(1951) 08 BOM CK 0020

In the Bombay High Court

Case No : O.C.J. Suit No. 1890 of 1947

Jekisondas Maganlal and Another — APPELLANT

Vs

Nanabhai Jhinabhai — RESPONDENT

Date of Decision : 10-08-1951

Acts Referred:
Bombay High Court (Original Side) Rules, 1980 — Rule 463
Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, Order 40 Rule 3, Order 40 Rule 4

Citation : AIR 1953 Bom 105 : (1952) 54 BOMLR 708

Hon'ble Judges : Shah, J

Bench : Single Bench

Advocate : M.V. Desai, for the Appellant; H.M. Seervai, for the Respondent

Judgement

Shah, J.

(1) By consent order dated September 30, 1947, one Mohanlal Nathubhai was appointed. Receiver (without remuneration and without security) in suit No. 1890 of 1947 to take charge of all assets, out standings, all the books of account, papers, vouchers and furniture of the firm of R. Ramanlal with powers under Order XL, Rule 1 of the Civil Procedure Code, as also with power to pay the debts of that firm, and to engage employees. The Receiver so appointed entered into the management and collected the outstanding and paid debts due by the firm. It appears that the Receiver settled and adjusted some of the claims of the firm against the debtors of the firm and paid other persons who made claims against the firm as creditors. The Receiver thereafter filed his accounts before the Commissioner for Taking Accounts. The plaintiffs in the suit objected to the form in which the accounts were filed. The Commissioner for Taking Accounts thereupon directed the Receiver to file revised accounts, and the same were accordingly filed. The plaintiffs filed objections and surcharges to the revised accounts. After some discussion before the Commissioner some evidence was led by the Receiver and the plaintiffs. The Receiver then raised two preliminary objections: (1) that it was outside the province of the Commissioner to consider

the validity of the debts discharged by the Receiver, and that it was solely within the province of the Receiver to satisfy himself that debts were due, and that he was entitled to make payments accordingly, and (2) that it was not open to the plaintiffs to file objections and surcharges to the Receiver''s accounts, as it was still to be decided whether the plaintiffs were interested in the firm of R. Ramanlal as partners.

(2) The Commissioner for Taking Accounts by an order dated June 19, 1951, disallowed both the objections, and directed the Receiver So proceed with the evidence relating to the proof of his accounts. The Receiver thereupon requested the Commissioner to make a special report to obtain directions from the Court on the following points: (1) whether in view of the order dated September 30, 1947, it is within the province of the Commissioner to go into the question of the existence of debts of the firm of R. Ramanlal shown in the accounts as paid by the Receiver, and (2) whether the plaintiffs were entitled to file any objections and surcharges to the accounts filed by the Receiver. It is this special report of the Commissioner dated July 12, 1951, that comes for adjudication before me on the Receiver''s notice of motion dated July 27, 1951.

(3) Mr. Seervai on behalf of the Receiver has submitted that a Receiver under the rules of this Court is required to have his accounts passed, and for that purpose the Receiver has to file his accounts in form No. 144 printed at page 332 of the Rules and Forms of the Bombay High Court (on the Original Side). 1950, before the Commissioner for Taking Accounts, and if the Receiver files accounts in that form and produces proper vouchers, prima facie showing that certain payments were made to the creditors of the estate of which he has been appointed Receiver, it is not open to the Commissioner to enter upon an enquiry whether the debts were as a matter of fact due. According to Mr. Seervai, the Commissioner has merely to see whether the payments alleged to be made are supported by proper vouchers or other evidence, and once that is done, it is not open to the Commissioner to enquire whether the debts satisfied by the Receiver did in fact exist, nor is it open to him to enter upon an enquiry as to the surcharges or as to any loss occasioned to the estate by any act of the Receiver.

(4) Counsel appearing for the parties have not argued before me the second paragraph of the notice of motion, and the second question in the special report of the Commissioner dated July 12, 1951. I, therefore, propose to confine myself to the first question submitted for adjudication by this Court in the Commissioner''s special report.

(5) Now, it must be noted that very extensive powers have been conferred upon the Receiver, besides the usual powers under Order XL, Rule 1. Civil P. C. The Receiver is authorised to pay debts and to settle, compromise and to receive debts due to the firm. Extensive as the authority or" the Receiver may appear to be in the present case, it is not disputed that it was not open to the Receiver to make payments to persons merely because he regarded them as creditors of the firm and to pay them such amounts as he thought proper.

