(2007) 02 KAR CK 0014

In the Karnataka High Court

Case No : Writ Appeal No''s. 3306 of 2002 and 5843 of 2003

Smt. Bharathi Murthy N. and Others — APPELLANT

Vs

Sri B.V. Krishnaswamy and Others — RESPONDENT

Date of Decision : 22-02-2007

Acts Referred:
Karnataka Cinemas (Regulation) Act, 1964 — Section 10, 9

Citation : (2010) 2 KCCR 1574

Hon'ble Judges : V. Gopalagowda, J;Subhash B. Adi, J

Bench : Division Bench

Advocate : B.G. Sridharan and Nandakishore, for K.N.L. Associates, for the Appellant; Ravivarma Kumar, for B.V. Rama Moorthy, for Respondent-1 and P.G.C. Chengappa, A.G.A. for Respondents-2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Subhash B. Adi, J.—Writ Appeal No. 3306/2002 is directed against the interim order passed by the learned Single Judge on 7.5.2002 in

2. Both these appeals heard together.

3. The case of the appellants is that, four persons namely, S. Ramaiah, Chand Pasha, B.V. Krishnaswamy and B.N. Gopala Gowda, formed a partnership on 11.6.1970 contributing Rs. 12,000/- each. The said firm purchased the land bearing Sy. No. 331 measuring I acre I gunta situated at Devanahalli Kasaba, under a registered sale deed dated 24.9.1970 from one N. Narayanaswamappa for establishing cinema theatre. These partners had borrowed money from several sources including Canara Bank, Devanahalli Branch, for obtaining no objection certificate and also for establishment of a Cinema theatre in the name and style as ''Sri Venkateshwara Theatre''. They had borrowed a sum of Rs. 5,75,368.75 paise from Canara Bank and they did not repay the said amount. The Canara Bank had filed a suit in O.S. No. 871/1982 and the said suit came to be decreed against the partners. Since the partners were unable to repay the

decretal amount, they entered into an agreement of sale dated 20th January 1992 with deceased N. Narayana Reddy, interalia agreeing to sell the property for a sum of Rs. 21 lakhs, which is inclusive of all the liabilities of the partners (sellers). By cheque bearing No. 543623 drawn on Corporation Bank, Malleswaram Branch dated 11.12.1991, the said Narayana Reddy had paid Rs. 50,000/- and same is also mentioned in the agreement. Thereafter, by cheque No. 543634 drawn on Corporation Bank, Malleswaram Branch dated 17.1.1992 another sum of Rs. 3,50,000/- was paid. In all Rs. 4,00,000/- was paid as on the date of the agreement. On 15.7.1994, the said partnership firm was re-constituted along with N. Narayana Reddy and his wife Smt. Bharathi Murthy. Narayana Reddy was made as working partner. On 11.1.1995, the deed of retirement was executed w.e.f. 31.12.1994, wherein earlier four partners namely, S. Ramaiah, Syed Abdul Wahab, B.V. Krishnaswamy and B.N. Gopala Gowda retired and a partnership consisting of N. Narayana Reddy and his wife Smt. Bharathi Murthy was constituted.

4. As required u/s 9 of the Karnataka Cinemas (Regulation) Act, 1964, the District Magistrate, Bangalore approved the transfer of the licence to run the permanent cinema talkies in the name of N. Narayana Reddy. Thereafter on 15.4.1995, B.V. Krishnaswamy filed an application before the District Magistrate, Bangalore Rural District, Bangalore for renewal of the licence and also mentioned that the licence renewed be granted in favour of N. Narayana Reddy. Thereafter, B.V. Krishnaswamy filed a suit in O.S. No. 18 of 1997 and sought for temporary injunction. However, on 31.12.1997, said Krishnaswamy filed a memo for withdrawal of the suit and it was dismissed as withdrawn on the same day. Immediately thereafter, on the next day itself, he filed another suit in O.S. No. 3/1998 on the file of the Civil Judge (Jr.Dn.), Devanahalli and obtained temporary injunction on 2.1.1998, interalia restraining Narayan Reddy and one Ramamurthy from entering the cinema talkies and based on the said interim order, B.V. Krishnaswamy removed some of the documents from the talkies. Immediately, Narayan Reddy filed an application in LA. III under Order XXXIX, Rule 3 and 4 interalia seeking vacating of the temporary Injunction and the learned Civil Judge (Jr.Dn.) by his order dated 1.4.1998 was pleased to allow LA. III and dismissed I.A.I thereby vacated the temporary injunction. The said order was questioned by Krishnaswamy in Misc Appeal No. 46/1998 and the II Addl. Civil Judge (Sr. Dn.), Bangalore by order dated 15.6.1998 dismissed the said appeal. Thereafter the said order was confirmed by this Court in C.R.P. No. 2891/1998 by order dated 2.11.1998.

