(1990) 10 MAD CK 0080

In the Madras High Court

L.Rmk.L. Kannan @ Ramakrishnan — APPELLANT

Vs

L.Rmk. Narayanan and Others — RESPONDENT

Date of Decision : 22-10-1990

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 40 Rule 2
Industrial Finance Corporation Act, 1948 — Section 30

Citation : (1990) 2 LW 502 : (1991) 41 MLJ 1

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—In this civil revision petition, a question is raised by the petitioner that the parties to the suit who are appointed as Receivers are not entitled to claim remuneration for functioning as such. No doubt, the order appointing them as Receivers did not fix any remuneration but it is not axiomatic that a party-Receiver is n5t entitled to any remuneration under any circumstances.

2. In England, a party to a proceeding appointed as receiver is not generally entitled to remuneration without the consent of the other parties. In Halsbury''s Laws of England, IV Edition, Volume 39, at page 931, the law is stated thus:

Salary Generally Allowed : A receiver appointed by the Court is allowed such proper remuneration, if any, as the court may fix, but his right is limited to the assets and in case of deficiency cannot be enforced against the plaintiff or other parties personally. A trustee who is appointed receiver is not generally entitled to remuneration, but even a trustee-receiver, unless he is expressly appointed ''without salary'', may be allowed remuneration if no other person equally well qualified for the position can be found or, in the case of an administration action, if the testator has authorised the payment of remuneration. Moreover, if a trustee has no active duties to perform involving the receipt of money, there can be no valid objection to him being remunerated for his services as receiver.

3. In Kerr on Receivers, 13th Edition, the following passages are found at pages 104 and 253 respectively:

A party to the action will not usually be appointed receiver unless he undertakes to act without salary, though in partnership cases salary is sometimes allowed. If a trustee, or party interested, asks leave to propose himself as receiver he will usually be required, if appointed to act without salary.

4. Order 40, Rule 2 of the CPC does not make a distinction between a party receiver and stranger-receiver in the matter of remuneration. The rule reads as follows:

Remuneration : The court may by general or Special order fix the amount to be paid as remuneration for the services of the Receiver.

5. In the Law of Receivers by S. Venkataraman, Second Edition, at page 107 it is stated, "Where a party to the action is appointed receiver he will not usually be allowed any remuneration. But in partnership cases or in other cases where there would be a necessity to use special skill and business capacity, he is sometimes allowed remuneration". At page 241 it is stated, "When a partner is appointed receiver of the partnership estate, Courts will-not generally allow him any remuneration". Similarly a trustee appointed receiver of the estate of which he is the trustee may not, in general, be allowed any remuneration. The relation of trustee and cestuique trust excludes any idea of remuneration except by express antecedent contract. A trustee appointed upon his own undertaking in a suit to act as receiver of the trust property is not under ordinary circumstances entitled to a salary as receiver. Though a general, it is not an inflexible, rule that no remuneration will be allowed to a trustee appointed by the Court receiver of the trust estate, (sic). The Court has a discretion to grant or refuse it."

6. In Law Relating to Receivers by Sir John Wooroffee, Sixth Edition at page 39, it is stated that "A party will not, however, be appointed unless upon his undertaking to act without salary, and when appointed he does not thereby lose his privilege as party in the cause". At page 238 it is stated. "A receiver may be appointed with his consent to act without salary. If a trustee or party interested asks leave to propose himself as receiver, he will be usually required to act without salary, unless by consent". At page 302 it is stated, "party proposing himself as receiver is to act without salary, unless by consent. A managing partner consenting to act as receiver during dissolution does not forego his right to remuneration as managing partner."

7. In P.P.P. Chidambara Nadar Vs. K.P.C. Mahalinga Nadar and Others, , Venkatasubba Rao, Officiating Chief Justice rejected a claim by a party-receiver for rent for using a portion of his house for the purposes of the business which he was managing as receiver. The learned Judge observed,

The receiver was a party to the suit and does not profess to have actually paid the rent but claims it on the ground that a portion of his house has been used for the purposes of the business. Having offered to discharge the duties without remuneration, he is hardly justified in claiming this amount.