(6) Under Order XL, Rule 3, Civil P. C., every receiver shall (1) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property; (b) submit his accounts at such periods and in such form as the Court directs; (c) pay the amount due from him as the Court directs; and (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence. Order XL, Rule 4, provides as under:

"Where a receiver-

(a) fails to submit his accounts at such periods and in such form as the Court directs or

(b) fails to pay the amount due from him as the Court directs, or

(c) occasions loss to the property by his wilful default or gross negligence, the Court may direct his property to he attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver."

Rules 461 to 463 of the Rules and Forms Of the Bombay High Court (on the original side), 1950, provide for the form of receiver''s accounts and the period for the filing of the receiver''s accounts with the Commissioner and the directions which may be given by the Commissioner with regard to payments and for passing the accounts. It is undisputed that the receiver is under an obligation to account for amounts received by him and is liable to pay in all monies received by him and to make good any loss occasioned to the estate by his wilful default or negligence. The receiver''s responsibility for all property which comes into his custody or management and his responsibility for the actual sums received by him and also those which might have been received by him but for his wilful default or negligence is also undisputed.

The question argued is whether in passing the accounts and payments of the balance under Rule 463 of the High Court Rules the Commissioner is merely concerned with the checking of vouchers produced by the receiver for payments made, or the Commissioner is entitled on objections raised to consider whether the debts which he alleges he satisfied did really exist. Order XL, Rule 3, enumerates the duties of the receiver such as furnishing security as the Court thinks fit, duly to account for what he shall receive in respect of the property, to pay the amount due from him as the Court directs, and to be responsible for any loss occasioned to the property by his wilful default or gross negligence. Rule 4 of Order XL makes provision for enforcing those duties by the Court which appointed him. Now, those rules do contemplate the assessment of liability of a receiver for the loss occasioned to the estate in his management by his wilful default or gross negligence by summary process instead of by institution of an independent suit. The expression ''Court'' as used in Rule 4 of Order XL can only mean ''the Court which appointed the receiver'', and not the Court which entertains and passes a decree in respect of any liability of the receiver for his default or negligence. The liability of a receiver declared in a suit can obviously be enforced by execution of the decree by the Court which passed the decree, which may not necessarily be the Court which appointed the receiver.

(7) Normally when the receiver has been guilty of wilful default or gross negligence, the liability would be ascertained (except in very simple and obvious cases) on a scrutiny of the accounts after the accounts of the receiver are brought in. The Commissioner for Taking Accounts is performing the functions of the Court under Order XL, Rule 3, Civil P. C., and when the Code provides for imposition of liability in respect of the acts of the receiver after summary enquiry, it is difficult to appreciate the argument of Mr. Seervai that in passing the accounts the Commissioner must confine himself merely to the question whether there are vouchers supporting the payments made by the receiver. In my view on principle there is nothing to warrant the contention of Mr. Seervai, that the Commissioner is not entitled to investigate into the allegations of misapplication of funds or of default or negligence. The Commissioner has in my view authority under Rules 3 and 4 to investigate into the allegations made against the Receiver. There appears to be no warrant for the view that when allegations of misapplication of funds or of default or negligence are made, the party complaining must be driven to a separate suit. It would depend upon the circumstances of each case, whether the enquiry could properly and effectively be made in proceedings under Order XL, Rule 4, or whether a suit Is the proper remedy for enforcement of the liability of the Receiver. The view I have taken on principle is amply supported by the decision reported in - ''Shriniwas v. M. C. Waz'', 45 Bom 99 (p. 102):

" ......I should certainly like to express the opinion that the Court ought to protect its officers, and to see as far as possible that they are not pestered with actions by parties to the suit who are not satisfied with their conduct, when they had every opportunity of making allegations against the Receiver at the time his accounts were passed. I do not say that all actions against persons who act as Receivers are to be excluded after their accounts are passed. There may be cases where the misconduct of a Receiver has been concealed, and could not have been ascertained even with due inquiry before the accounts were passed. When the Receiver applies to pass his accounts, then is the time for the parties to the suit to Object to the accounts, and to make allegations of misconduct against the Receiver, and if the accounts are passed, in spite of those objections, then the matter, as far as I can see, is decisive against those parties as far as the allegations which are made against the Receiver at that time."

