have complied
with the instructions contained in the letters dated 7.10.1986,
11.12.1986 and 22.12.1986. He did neither. On the other hand,
B he has chosen to release the amount to the plaintiff in the suit
(first respondent herein), acting on the request of his counsel
Mr. R. L. Gaggar. Neither the consent decree nor the
appellants' authorization required the amount to be paid to the
'purchasers' or the first respondent. There was also no order
C of the court to pay the amount to first respondent. The High
Court has not examined these aspects. We are, therefore, of
the view that the order cannot be sustained.

10. It is relevant to note here that when appellants (the
vendors) demanded the amount, the Receiver instructed the
D appellants to furnish a 'no objection certificate' from Park
Services Pvt. Ltd. for releasing the amount. But when Mr. R.L.
Gaggar, the Solicitor for the first respondent, wrote to him
confirming that the balance amount had to be paid to the
appellants, but made a demand that the Receiver should pay
E the amount to him acting on behalf of the 'purchasers', the
Receiver did not insist upon a 'no objection certificate' or a
confirmation from the appellants but proceeded to directly pay
the amount to the Solicitor for the first respondent. It should be
noted that first respondent is different from the eleven
F purchasers and also different from Park Services Pvt. Ltd. There
is also no material to show that except Rs.108,341/64 which
was due as Municipal Tax, there was any other outgoing in
respect of the premises.

11. We are unable to comprehend how the sale price in
G regard to a completed sale, entrusted to the Receiver, for
payment to vendors, could be refunded to the agreement holder
who nominated the purchasers. The sum of Rs. 3,00,000/- was
left with the Receiver to pay to Park Services Pvt. Ltd., towards
statutory dues and other outgoings in regard to the premises.
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Admittedly, Park Services Pvt. Ltd. never claimed from the Receiver, any amount towards any outgoings in regard to the premises. The only outgoing was found to be Rs.1,08,341/64 due as Municipal Tax which was paid directly by the Receiver to the Municipal Corporation. The instruction by the appellants to pay Rs.3 lakh to Park Services Pvt. Ltd. towards outgoings was an unilateral instruction to the Receiver and when the said amount was not claimed by Park Services Pvt. Ltd., the appellants were entitled to issue modified instructions by seeking payment to themselves. But the demand for payment was ignored and the Receiver chose to pay the amount to the purchasers without any satisfactory explanation.

12. Receivers appointed by court are expected to submit periodical accounts/reports to the court with copies to parties. If their assigned task is completed, they should seek discharge. They cannot continue as Receivers for decades, without doing anything and holding on to the amounts entrusted to them in trust. When courts appoint Receivers either during pendency of the proceedings or post decree, the courts should ensure that the Receivers submit periodical reports and that once their assigned task is completed, they are discharged. If it is not done, it will cause unnecessary hardships and may give room for avoidable irregularities. Each court will have to keep track of Receivers (as also commissioners) appointed by it and ensure that they duly perform their functions in time and thereafter discharge them.

13. When any money belonging to the parties is entrusted to the Receiver, he should deal with it as per the directions of the court. If the appointment is post-decree, he should seek instructions from the court as to the manner of disposal of the funds entrusted to him, particularly when the Receivership is dormant and the amount has been lying with him unclaimed for a considerable period. A Receiver cannot assume that unless the court directs, he need not submit accounts, or that he need not account for the amounts lying with him. If a Receiver pays

- A the amount belonging to vendor-defendant, to someone else without the authority of the court or authorization from the vendor-defendant; it will amount to gross negligence or wilful default on his part. Consequently, he may become personally liable. If the part of the sale price which he was holding, is lost
B by payment to a wrong person, he will be answerable to the court and the vendor for the amount.

- C 14. During hearing, Mr. K.V. Viswanathan, learned senior counsel appearing for the first respondent admitted and confirmed that Mr. R.L. Gaggar had received the amount from the Receiver on behalf of the first respondent and that the first respondent had in turn received the amount from his counsel Mr. R.L. Gaggar. He further stated on instructions, that the first respondent will deposit the entire sum of Rs.9,23,998/36 which was received from the Receiver, before the Calcutta High Court, within one month from today, for being disbursed in accordance with the order that may be made by the High Court.
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- E 15. Having regard to the facts and circumstances, and the aforesaid submissions, we allow this appeal and issue the following directions:

- (i) The order dated 8.12.2008 of the High Court is set aside and the matter is remitted to the High Court.
- F (ii) The first respondent is directed to deposit a sum of Rs.9,23,998.36p. with the Calcutta High Court within one month from today. The question of liability of first respondent to pay interest on the said amount from 23.8.2002 to date of such deposit, shall be decided by the High Court. The amount to be deposited by the first respondent shall be kept in fixed deposit until the disposal of the appeal.
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- H (iii) The High Court will examine afresh the entire issue as to whether the Receiver had discharged his functions properly and complied with the directions. If it is found that

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he has not complied with the same, appropriate action may be initiated. The High Court however will take note of the fact that the Receiver had at no time converted the funds to his personal use, but had maintained it separately. A

(iv) The High Court will also decide as to who is entitled to the amount and pass appropriate orders. If the appellants are found to be entitled to the amount, then it is needless to say they will be entitled to it with interest upto the date of payment. B

(v) The High Court shall give full opportunity to the second respondent to explain his conduct as Receiver, and decide the issue uninfluenced by the prima facie findings recorded by us in regard to his conduct in dealing with the funds entrusted to him. C

R.P.

Appeal allowed.