8. In AIR 1942 64 (Nagpur) the law is stated thus:

Coming now to the merits, the English rule given in Seton''s Judgments and Orders, Vol. 1, P.746, is that when a party interested proposes himself as receiver he is usually required to act without salary unless by consent. There is nothing to show that the rule is different in India. Here the non-applicant proposed itself as the receiver. It is clear that it was acting to a large extent in its own interests. It did not ask that it should be paid any remuneration and consequently the usual rule ought to apply and it ought to be taken that the offer was to act without remuneration and that the appointment was so made the order being silent on the point. But however that may be, as we have said, circumstances may alter and it may be proper for a Court at a later stage to make an order allowing remuneration. Whether it was so proper in this case is a matter into which we need not because it has not been raised in that shape in the grounds of appeal. We are informed that the non-applicant has been obliged to sink some of its own money in working this colliery and that that may have been a proper basis for allowing remuneration at the stage when theapplication was made. But as we have said this particular matter is not challenged in the application for revision and consequently we can take it that there were sufficient grounds, which are not disclosed in theorder, justifying the subsequent order.

9. In U Tun Yin v. Mating Ba Han AIR 1942 Ran 12 the High Court of Rangoon appointed a party as receiver and imposed a condition that he shall furnish security for Rs. 30,000 and that he will not be entitled to draw any fees byway of commission.

10. In Md. Abdul Halim Baig v. Md. Ali Hussain (1948) 1 M.L.J. 964 : AIR 1948 Mad. 335 Govinda Menon, J. summarised the law thus:

The law is well settled both in England and in this country that generally where a party is appointed receiver, he is not allowed a salary unless by consent of parties (vide Halsbury''s Laws of England, Hailsham Edn., Vol. 28 p. 81). No doubt, in England there are exceptions to the general rule, and one of such exceptions is contained in a Judgment of the Court of Appeal, in Bignell v. Chapmen (1892) 1 Ch. 59. Where Lindley, L.J., discusses the question and lays down that where a trustee has been functioning as a receiver and where that trustee had been before becoming a receiver obtaining some remuneration, he is entitled to get the same even after he was appointed receiver. Moreover, Lindley, L.J. says that it was a discretion for the trial Judge, North, J. who thought that certain remuneration was reasonable and allowed it. I do not find any justifying reason why the present petitioner who was appointed as receiver on his own application and after opposition from the other parties, is entitled to any kind of special consideration. The Indian decisions to which my attention has been drawn are those contained in Budhulal Jagannath v. Hirdagari Collieries, Ltd. AIR 1942 Nag. 54 : I.L.R 1942 Nag. 671 and Mohamed Kamil v. Hedatiyulia 90 I.C. 492. Both these decisions lay down the general principle as enunciated in Halsbury''s Laws of England and it is also stated that there may be few exceptions to this general rule.

11. In Gorrela Venkata Satteyya and Others Vs. Mulibai and Others, , Viswanatha Sastri, J. observed as follows:

It is not the law that a receiver should always be remunerated and a receiver may be appointed with his consent to act without a salary. This is usually the case where a party to the suit is appointed as receiver or a trustee or other person interested in the property proposes himself as a receiver.

12 Thus, it is clear that a party-receiver can claim remuneration under certain circumstances. The Court is entitled to grant remuneration if the circumstances of the case warrant the same.

13. In this case, the suit is one for partition and rendition of accounts. The properties involved in the suit comprise of very large extent of lands of over 800 acres including coffee plantations. The suit properties are situated in Nattarasankottai, Sivaganga, Virudhunagar, K. Puthur, Khelaiboor Vellaloor, Yercaud, Coimbatore and Kariyamangalam. Thus, the properties are in six districts in Tamil Nadu State. The suit properties also comprise of some family businesses. The trial Court appointed an advocate receiver to manage the properties. That order was set aside by this Court in C.M.A. No. 505 of 1986 and defendants 7 and 27, who are respondents 1 and 2 herein, were appointed as receivers. They filed I.A. No. 58 of 1990 praying for fixation of remuneration on the ground that they have been obliged to spend their full time in the management of the estate as receivers and neglect entirely the business which they were carrying on previously. The trial Court passed order granting remuneration at 5% of the gross income from the estate. It is the said order which is challenged in this revision petition by the 18th defendant.