5. In the meanwhile, Krishnaswamy by producing the temporary injunction, granted on 2.1.1998 had made a representation on 23.2.1998 before the District Magistrate, Bangalore Rural District Bangalore, for renewal of the licence, and the District Magistrate by order dated 31.3.1990 rejected the said application. B.V. Krishnaswamy being aggrieved by the said order of rejection, had filed Appeal No. 2 of 1998 before the Divisional Commissioner. In the meanwhile, the Canara Bank sought to execute the decree and Narayana Reddy discharged the

outstanding debt to the tune of Rs. 8 lakhs on 9.9.1998 and the Canara Bank, Devanahalli branch issued a discharge certificate dated 11.12.1998.

6. The Divisional Commissioner by order dated 8.1.2001 quashed the order of District Magistrate dated 31.3.1998 and remitted the matter to the District Magistrate and the District Magistrate by order dated 26.11.2001 granted the licence in favour of Krishnaswamy.

7. The order of the District Magistrate dated 26.11.2001 was called in question in Appeal No. 5 of 2001 before the Divisional Commissioner, Bangalore Division, Bangalore. The Divisional Commissioner by order dated 3.1.2002 granted Interim order in favour of the appellants. Thereafter the Divisional and Commissioner by order dated 15.4.2002 dismissed the appeal filed by the appellants and confirmed the order of the District Magistrate dated 26.11.2001. The order of dismissal of the appeal by the Divisional Commissioner and the order of granting licence by the District Magistrate, Bangalore Rural District, Bangalore were called in question by the appellants in W.P. No. 20138/2002. In the said writ petition, the learned Single Judge by order dated 7.5.2002 granted an interim order, subject to appellants depositing Rs. 75,000/- within two months and also permitted the first respondent to withdraw the said amount. Thereafter, the learned Single Judge by order dated 25.7.2003 dismissed the writ petition, confirming the order of the Divisional Commissioner and District Magistrate.

8. It appears that during the pendency of the proceedings, Narayana Reddy died and his legal representatives were brought on record. Writ Petition as well as appeal before the Divisional Commissioner were prosecuted by the LRS of Narayana Reddy. These appeals are also by the LRs of Narayana Reddy.

9. The Writ Petition was contested by Krishnaswamy, mainly on the ground, that the alleged agreement dated 20th January 1992 is an unregistered one and is a fabricated and created document by forging the signature. That the Syed Abdul Wahab @ Pyar Sab, who was one of the partners, was not a partner when the alleged agreement was created and he had no authority to sign. So far as Narayana Reddy is concerned, his action to enforce the alleged fraudulent agreement of sale lies before the Civil Court by way of filing suit for specific performance of the contract. As the time itself has lapsed even to file the said suit, no rights would flow from the said document in the eye of law. Even In the records of the Municipal Council, Devenahalli, in the column occupier, it is shown as Venkateshwara Enterprises and the recitals in the alleged agreement are contrary to the entries in the municipal record. The alleged retirement of the partners is also fabricated document and the signature of B.V. Krishnaswamy has been forged in the said document. In this regard, an enquiry was held by the Registrar of Firms and by order dated 15.11.1999, the Registrar of Firms has deleted the names of Narayana Reddy and his wife from the list of partners of the firm, which order was challenged by N. Narayana Reddy in W.P. No. 18200 of 2000 and the said writ petition was dismissed by order darted 31.8.2001 and the order of Registrar dated 1.2.2002 by restoring the partnership constituted in

