

A AMBALAL SARABHAI ENTERPRISES LTD. AND ORS.

v.

PRAKASH CHANDRA ARYA

DECEMBER 18, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Civil Procedure Code, 1908: Order 40 Rule 1.*

C *Receiver—Appeal pending in High Court—Division Bench declined to interfere with order of Single Judge appointing Receiver—Supreme Court granted permission to make the Receiver a party-respondent—Direction issued to Receiver not to part with possession of premises until further orders—Appellant's contention that there was a Memo of Understanding before the BIFR in which an agency and Associates undertook to revive the sick industry of the defendant-tenant—If the said agency is permitted to revive the sick industry to work under the direction and control of the Receiver, it may not cause any impediment to the interest of the respondent-landlord—Held it may not be desirable at this stage to go into the question—Parties permitted to place the entire material before the Division Bench which would go into the matter on merits and decide according to law.*

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 16937 of 1996.

From the Judgment and Order dated 28.11.96 of the Calcutta High Court in G.A. No. 3616 of 1996.

F Dipankar Gupta, Utpal Majumdar, Ms. Nalini Tripathi and Mrs. Sarla Chandra for the Appellants.

G.S. Chatterjee, Jishu Saha, Raja Chatterjee and Sandeep Agarwala for the Respondent.

G The following Order of the Court was delivered :

Leave granted.

H This appeal by special leave arises from the order of the Division Bench of the Calcutta High Court, made on November 29, 1996 in G.A.

No. 3616/96. We decline to go into the merits of the matter. Suffice it to state that pending appeal the Division Bench had declined to interfere with the order of the learned single Judge appointing a Receiver. When the matter was mentioned in the Chief Court for early hearing, this Court passed an order on December 4, 1996 thus :

"Permission to make the Receiver a party respondent granted. Notice will go to the Receiver. Dasti service permitted. There will be an ad-interim order directing the Receiver not to part with the possession of the premises to anyone till further orders. List the matter on 18.12.1996."

Parties have filed their respective affidavits and counter- affidavits. The Receiver also was served but has not filed the affidavit . In the affidavit filed on behalf of the appellants, they pointed out certain changes in the circumstances on the basis of which Shri Dipankar Gupta, learned senior counsel, sought to contend that there is a Memo of understanding before the BIFR in which one O.P. Mall and Associates undertook to revive the sick industry of the defendant-tenant. If the said agency is permitted to revive the sick industry to work under the direction and control of the Receiver, it may not cause any impediment to the interest of the respondent-landlord. The said stand was disputed by the learned counsel appearing for the respondent. In that view of the matter, we think that it may not be desirable at this stage to go into the question. It would be open to the parties to place the entire material before the Division Bench which would go into the matter on merits and decide according to law.

In view of the fact that the industry requires to be revived, we think that it would be expedient that the appeal pending before the Division Bench is disposed of expeditiously. Accordingly, we request the learned Chief Justice to direct G.A. No. 3616/96 and the connected Appeal APOT No. 626/96 to be posted before appropriate Division Bench for final disposal preferably on any date between 6th January, 1997 and 9th January, 1997.

The appeal is accordingly disposed of. No. costs.