(1975) 11 KAR CK 0012

In the Karnataka High Court

Case No : C.R.P. No. 98 of 1975

N. Jayadevappa APPELLANT

Vs

G. Nanjundappa and Another RESPONDENT

Date of Decision : 05-11-1975

Acts Referred:

Citation : AIR 1976 Kar 27 : (1976) ILR (Kar) 564 : (1976) 1 KarLJ 19

Hon'ble Judges : Y. Jagannatha Shetty, J

Bench : Single Bench

Advocate : K.S. Puttaswamy, for the Appellant; B. Veerabhadrappa, for the Respondent

Judgement

1. This revision Petition is concerned with the validity of an order of the Additional Civil Judge Shimoga fixing the remuneration of a Receiver appointed in the suit for dissolution of a partnership firm.

The firm is engaged in operating stave carriages. It has in all about six route permits in the District of Shimoga. The monthly collection of the fares is roughly estimated to be a lakh of rupees. There is separate staff for the operation of the vehicles and also for its maintenance, The Court appointed an Advocate of the local Bar as Receiver fixing his remuneration at 7% on the realisation of the assets of the firm, despite the objection of the petitioner that a fixed remuneration would be sufficient. The Court has relied upon the State Government Order No. LAW 20 LCL 73, dated 28th March 1974 fixing the remuneration of the Official Receivers at 7% on the assets realised in insolvency proceedings. The Court observed that if the remuneration fixed at 7% works out less than Rs. 1.200 per month, the Receiver is entitled to receive a remuneration of Rs. 1,200/-. The receiver was also held entitled to spend any amount to meet his expenses in due discharge of his duties out of the assets of the firm.

2. Challenging the validity of the said order defendant 1 has approached this Court.

3. It is not in dispute that the remuneration of the Receiver fixed at 7% on the realisation of the assets or income of the firm would work out at Rs. 4,000 to Rs. 5,000 Per month depending upon the collection of fares in each month, It was the contention of counsel for the petitioner that the said remuneration was excessive and disproportionate to the work done by the Receiver. It is said that the Receiver has limited function, and is required to supervise the activities of the workmen and has no special responsibility to perform. It is also said that the entire work of the Receiver was formerly performed by the managing partner of the firm who was paid only a sum of Rs. 250/- Per month. Counsel for the petitioner, has however no objection for paying the Receiver Rs. 750/- per month.

Counsel for the Receiver submitted that this Court may fix any remuneration above Rs. 1,200/- and below Rs. 2,000/Per month.

On these extreme contentions, I do not think that I can strike a balance. I may, however, briefly state the principles, which must enter into the judicial verdict in determining the remuneration of a Receiver in a case like this. In Kerr on Receivers (13th Edition) at page 248, it is stated as follows:

"On gross sums received the percentage is usually from 11/4 to 11/2 per cent. In the case of receivers and managers there is no fixed scale. They are sometimes allowed 5 per cent on the receipts: in other cases their remuneration is fixed at a lump sum or regulated by the time employed by the receiver, his partners and clerks. In such cases a time account is required. A statement of particulars of work done is also sometimes required from receivers and managers to enable the rate of remuneration to be fixed.

"A receiver and manager appointed to wind up or carry on a partnership business is, in the absence of express stipulation, entitled to a quantum meruit, though he is himself a Partner, irrespective of his liabilities to the Partnership as a partner."

In the Law of Receivers by N. D. Basu (Second Edition. 1964) at page 695, the following Principles are set out:

"As to what a reasonable fee is. no iron clad rule car, be laid down, The amount of work done by the receiver must of course. be taken into consideration, as well as the equality of the work, and the amount of funds Passing through the hands of the receiver, and the magnitude of the case, and: the responsibility imposed."

The observation in the "Law Relating to Receiver" by Woodruff (Sixth Edition. 1964) at page 237, appears to be of some use in the present case,

"The amount which will be allowed is what is reasonable having regard to the difficulties or facilities of collection and management and the other circumstances of the estate. When a commission is allowed it is generally at the rate of 5 percent, though the rate in the case of a very large estate has by arrangement with the receiver been fixed as low as one per cent of the value of the estate coming into his hands provided that the remuneration was not less than a particular sum."

From these Principles, what can be deduced is that the remuneration is to be fixed by the Court having regard to the nature of the work and the responsibility to be shouldered by the Receiver. It mal be a fixed sum or on the percentage basis There cannot be any absolute standard in the matter. The Court after appraisal of the nature and volume of the work entrusted and the time required for performing the duties, should, fix the remuneration of the Receiver. The order of the trial Court basing on the Government Order prescribing the scale of fee to the Official Receiver cannot be a safe guide in the present case. Five to seven percent allowed there under to the official Receiver is on the realisation of the assets of the insolvent. It is common knowledge that there would be hardly any appreciable assets of an insolvent and even if there is any it would be extremely difficult for the Receiver to realise it.

4. The trial Court should now reconsider the matter and fix an appropriate remuneration. I therefore, allow the revision Petition setting aside the order, and with a direction to the trial Court to reconsider the matter in the light of the observations made.

5. No costs.

6. Petition allowed