1970-71 and the said order has not been challenged by the petitioner. Subsequently, though the writ petition was restored, however, the order dated 1.2.2002 passed by the Divisional Commissioner stating that Narayana Reddy and his wife are not partners has become final. It is also alleged that the material facts are not disclosed by Narayana Reddy in his writ petition and has suppressed the material facts. That the discharge of loan certificate does not confer any right on Narayana Reddy or his wife and there is no reconstitution of the partnership. It is also alleged that renewal application given by Krishnaswamy on 15.4.1995 is also fabricated and interpolated by inserting the words "licence may please be issued in the name of Managing Partner Sri.N. Narayana Reddy only". Narayana Reddy in collusion with the Manager of the theatre had inserted the said sentence. It is also alleged that the order of transfer of licence in favour Narayana Reddy was challenged by the first respondent namely, B.V. Krishnaswamy before the Divisional Commissioner. The Divisional Commissipner by his order dated 8.1.2001 partly allowed the appeal and the order dated 4.5.1995 and endorsement dated 31.3.1998, transferring the licence and granting the licence were set aside and the matter was remitted to the District Magistrate and order of status-quo, was directed to be maintained. It Is also alleged that the order of the Divisional Commissioner has become final and thereafter, the District Magistrate by order dated 26.11.2001 has granted licence in favour of respondent No. 1 B.V. Krishnaswamy and thereafter, the first respondent after obtaining licence, has started exhibiting the films in the theatre, and that he was running Kannada film called, ''OM'' and alleged that the first respondent is in physical possession of the theatre. It is also alleged that the civil proceedings were in the individual capacity of Krishnaswamy and not in the capacity of partnership firm. As such, they are not applicable. On these grounds and other grounds, the writ petition was contested.

10. The learned Single Judge after hearing, dismissed the writ petition filed by the appellants by observing, that the Licencing Authority without hearing the respondent No. 1, in whose name the original licence was granted, had transferred the same to the name of Narayana Reddy as a matter of course and event, as such, the appellants i.e., petitioners before the learned Single Judge cannot make any grievance against the impugned order passed by the Divisional Commissioner, which is an order of remand.

11. Sri B.G. Sridharan, learned Senior Counsel appearing for the appellants submitted that as per Annexure-A dated 20th January 1992, all the partners of M/s. Venkateshwara Enterprises entered into an agreement of sell the cinema theatre Including the land for a consideration of Rs. 21 lakhs and on 15th July 1994, partnership was reconstituted by including. Narayana Reddy and his wife as partners and Narayana Reddy was made as Managing Partner. In the said reconstituted partnership, Narayana Reddy was empowered to open a fresh account. Thereafter on 11th January 1995, the earlier partners namely, S. Ramaiah, Syed Abdul Wahab @ Pyar Sab, B.N. Gopala Gowda and B.V. Krishnaswamy retired from the firm and N.Narayana Reddy and Smt. N. Bharathi

