
(2013) 09 BOM CK 0178

In the Bombay High Court

Case No : Appeal No. 630 of 2010 in Notice of Motion No. 1334 of 2006 in Suit No. 924 of 2001 in Court Receiver's Report No. 44 of 2006

Anil K. Bodani and Others

APPELLANT

Vs

Manju Meadows Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 21-09-2013

Acts Referred:

Citation : (2014) 2 ALLMR 690 : (2014) 1 BomCR 346 : (2014) 3 MhLj 530

Hon'ble Judges : V.M. Kanade, J;S.C. Gupte, J

Bench : Division Bench

Advocate : Venkatesh Dhond, with Mr. Snehal Shah, Mr. Gaurav Shah, Mr. Naishadh Bhatia instructed by M/s. Neghandhi, Shah and Himayatullah, for the Appellant; Pradeep Sancheti, with Mr. Simil Purohit instructed by . M/s. Desai, Desai and Carrimjee for Respondent No. 10 and Mr. Sachin Pandey with Ms. Debashree Mandpe instructed by . M/s. Parimal K. Shroff and Co. for Respondent Nos. 3, 11 and 12, for the Respondent

Judgement

S.C. Gupte, J.—This Appeal arises from an order passed by a learned Single Judge of this court on a report of the Court Receiver and a Notice of Motion moved by the Respondents (Original Defendants). The Appellants (Original Plaintiffs) have filed the present suit, inter alia, for a declaration of their ownership of the equity shares of the First Respondent Company (Original Defendant No. 1) and the illegality of various resolutions passed at the Board of Directors Meeting of the First Respondent including resolutions for Appointment of some of the Respondents (Original Defendants Nos. 12, 13, 14 and 15) as directors of the First Respondent and allotment of shares of the First Respondent to Respondent No. 11 (Original Defendant No. 11). The Appellants claim to hold 99.96% of the equity capital of the First Respondent Company. The First Respondent is engaged in the business of live-stock farming and breeding and is the owner of about 101 acres of land at Village Shirgaon, Taluka Maval, District Pune where it has its stud farm. It is the case of the Appellants that Respondent No. 2 and his nominees are wrongfully seeking to retain control of the First

Respondent and to that end have engaged in malpractices and illegalities which include illegal allotment of shares and appointments of directors, all of which are challenged in the suit.

2. Pending the hearing and final disposal of the suit, the Appellants, inter alia, applied for appointment of Court Receiver of all properties of the First Respondent including immovable property, movables and livestock/horses together with all statutory books, records, bank accounts, book debts etc. with power to hand them over to the Appellants. By his order dated 5 March 2004, a learned Single Judge allowed the Appellants' Notice of Motion by appointing the Court Receiver, High Court, Bombay as the Receiver of the property of the First Respondent as prayed for with directions to appoint the Appellants as Agent of the Receiver for the purpose of managing the stud farm on usual terms and conditions, excepting the conditions for payment of royalty and furnishing of security. The appointment of the Appellants as Agent was, inter alia, subject to payment by the Appellants of bank dues as also dues of M.S.E.B., Village Panchayat and workers etc. owed by the First Respondent. The matter was carried by the Respondents in Appeal. The Appellate Court, inter alia, noted that having regard to the substantial payment of Rs. 60 Lakhs by the Appellants to the Bank to get out of the financial situation which arose on the failure of the contesting Respondents (i.e. the Appellants therein) to protect the property, the learned Single Judge was justified in passing the order. As regards the appointment of the Appellants as Agents without payment of royalty as well as security, the Appellate Court was of the view that in view of the fact that the Appellants (i.e. the Respondents therein) having paid the amount Rs. 60 Lakhs to the bank, the security was not called for, but the royalty charges ought to be paid by the Appellants. The order of the learned Single Judge was modified to that extent by the Appellate Court. The Receiver was directed to fix the royalty after considering all the relevant facts.