Mr. Justice Heaton observed as follows (p. 104):

"......It is clear also that the order made by the Court was an order in a matter in which the Court had to determine whether the Receiver''s duties had been properly performed, & if not, it was a matter in which the Court had power to enforce the proper performance, or as it may be otherwise stated, to punish the non-performance of the Receiver''s duties by an order relating to his property... ......If you have a Receiver, the appointment of whom is provided for by the Code; and if he has to submit his accounts, and that is also provided for; the Court must necessarily have power to say whether those accounts are right or wrong, and whether it will accept them or not, and it is only to Rule 4 that you can ascribe the order which was made in this case."

(8) In - ''Kamatchi Ammal v. Sundaram Ayyar'', 26 Mad 492 it was held that ''when a party feels aggrieved at the conduct of a Receiver, he should seek redress against the Receiver in the proceedings in which he was appointed.'' Since that decision was published the Madras High Court has amended Rule 4 of Order XL, Civil P. C., so as to make it obligatory upon the Court which has appointed the Receiver to deal with all matters relating to the conduct of the Receiver in those proceedings.

(9) In -- ''Chaparaddi v. Kabilmolla'', ILR (1943) Cal 204 it was held that it is open to a Court which has appointed the Receiver to investigate Questions of wilful default or gross negligence on the part of the Receiver. In - ''Mohini Mohan v. Ram Narain Patra'', 14 Cal 445 Mookerjee and Caspersz JJ. indicated the procedure to be followed in scrutinizing the accounts and observed that besides the verification of expenditure as supported by proper vouchers and the accuracy of the receipts, the Court must consider the propriety of the expenditure for legitimate purposes.

(10) It has been necessary to consider the principle underlying Order XL, Rules 3 and 4, and the authorities, because Mr. Seervai has very strenuously relied upon the case reported in - ''Coomar Sattya Sankar v. Ranee Colapmonee Debee'', 5 Cal 223 and upon the reproduction of a long extract from that judgment in Woodroffe''s ''Law Relating to Receivers'', Fourth Edition, at pages 247 to 251, with apparent approval. Mr. Seervai has also pointed out that in Orrnond''s Rules of the Calcutta High Court, (1914), Original Side, 1940 Edition, at page 412, in the foot-note it appears to have been stated that the only questions which can properly arise on an application for passing accounts are, whether all the collections made are properly entered into accounts and whether all disbursements are payments properly made in respect of the estate and any liability of the Receiver other than that must be established in a suit. The case in - Coomar Sattya Sankar v. Ranee Golapmonee Debee'', was approved by Sanderson C. J. and Rankin J. in - ''Subal Chandra v. Jatindra Mohan'', 53 Cal 881 though it must be observed that the only question which fell to be decided before the Court in that case was whether the discretion exercised by the trial Judge in relegating parties to a suit should be interfered with. The head-note in - ''Coomar Suttya Sankar v. Ranee Golapmonee Debee'', 5 Cal 223 is as follows:

"A Receiver is responsible for all properties which comes into his custody or management and he is responsible not only for actual sums received by him but for those which might have been received by him but for his wilful neglect and default.

''Balaji Narayan v. Ramchandra Gobind'', 19 Bom 660

The only question which properly arises on an application by a Receiver to pass his accounts is as to the items of that particular account and involves the inquiry whether all his collections, made on behalf of the property of which he is the Receiver, are duly entered in the accounts and next, whether all his disbursements are payments properly made in respect of that estate.

A Receiver''s liability is not restricted to matters shown upon his accounts.

If there is any liability attaching to the Receiver other than that which appears on the face of the accounts the proper course is to sue the Receiver for the purpose of establishing that liability.

Questions with regard to the soundness or prudence of the system of the management adopted by a Receiver or charges of wilful default or neglect are not matters that can be disposed of in the shape of exceptions to accounts.

Even where a prima facie case of the responsibility of the Receiver for malpractices of his servants is made out, an inquiry into such practices is foreign to an application to pass Receiver''s accounts. The objection that a Receiver has not included in his accounts collections made in the mofussil, cannot be dealt with upon an application to pass his accounts.