constituted a firm. He also relied on discharge certificate issued by Canara Bank, Devanahalli Branch dated 11.12.1998 to show that in pursuance of the reconstitution of the firm, the entire loan to the tune of Rs. 8 lakhs, as decreed in O.S. No. 87/1992 was discharged by N.Narayana Reddy as a Managing Partner of M/s. Venkateshwara Enterprises. He also relied on a letter addressed by Canara Bank to Narayana Reddy on 30.11.1998, wherein in pursuance of the discharge of the loan standing in the name of M/s. Venkateshwara Enterprises, the original title deeds were returned to N. Narayana Reddy on 30.11.1998. Further, in pursuance of the application made by Krishnaswamy on 15.4.1995, an order was passed by the Additional District Magistrate on 4.5.1995 interalia approving the transfer of licence from Krishnaswamy to N. Narayana Reddy as the Managing Partner of M/s. Venkateshwara Enterprises and thereafter, on the basis of the application dated 15.12.1995 made by B.V. Krishnaswamy, the licence was also transferred in favour of N. Narayana Reddy. He also pointed out from the order passed in O.S. No. 3 of 1998 on I.As.I and III dated 1 April 1998 in a suit filed by B.V. Krishnaswamy against N. Narayana Reddy and one Ramamurthy wherein a finding is given, that Narayana Reddy was put in possession and who renovated the talkies and further pointed out that the Civil Court on the basis of the averment including the allegation of forgery and denial of reconstitution of the firm, held that N. Narayana Reddy has been in possession and enjoyment of the suit property, and running theatre till the filing of the suit and the Civil Court, did not accept the contention, that the documents are forged or concocted. He also submitted that the said order was confirmed in appeal and also by this Court. Relying on the order passed by the Civil Court vacating the temporary injunction, learned Senior Counsel submitted that the Civil Court prima facie has found that Narayana Reddy has been in possession of the talkies. Learned Senior Counsel also pointed out that, what was challenged by Krishnaswamy in appeal No. 2/1998-99 before the Divisional Commissioner was the order dated 31.3.1998 passed by the District Magistrate and not the order dated 4.5.1995. He pointed out, that by order date 31.3.1998, the District Magistrate had rejected the objection raised by Krishnaswamy, for renewal of the licence in favour Narayana Reddy and the appeal was only against the said order. However, the Divisional Commissioner erroneously set aside the order dated 4.5.1995, which is an order of approval of transfer. He submitted that the Divisional Commissioner''s order has no bearing on the facts and circumstances of the case, Insofar as it relates to setting aside the order dated 4.5.1995, inasmuch as, in pursuance of the order dated 4.5.1995, the District Magistrate granted the licence in favour of Narayana Reddy and same was renewed from time to time. As on the date of passing of the order by the Divisional Commissioner, the order dated 4.5.1995 was given effect to and the licence was already renewed and the rejection of the objections of Krishnaswamy, by the District Magistrate on 31.3.1998 was only the subject matter before the Divisional Commissioner. He further submitted that as far as the order of the Registrar of Firms deleting the names of Narayana Reddy and his wife, writ petition was flied in W.P. No. 18200/2000 and this Court by order dated 2.9.2004 quashed the order of the Registrar of Firms and has remitted the matter and the said matter has not yet been concluded. He further submitted that undisputedly the amount of Rs. 4 lakhs has been paid under a cheque in terms of agreement of sale. Further, Rs. 8 lakhs loan has been discharged, which was standing in the name of M/s. Venkateshwara Enterprises, the other partners have received their share of the amount and same is clear from the bank statement dated 16.6.1998 i.e., Rs. 9,10,000/-. He further submitted that the transfer was approved by the District Magistrate by order dated 4.5.1995 and thereafter a licence was granted in favour of Narayana Reddy as a Managing Partner and further same was renewed. He also submitted, that Krishnaswamy after the order of injunction was vacated, as an after thought, has made an allegation of forgery and fabrication. In fact, there is no other transaction between Narayana Reddy and Krishnaswamy. There was no reason for Krishnaswamy to accept the amount & also by the other partners. He also pointed out that the granting of licence in favour of Narayana Reddy for 1998 was questioned by Krishnaswamy. As such, the District Magistrate without even considering the orders earlier passed on 4.5.1995 and 31.3.1998 has passed the impugned order dated 26.11.2001. He also pointed out from the said order that the District Magistrate has assigned only reason, that the Krishnaswamy has denied the transfer of the licence, and in view of the said denial, Narayana Reddy is not entitled for licence. He further submitted, that admittedly, the licence granted on 14.5.1995 and is for the period of one year and thereafter the licence having been renewed, there was no justification for the District Magistrate to set aside the order, which has already given effect to and has expired its term. He further submitted that the allegation of fabrication of document or forgery has been made, as an after thought. He further submitted that neither the District Magistrate nor the Divisional Commissioner has taken into account the relevant documents and facts and circumstances of the case and also the provisions of the Karnataka Cinemas (Regulation) Act, 1964. Relying on Section 9 of the Act, he submitted that approval is required for transfer of licence and in terms of the same, approval has been granted by the District Magistrate as per Annexure-F. In pursuance of the same, licence was transferred and it was renewed from year to year, as such, the objection raised by the respondent No. 1 for grant of licence for the year 1998-99, is not tenable. He also submitted that the application dated. 15.4.1995 though it is alleged, that it is fabricated, nevertheless the signature on the same is not denied. It is in this context, he also referred to a legal notice issued by an Advocate on behalf of B.V. Krishnaswamy on 26.11.1997 addressing a letter to the Registrar of Firms wherein it is admitted, that Narayana Reddy is the Managing Partner of the firm and it is also alleged that he is mismanaging the theatre and is not disclosing the assets and liabilities to the partners and also to the authorities and in this connection, in the said letter, it is requested that an action against N. Narayana Reddy be taken In accordance with law and to intimate the development to B.V. Krishnaswamy. By relying on the said legal notice produced at Annexure learned Senior Counsel submitted that the fact that Narayana Reddy was the Managing Partner is admitted, however, the said fact is denied in the statement of objection filed to the writ petition. He also submitted that after accepting the amount under the agreement of sale and after allowing Narayana Reddy to run the theatre, as an after thought, an objection was raised before the District Magistrate. The District Magistrate without even looking in to any of the documents, only on the ground of denial of transfer of licence, has refused to renew the licence in favour of Narayana Reddy has passed the impugned order. On these documents, learned Senior Counsel submitted that the learned Single Judge has erred in observing that the Divisional Commissioner has remanded the matter, which is factually incorrect. He pointed out from Annexure-P, an order of the Divisional Commissioner dt. 15.4.2002, is an order confirming the order of the Divisional Commissioner and not remand.

