

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE J.SREENIVAS RAO

COMMERCIAL COURT APPEAL No.14 OF 2024

JUDGMENT: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. Avinash Desai, learned Senior Counsel represents Mr. Mohd. Omer Farooq, learned counsel for the appellant.

Mr. B.Chandrasen Reddy, learned Senior Counsel represents M/s.Chandrasen Law Offices, for the respondents.

2. This appeal under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the 1996 Act') has been filed against the order dated 14.03.2024 passed in C.O.P.No.82 of 2023 by the District Judge, for Trial and Disposal of Commercial Disputes, at Hyderabad, by which respondent No.1, namely Managing Partner of M/s.Cafe Bahar Restaurant has been appointed as Receiver. In order to appreciate the grievance of the appellant, relevant facts need mention which are stated infra.

(i) FACTS:

3. The parents of the appellant and the respondent Nos.1 to 3 and deceased respondent No.4 constituted a partnership firm, namely M/s.Cafe Bahar and Restaurant (hereinafter referred to as 'the Firm'), which is engaged in the business of running an Irani restaurant and bakery since 1999. After the death of the parents of the appellant, and the respondent Nos.1 to 3 and deceased respondent No.4, the Firm was re-constituted and a Deed of Reconstitution dated 01.10.2020 was executed. The appellant has 14% share in the Firm.

4. After execution of the Deed of Reconstitution, disputes arose between the appellant and the respondents. According to the appellant, the respondents did not pay her the rightful share in the profits of the Firm since January, 2021 i.e., for 3 years and 9 months and was paid only a sum of Rs.1,00,000/- per month. The said amount is deducted from the capital of the appellant in the firm. As per the version of the appellant, the respondents have misappropriated and withdrawn huge sums from the bank accounts of the Firm.

5. Respondent Nos.1 to 3 issued a notice dated 06.09.2021 to dissolve the Firm to which the appellant submitted a reply on 09.09.2021 stating that the Firm stands dissolved. The respondent Nos.1 to 3, thereupon, initiated arbitration proceedings seeking dissolution of the Firm. The arbitrator by an Award dated 22.09.2023 permitted the withdrawal of the claims while preserving the rights and contentions of the appellant.

6. The appellant issued a notice on 07.10.2023 of dissolution of the Firm and the respondents were asked to render accounts and to distribute the assets of the Firm. The appellant filed an application under Section 9 of the 1996 Act seeking appointment of a Receiver to take over the business of the Firm. The Commercial Court, by an order dated 13.02.2024 passed in C.O.P.No.82 of 2023 allowed the aforesaid application filed by the appellant. The operative portion of the said order reads as under:

“In the result, petition is allowed. Both the parties are directed to submit their proposals by 19.02.2024 for appointing a receiver and to give necessary directions to the receiver in order to manage the day to day affairs of the partnership firm and its properties.”

7. The aforesaid order has not been challenged by either of the parties and has attained finality. Thereafter, in pursuance of the proposal submitted by the parties, the Commercial Court by an order dated 14.03.2023 *inter alia* held that the Firm runs the Café, which is famous and well known to the public and if a third party is appointed as a Receiver, it would be difficult for Receiver to manage the day to day affairs of the business. The Commercial Court, therefore, appointed respondent No.1, namely the Managing Partner of the Firm as Receiver to manage the day to day affairs of the business, subject to the terms and conditions enumerated therein. Being aggrieved, the appellant has filed this appeal.

(ii) INTERIM ORDER:

8. A Division Bench of this Court with consent of the parties had appointed Mr. P.Raju, retired District Judge as Receiver to supervise the running business of the Café during pendency of the Appeal and has fixed his remuneration at Rs.2,00,000/- per month, which was directed to be borne by the appellant and the respondents equally. The aforesaid Receiver had submitted a

Report to this Court in a sealed cover. The sealed cover was opened and the learned Senior Counsel for the parties were granted the opportunity to go through the Report submitted by the Receiver. Learned Senior Counsel for the parties have gone through the aforesaid Report submitted by the Receiver. According to the appellant, due to non-cooperation of the respondents, the Receiver has not been able to supervise the business, while the contention of the respondents is that on account of interference of the appellant with the functioning of the Café, the employees are not reporting to duty. Admittedly, the Café is closed since 10.10.2023.

(iii) SUBMISSIONS ON BEHALF OF THE APPELLANT:

9. Learned Senior Counsel for the appellant submitted that the duration of business of the partnership is at will and the same stands dissolved on receipt of notice of dissolution. The Commercial Court ought to have appreciated that respondent No.1 has mismanaged the affairs of the Firm and has run the business by completely excluding the appellant from the profits of the Firm. It is contended that it was wholly inappropriate to appoint the respondent No.1 as the Receiver and to permit him

to run the business in the same manner as he was doing prior to dissolution of the Firm. It is further contended that the respondent Nos.1 and 3 have withdrawn a sum of Rs.2.5 crores and Rs.1.6 crores respectively on 31.03.2023 and have misappropriated the funds as well as assets of the firm. The conduct of the respondent No.1 disentitles him to be appointed as the Receiver and his appointment is prejudicial to the interest of the appellant as the same would facilitate misappropriation of funds and assets of the Firm.