If a prima facie ground is made out of the accountability of the Receiver for the mofussil collections, the proper course is to either postpone the passing of the accounts until the question of the Receiver''s liability is established by suit or to pass the accounts reserving the right of the parties to establish any claim they may make against the Receiver in a suit properly framed for the purpose."

The head-note correctly sets out the principle regarded by Mr. Justice Sale as applicable to the consideration of exceptions to the accounts filed by the Receiver. However it is pertinent to note that at the time when the question arose before Mr. Justice Sale, the CPC of 1882 was in operation and that Code did not make any provision similar to the provision in Order XL, Rule 4, Civil P. C. of 1908. Also there is nothing in the judgment of the Court showing that there was any rule made by the High Court on its Original Side providing for any special procedure for enquiry and passing of accounts filed by the Receiver. It appears that without referring to any statutory provision applicable, the learned Judge observed that in passing accounts the Court is only concerned with the matter shown upon the accounts, and that the question as to the liability and responsibility must be tried in a separate suit.

(11) The liability of a Receiver may arise out of accounts submitted by him or may arise apart from it. If the Receiver has received amounts and has not shown those amounts in the accounts or has shown disbursements which were not made or he has wrongfully settled claims or incurred expenses which he was not entitled to incur, it would be difficult to say that the liability did not appear on the accounts, though not on the face of the accounts. Can it then be said, that even though the liability appears on the accounts, the parties-must in all cases be

relegated to a separate suit when an allegation is made as regards misconduct of the receiver, especially, when the statute now makes an express provision which implies a power to make a summary enquiry. I am unable to see any reason why in passing accounts the Court should not in a proper case make enquiry on the exceptions taken. It may be that serious questions with regard to the liability and responsibility of the Receiver may arise, either out of the accounts submitted by him or apart from those accounts, and the Court may in the exercise of its discretion, relegate the parties to a suit. But I am unable to accept the submission of Mr. Seervai that notwithstanding the provisions of Order XL, Rules 3 and 4, the Court must, where questions other than those appearing on the face of the accounts submitted by the Receiver are raised refer the parties to a separate suit. For the purpose of passing accounts the Commissioner for Taking Accounts is obviously exercising the powers of the Court, and if the Court has that jurisdiction to make an enquiry when the dealings of the Receiver are challenged, the Commissioner equally has the same authority.

(12) In Woodroffe''s Law Relating to Receivers at page 2-51 immediately after the quotation from The case in - ''Coomar Sattya Sankar v. Ranee Golapmonee Debee'', 5 Cal 223 the learned author has stated:

"It is not compliance with the letter of the spirit of Rule 3, Order XL, of the Civil Procedure Code, merely to examine the accounts submitted by the receiver, and ascertain whether the alleged payments made are supported by vouchers. Whenever property or funds come into the hands to a receiver pending litigation, the Court may require him to report his acts and doings and to render an account in order to ascertain the condition of the property, and to enable the Court to settle the rights of, and do justice to, all the litigant, parties, when the accounts of the receiver come up for adjustment, he is a party in interest, entitled to be heard, and it is the duty of the Court to see that his rights are protected; but so, also, all other interested, parties are entitled to notice and an opportunity to attend & be heard. All persons having an interest in the estate which the receiver represents, have the right to be present, & be examined on any subject pertinent to the enquiry, which springs out of the proceeding itself, and to take exception to the receiver''s accounts."

That passage completely negatives the contention of Mr. Seervai.

(13) The Commissioner for Taking Accounts, was in the present case of the view that the exceptions should be considered, and no reason! is suggested to me why his discretion should! be interfered with. It is not submitted that any, serious or complicated questions arise that it would be manifestly improper to try them in proceedings under Order XL, Rules 3 and 4, Civil P. C.

(14) The notice of motion must, therefore, be dismissed.

(15) PER CURIAM: I do not think that in this case the action of the Receiver was either mala fide or dishonest, and I do not see why the Receiver should be made to pay the costs of the plaintiffs.

(16) Costs of the plaintiffs as well as of the Receiver to come out of the partnership funds of Messrs. R. Ramanlal.

(17) Order accordingly.