12. Sri. Ravivarma Kumar, learned Senior Counsel for respondent No. 1 submitted that the application dated 15.4.1995 for renewal of the licence is interpolated by insertion of a sentence that licence may please be issued in the name of Managing Partner N. Narayana Reddy only. He relied on Annexure-R9, an order of Divisional Commissioner dated 8th January 2001 and pointed out that order of transfer dated 4.5.1995 has been set aside by the Divisional Commissioner and the matter was remitted to the District Magistrate for re-consideration and the District Magistrate on re-consideration, in view of the cancellation of approval of transfer of licence, has found that the licence cannot be transferred, as the same being personal and further there being no approval of transfer, the District Magistrate was justified in not renewing the licence in the name of Narayana Reddy. He further submitted that the alleged partnership was reconstituted on 21.11.1997 and immediately on 23.11.1997, a complaint was filed and on the basis of the complaint, the District Registrar of Firms passed an order deleting the names of Narayana Reddy and his wife and thereafter the first respondent had also filed objections for renewing the licence in favour of Narayana Reddy. He further submitted that there is no delay in approaching the authority by the respondent No. 1. He submitted, that when the application dated 15.4.1995 is fabricated, said document cannot be taken as a valid application for grant of transfer of licence. Relying on the order of the Divisional Commissioner at Annexure-R9 and also referring to the order of the District Registrar of Firms deleting the names of Narayana Reddy and his wife, learned Senior Counsel for respondent No. 1 submitted that the order of the District Magistrate confirmed by the Divisional Commissioner does not call for interference. He submitted that the discharge of loan by Narayana Reddy does not by itself confirm any title or authority on Narayana Reddy to secure licence in his name. He further submitted that the order passed by the Civil Court was only against Krishnaswamy, and not against the firm. The firm being the licencee and there is no injunction as against the firm, it is entitled to run the talkies. He further submitted that when according to Narayana Reddy, he became partner w.e.f. 21.11.1997, question of an application being given by Krishnaswamy on 15.4.1995 for transfer of licence in the name of Narayana Reddy as a Managing Partner, does not arise. On these submissions, learned Senior Counsel for

respondent No. 2 stated that the order of Divisional Commissioner as well as the District Magistrate do not call for interference.

13. After hearing learned Counsel for appellant and respondents, they have filed xerox copies of some documents, same are taken on record.

14. In this case, original partnership was constituted, comprising respondent No. 1 and three other persons in the year 1970. As far as the induction of Narayana Reddy and his wife as the partners, was seriously disputed by the first respondent. However, it is seen from Annexure-Q produced in the writ petition, a letter addressed by the Advocate on behalf of respondent No. 1 to the Registrar of Firms on 26.11.1997 wherein it stated:

...But after one Narayana Reddy had come as a Managing Partner, he was mis-managing and misusing the liability without paying the loan amount to the concerned Canara Bank or to show the assets and liabilities of the Firm to the other partners or even he has not intimated to your authority or to the Entertainment Tax Department or any other concerned Departments, In accordance with law....