3. The Receiver by his order dated 25 August 2004, fixed a sum of Rs. 20,000/- p.m. by way of royalty in respect of the stud farm. The Receiver, in his order, noted that the stud farm incurred losses of Rs. 6,07,777/- for the year 2000-2001, Rs. 65,00,000/- for the year 2001-2002, Rs. 68,82,225/- for the year 2003-2004 and Rs. 53,59,367/- for the year 2004-2005. Considering the continual losses over the last preceding four years as also the reports regarding the condition of the stud farm and the horses, the balance sheet submitted by the Respondents etc., the Receiver was of the view that the royalty of Rs. 20,000/- p.m. was fair and reasonable. The order of the Receiver was not challenged by any of the parties. An Agency Agreement fixing royalty of Rs. 20,000/- p.m. was thereupon executed by the Appellants with the Court Receiver. The possession of the stud farm was handed over to the Appellants under the said Agency Agreement and accordingly since 30 April 2004 the Appellants started managing the stud farm on payment of the royalty so fixed by the Receiver.

4. On 24 April, 2006, about 2 years after the Appellants took over possession as Agents of the Receiver, the contesting Respondents took out the Notice of Motion (in which the impugned order was passed) praying, firstly, for termination of the Agency Agreement between the Court Receiver and the Appellants and, secondly, for a suitable increase in the royalty amount with retrospective effect, i.e. from 30 April 2004. Simultaneously with this Notice of Motion, the Court Receiver filed a Report seeking directions as to whether the agency of the Appellants should be terminated. The Receiver's Report together with the Respondents' Notice of Motion was heard by the learned Single Judge. The main grievance of the Respondents that third parties were put in possession of the stud farm was not accepted by the Single Judge. The learned Single Judge held that no case was made out for termination of the agency of the Appellants. As regards the prayer for increase in Royalty, the learned Single Judge noted that there was merit in the grievance of the Respondents that the royalty had not been fixed on any rational basis and that it would be necessary to direct the Court Receiver to carry out a valuation and thereafter determine the royalty afresh. The learned Single Judge directed that the refixation of royalty by the Court Receiver shall take effect from the date on which the Appellants assumed charge as Agents of the Court Receiver. It appears that in pursuance of the said order, a royalty of Rs. 6,81,600/- p.m. has been subsequently fixed by consent of the parties. It further appears that the question of retrospective payment of royalty from 30 April 2004 (i.e. the date of assumption of charge as Agents by the Appellants) upto 21 December 2006 (i.e. the date of the impugned order of the learned Single Judge) was carried in appeal. The Appellate Court having rejected the appeal on the ground of bar of limitation refusing to condone on the delay, the matter was carried before the Supreme Court. The parties agreed that the Appellants shall pay royalty as may be decided by the Supreme Court for the period between 30 April 2004 to 21 December 2006. The Supreme Court has since set aside the Appellate order, condoned the delay and remanded the Appeal for a fresh hearing. That is how this court has proceeded to hear this appeal on remand.

5. The appeal is restricted to that part of the order of the learned Single Judge by which the refixation of royalty was directed to take effect from the date of assumption of charge by the Appellants as Agents of the Court Receiver. In the other words, the refixation of royalty retrospectively for the period prior to impugned order is the only subject matter of challenge in this appeal. There is no challenge to the rest of the order of the learned Single Judge.

6. Mr. Dhond, the learned Senior Counsel for the Appellants, submitted as follows:

(a) The contesting Respondents never challenged the royalty fixed by the Court Receiver and accepted the same and accordingly the Appellants have paid and continued to pay the amount of Royalty of Rs. 20,000/- p.m. till the date of the impugned order;

(b) The decision of the Appellants to accept the agency was based on the quantum of royalty fixed of Rs. 20,000/- p.m. and the Appellants could not be

saddled with an increased amount of royalty retrospectively; and

(c) The Appellants have paid large sums to the Bank, MSEB, Village Panchayat and workmen and turned around the stud farm which was making losses consistently over a period of preceding four years and the original royalty of Rs. 20,000/- p.m. was fixed after considering all relevant circumstances including these payments.