14. I have no hesitation to agree with the Court below that the receivers are entitled to remuneration in this case. They never offered to be appointed as receivers or to work without any remuneration. Admittedly they were carrying on, business prior to their appointment as receivers and now they are obliged to devote their entire time for the management of the estate. The receivers claim that after their taking over the management, the income from the estate has increased several folds on account of their sincere efforts. The said claim is disputed by the petitioner, according to whom there was no special effort on the part of the receivers, but the increase in the income is due to other reasons for which the receivers cannot claim any credit. I do not think it necessary to decide that controversy for the purpose of this petition. It is not in dispute that the receivers are at present taking proper care of the estate. The circumstances that they are spending their full time in the management of the estate which is a very large one and that they are not able to their individual business which they were carrying on previously, are sufficient. There is one other circumstances which is relevant. Admittedly, one of the parties who was in management of the properties previously was drawing a salary of Rs. 2,000 per month and also

bonus at times. Hence, the order of the Court below upholding the claim for remuneration made by the receivers is just and proper and there is no reason to interfere with the same.

15. However, the quantum of remuneration fixed by the Court below is unduly excessive. There is no rule which compels the court to grant a remuneration of 5% on the gross income to the receivers. Even in the case of a stranger-receiver, he is not entitled to get such a remuneration as a matter of right. The quantum has to be fixed on this basis of the work done by the receiver. In Kabalamurthi Pillai v. Subramania Pillai 60 M.L.J. 332 : AIR 1931 Mad. 500Venkatasubba Rao, J. defined the receiver''s commission as "in truth the price of the work done" by him and observed that it must have some relation to the labour involved and the time taken.

16. The said observation were quoted with approval by a Division Bench of this Court in B. Soundarapandian Vs. Industrial Finance Corporation of India, . The Bench had to consider the fixation of remuneration of receiver appointed u/s 30 of the Industrial Finance Corporation Act (XV of 1948). Referring to the provisions of Order 34, Rule 7 of the Madras High Court Original Side Rules, 1956, under which normally 5% on the total value of the realisations is claimable by way of remuneration by a receiver, the bench observed as follows:

8. It may be seen from this provision that normally five per cent on the total value realised by him could be claimed by the Receiver as Commission, but that is subject to the condition referred in that rule itself, namely'' unless the Judge otherwise directs''. Though the discretion vested in the Court in this regard may be considered to be a judicial discretion, still that a discretion is vested in the Judge to grant less or more than five per cent cannot be disputed.

... ...

9. ...Once the remuneration is not fixed at the time of the appointment of receiver, the power is always vested in the Court to fix the remuneration either at a percentage of the collections or at a fixed amount or at a fixed monthly remuneration according to the circumstances of each case. Of course the Judge would be guided by the quantum of work and the other circumstances in each case. In all such matters, therefore, the court must fix the remuneration with reference to the period for which the receivers worked and the quantum of work turned out by them.

17. The Court below is in error in granting 5% of the gross income by way of remuneration particularly when the receivers are party-receivers. It, is the complaint of the petitioner that the same works out to 25% of the net income. On the facts and circumstances of this case. I am of the view that a remuneration of Rs. 3,250 per mensem for each of the receivers is just and reasonable. The receivers are entitled to the said remuneration from the date of taking charge viz., 20.4.1987. Hence, the order of the Court below is modified by fixing the remuneration of the receivers (respondents 1 and 2 herein) at Rs.

3,250 each per mensem from 20.4.1987 till the date of their discharge.

18. The Civil Revision Petition is partly allowed. There will be no order as to costs.