It is also stated in the said letter, that earlier partners had raised loan from Canara Bank and Narayana Reddy had become Managing Partner and is mismanaging the affairs of the firm and it is in this regard, a letter was addressed by the Advocate for respondent No. 1 for taking action against Narayana Reddy. It is also not in dispute that as per Annexure-D, the discharge certificate dated 11.12.1998, an amount of Rs. 8 lakhs is paid by Narayana Reddy as the Managing Partner. Respondent No. 1 except saying that discharge of loan will not confer any right on Narayana Reddy, has not stated as to, how that discharge of loan came to be made by Narayana Reddy and what action the respondent No. 1 has taken against the Bank. In response to the discharge of loan even the original documents pertaining to the firm, mortgaged to the Bank were returned to Narayana Reddy by the Bank on 30.11.1998 as per Annexure-E and respondent No. 1 has not stated, as to in what capacity Narayana Reddy has received those documents and what action has been taken by the first respondent First respondent had filed a suit before the Civil Court in O.S. No. 3/1998 on similar allegation, and the Civil Court on the same allegation while disposing of I.A.I and IA. 111 i.e., for granting injunction and vacating injunction, has prima facie found that Narayana Reddy is in possession of the cinema talkies and has further found that, the contention of forgery or Interpolation is not acceptable and this finding has become final right upto this Court. It is also not disputed that in pursuance of Annexure-F, an application given by first respondent for renewal of licence, the licence was renewed from 1995 not in the name of first respondent, but in the name of Narayana Reddy and continued till the objections are raised on 11.12.1998. Except making complaint in 1997 before the Registrar of Firms as per Annexure-Q, the grant of licence as well as renewal of the licence was not questioned by the respondent No. 1 dated 11.12.1998. In pursuance of the said objection, the District Magistrate had rejected the objection, by order dated 31.3.1998. The order of approval of transfer as per Annexure-G was passed on 4.5.1995 and it is seen from the said order, that a copy is marked to B.V. Krishnaswamy. Admittedly, an appeal lies against said order u/s 10 of the Act. However, no appeal admittedly has been filed against the said order. No doubt as per Annexure-R9, the Divisional Commissioner In an appeal filed against the rejection of objection by the District Magistrate on 31.3.1998, has set aside the order of transfer made on 4.5.1995. However, there was no such appeal filed by the respondent No. 1 against the said order nor there was adjudication by the District Magistrate on the question of transfer of licence. Further what is to be seen in this appeal is, by the time the order passed by the Divisional Commissioner on 8.1.2001, not only there was transfer of licence, but the licence was renewed from year to year in the name of Narayana Reddy. If that is so, the question of setting aside the approval of transfer of 1995 by the Divisional Commissioner without there being any appeal or adjudication by the District Magistrate was one without jurisdiction. Even on facts, It Is not permissible for the Divisional Commissioner to set aside the said order. The fact that the respondent No. 1 has not raised any objection as against discharge of loan admittedly standing against the partnership, not taking any action against the grant of licence from 1995 to 1998. Not filing an appeal against the order of transfer under the provisions of the Act and further the partners having received Rs. 9,10,000/- as per Bank statement dated 16.6.1998 under the agreement by way of cheque and having allowed Narayana Reddy to discharge the loan and in the light of findings given by the Civil Court as regards to the possession of Narayana Reddy, the conduct of the respondent No. 1 is not appreciable, as on one hand he receives the amount under the agreement and on the other hand, he raises the objection against the grant of licence. These circumstances clearly show that on one hand, respondent No. 1 had received the amount evidenced by cheque and discharge certificate and on the other hand, as an after thought; nearly after 3 years sought to raise objection for grant of licence. When the District Magistrate considered the matter, has not even looked into any of these documents and in one sentence, the District Magistrate cancelled the licence standing in favour of Narayana Reddy by observing that:

...However without going into the question of adjudicating the genuineness, legality and enforceability of the contract between the parties, since it is vehemently denied by the original Licensee - Shri B.V. Krishnaswamy that he has not given any such consent and I or assent for the transfer of the Licence standing in his name to the name of Shri N.Narayana Reddy (since deceased), the transfer of the licence made in the name of Shri N. Narayana Reddy from the name of Shri B.V. Krishnaswamy does not stand in the eye of law.