7. Mr. Sancheti, the learned Senior Counsel for the Respondents, submitted that-

(a) The reasonableness of the sum of royalty now fixed at Rs. 6,81,600/- p.m. is not in dispute between the parties, the Appellants having consented to the same;

(b) An agent of the Court Receiver having accepted to take up agency on such terms as to the royalty as may be fixed by the Receiver or the Court cannot refuse to pay reasonable royalty fixed for such agency; and

(c) The Appellants cannot seek to excuse payment of royalty on the ground of payment of bank dues, since that was a factor considered originally by the Appeal Court for excusing the Appellants from payment of security.

8. At the outset, it may be noted that the royalty originally fixed by the Court Receiver at Rs. 20,000/- p.m. was not an ad-hoc royalty pending determination of a fair and reasonable quantum. It was a royalty fixed after hearing the parties and considering the material placed by them before the Receiver. If the Respondents were aggrieved by such fixation, they could always have approached the learned Single Judge in Chambers for fixation of another sum towards such royalty. This the Respondent did not do. They instead accepted the quantum so fixed, allowed the Appellants to go ahead and enter into agency agreement with the Receiver and take over management of the stud farm as agent of the Receiver. Secondly, from the standpoint of the Agent, namely, the Appellants, taking over the management of the stud farm as an agent of the Receiver was a commercial decision and payment of a particular sum of royalty per month has been an important consideration which has gone into the making of this commercial decision. Considering the dire straits in which they found the business of the stud farm when they took it over as agents of the Receiver, which fact is acknowledged by both the learned Single Judge and the Division Bench in Appeal, the Appellants might well have found the agency not worth their while if the royalty had been originally fixed at Rs. 6,81,600/- p.m. It is only now, after they brought in money and turned the business around by their management of the stud farm, that the Appellants have agreed to pay a royalty of Rs. 6,81,600/- p.m. for the agency with effect from 21 December 2006.

9. The Appeal Court no doubt considered the Appellants' entitlement to be excused from payment of security on the basis of payment of a large sum of Rs. 60 Lakhs by the Appellants towards bank dues, but then there were other dues to be cleared as well. The business required urgent inflow of funds, as noted both by the Single Judge who appointed the Appellants as agents and the Division

Bench which confirmed the order of the Single Judge except for a modification relating to the royalty. The Division Bench had directed the Court Receiver to fix the royalty after considering all the relevant facts. The Receiver did so by taking into account the financial circumstances of the business including the huge losses run by the stud farm over the preceding four years as well as the large sums required to be brought in towards clearing of their existing dues. The royalty originally fixed at Rs. 20,000/- p.m. was not only on the basis of the payment of bank dues of Rs. 60 Lakhs by the Appellants as agents, but all these financial circumstances including the clearing of all liabilities owed by the First Respondent Company towards M.S.E.B. dues, amounts payable to the Village Panchayat and workmen's dues. As noted by the learned Single Judge himself, an amount of Rs. 20.75 Lakhs was paid towards retrenchment compensation of the workmen of the First Respondent, an amount of Rs. 1.04 Lakhs was paid to the Gram Panchayat and Rs. 1.18 Lakhs was paid to M.S.E.B.

10. In these circumstances, it would not be permissible to now saddle the Appellants with a retrospective liability based on a revised estimate of royalty. The original royalty was fixed on the basis of all relevant circumstances then obtaining; the same was accepted by all the parties including the contesting Respondents; and the Appellants accepted the agency on the basis of the royalty so fixed, brought in further funds and managed to turn around the business. It would be wholly inequitable to retrospectively revise the royalty for a period anterior to the Respondents' application for a revised royalty.

11. The Respondents applied for revision of the royalty on 24 April 2006 by their Notice of Motion in which the impugned order was passed. The refixation of royalty can only be considered with effect from the date of that application. In that view of the matter, the order of the learned Single Judge insofar as it directs payment of refixed royalty for the period dating from the assumption of agency till the date of the Notice of Motion, namely, between 30 April 2004 to 24 April 2006, is set aside. The Appellants have already paid/undertaken to pay royalty at the rate of Rs. 6,81,600/- p.m. from 21 December 2006 till date. The Appellants shall, in accordance with their undertaking given to this court as noted in the order dated 5 January 2012 pay royalty at the rate of Rs. 6,81,600/- p.m. for the period between 24 April 2006 to 21 December 2006.