Except this reason, no other reasons are assigned by the District Magistrate. When the District Magistrate has not gone into the correctness of the contract, he could not have ignored the order passed on 4.5.1995 and rights of the parties. Further, he could not have ignored the fact that the order dated 4.5.1995 was given effect to and no objection has been raised against the same. The

District Magistrate has completely ignored the order of approval and further has ignored that the order of approval was given effect to and he has also ignored that the Civil Court had given a finding in favour of Narayana Reddy holding that he is in possession. Neither the District Magistrate nor the Appellate Authority, has considered evidence and the circumstances of the cases. Apart from the above, the conduct of Krishnaswamy is required to be considered, inasmuch as, as per the agreement of sale, all payments are made by way of cheque and bank documents show that the partners have encashed the cheque. If that is so, there is no justification in the contention of the respondent No. 1. Taking into consideration of the money having been received by respondent No. 1 and further taking into consideration that the transfer order dated 4.5.1995 was given effect to and thereafter licence has been renewed and it was not the subject matter of adjudication before the District Magistrate, even the order of setting aside the said order by the Divisional Commissioner was of no consequence and does not in any way affect the rights of Narayana Reddy.

15. Learned Counsel for respondent No. 1 has produced some documents i.e., a xerox copy of death certificate alleged to have been issued by a Makkah Authority, stating that Syed Abdul Wahab died in September 1983, based on this, it is submitted that Syed Abdul Wahab could not have signed the alleged reconstitution of firm. The xerox copy is not acceptable and there is no corresponding certificate issued by the Indian authority. Even otherwise, it may not be relevant for the purpose of this case, as no one on behalf of Syed Abdul Wahab, has made any complaint of alleged forgery of the signature of the Syed Abdul Wahab. Except Krishnaswamy, no other partners have raised any objection. And in this case, partners having received the amount, it is not now open to them to turn around and object the appellants insofar as grant of licence is concerned. We find that the order of District Magistrate dated 26.11.2001 and the order of Divisional Commissioner dated 15.4.2002 produced at Annexures-L and P are required to be quashed. However, the findings, if any, given in these appeals cannot be taken as deciding the contract between the parties. Prima facie on the material, our conclusion is that the orders of the District Magistrate and also of the Divisional commissioner are per se illegal.

Accordingly, Writ Appeal No. 5843/2003 is allowed. The order of the learned Single Judge dated 25.7.2003 in W.P. No. 201 38/2002 is set aside. Consequently, the impugned orders passed by the District Magistrate dated 26.11.2001 and the Divisional Commissioner dated 15.4.2002 are hereby quashed. In the light of the quashing of the impugned order passed by the District Magistrate dated 26.11.2001 and the Divisional Commissioner dated 15.4.2002, the Receiver appointed by this Court by order dated 15.4.2004 stands discharged and the Receiver is directed to hand-over the possession of the talkies to the appellants. As regards to the fees of the Receiver, same will be fixed after hearing the Receiver.

In the light of allowing of W.A. No. 5843/2003, the Writ Appeal No. 3306/2002 filed against the interim order passed by the learned Single Judge on 7.5.2002 in W.P. No. 20138/2002 does not survive for consideration. Accordingly, same is dismissed. However, the appellants are entitled for refund of the amount deposited by them in terms of the interim order granted by the learned Single Judge. Accordingly, the appellants are permitted to withdraw the amount in deposit.

VGGJ & SBAJ

22/02/2007

Heard the Receiver. He submitted that in the light of the order by this Court on 15.4.2004, he has been working one hour weekly to maintain and manage the talkies and submitting the accounts every month to this Court. Since 15.4.2004 till today, he has been working as Receiver.

Taking into account the number of hours and also the period for which he was appointed, we feel it just and proper to fix the Receiver''s fee at Rs. 1,000/- per month. Accordingly, the appellants are liable to pay the Receiver''s fee, in all Rs. 33,000/- to the Receiver.

Office is directed not to refund the amount in deposit to the appellants unless the appellants produce an acknowledgment for having paid the Receiver''s fee.