10. It is submitted that after the interim order dated 27.09.2024 was passed by this Court, the respondent Nos.1 and 3 have acted in a *mala fide* manner with the sole object of making it impossible for the Receiver to function and have instructed the staff not to cooperate with the Receiver appointed with the consent of the parties. It is pointed out that on account of instructions of respondent Nos.1 and 3, the entire staff is absent from the duties at the Café from 10.10.2024 and the Café has been closed. It is argued that the Commercial Court erred in relying on the decision of the Supreme Court in **Firm Ashok Traders vs. Gurumukh Das**

Saluja¹ and **Motilal vs. Badri Nath**² for the proposition that the nature of business warrants appointment of partner as Receiver. It is contended that the aforesaid decisions do not apply to facts of the present case as in the aforesaid decision, the issue with regard to the running partnership firms/joint family business was involved. It is further contended that in the facts and circumstances of the case, the Commercial Court ought to have appointed a third party as a Receiver and the appellant has no objection to the same. It is further contended that various Resolution Professionals have been appointed as Receivers to run the hotels. In this connection, reference has been made to a Panel prepared by the Insolvency and Bankruptcy Board of India. In support of his submissions, reliance has been placed on the decision of the Madras High Court in **Devi Textiles vs. S.Suganthi**³ and a decision of the Patna High Court in **Sheoarain Jaiswal vs. Darshan Lal Jain**⁴.

¹ (2004) 3 SCC 155

² AIR 1982 J&K 1

³ 1999 SCC OnLine Mad 501

⁴ 1971 SCC OnLine Pat 133

(iv) SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

11. On the other hand, learned Senior Counsel for the respondents has submitted that the Order passed by the Commercial Court is just and proper and while directing the appointment of respondent No.1 as the Receiver, the Commercial Court has placed reliance on the decision of the Supreme Court in **Firm Ashok Traders** (supra), which squarely applies to the facts of the case. It is further submitted that in the Award dated 20.09.2023, the Arbitrator has recorded the finding that the duration of business of partnership is not at will and the appellant has challenged the aforesaid Award in proceeding under Section 34 of the 1996 Act. It is contended that the amounts which were withdrawn by the respondent Nos.1 and 3 were on account of salary of the employees of the Firm. It is further contended that due to interference of the appellant with the running of the Café, the Receiver was unable to run the restaurant and the same has been closed with effect from 10.10.2023. It is urged that the third party does not have any experience of running the family concern and therefore, he cannot be appointed as a Receiver and he cannot run the Café effectively. It is pointed out that an application has been filed

seeking recall of the Order dated 27.09.2024 passed in this appeal appointing the retired District Judge as the Receiver. It is contended that the order passed by the Commercial Court does not call for any interference in this Appeal.

12. We have considered the submissions made on both sides and have perused the record.

(v) ANALYSIS:

13. Section 43 of the Partnership Act, 1932 provides for dissolution by notice of partnership at will. For the facility of reference, Section 43 is extracted below:

“43. Dissolution by notice of partnership at will.—

(1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.”

Thus, it is evident that partnership firm at will may be dissolved by any partners giving notice in writing to all the partners to dissolve the partnership firm and the firm is

dissolved from the date mentioned in the notice as the date of dissolution and in case no date was mentioned from the date of communication of notice.

14. Clause 4 of the Deed of re-constitution of the partnership reads as under:

“The duration of partnership business shall be “AT WILL”. The retirement or death of any partner shall not ‘IPSO-FACTO’ dissolve the firm.”

Thus, from the perusal of aforesaid clause, it is evident that the duration of business of the partnership is at will. We have carefully gone through the award dated 22.09.2023 passed by the arbitrator. The aforesaid award does not record any finding that the partnership is not at will. The respondent Nos.1 to 3 had issued a notice dated 06.09.2021 dissolving the Firm. Thereafter, they issued a notice dated 18.04.2023 seeking to withdraw the earlier notice dated 06.09.2021 seeking dissolution of the Firm. Subsequently, the appellant by a notice dated 07.10.2023 had dissolved the Firm with immediate effect. The partnership Firm stands dissolved on receipt of the notice by the respondents.

15. The solitary issue which arises for consideration in this Appeal is whether in the obtaining factual matrix of the case, the Managing Partner can be appointed as a Receiver to manage the affairs of the Firm, which stands dissolved.

16. The Receiver in a claim or other proceedings is an impartial person appointed by the Court to manage the affairs of the Firm during the pendency of a *lis* between the parties and acts as hand of the Court. The appointment of Receiver in respect of a dissolved partnership is in the discretion of the Court and while exercising the discretion, the Court will be guided for consideration of observing and protecting the property and assets of the dissolved form will not permit them to be dissipated or used by one partner exclusively to the detriment and disadvantage of the other partners, who are excluded from the appointment of partnership Firm.

17. In ***Kerr & Hunter on Receivers and Administrators, 18th edn., at pg. 65***, while dealing with appointment of Receiver in partnership cases learned Authors have opined as under:

“The readiness of the court to appoint a receiver in partnership cases depends upon whether the

partnership has been dissolved at the time when the application is made. If a dissolution has clearly been effected by the service of the claim form, or if the partnership has expired by effluxion of time, a receiver will readily be appointed, though the appointment is not a matter of course.”

18. Impartiality is an essential attribute of a Receiver. Therefore, normally one of the parties to a *lis* should not be appointed as Receiver without consent of the other parties unless a very special case is made out. Therefore, normally when the relationship between the parties are strained and there is deficit of trust and allegations and counter-allegations are made against each other, in such circumstances a party to the *lis* should not be appointed as Receiver. Similar view was taken by a Division Bench of Patna High Court in **Sheonarain Jaiswal** (supra) and a learned Single Judge of Madras High Court in **Devi Textiles** (supra).

19. In the instant case, the appellant and the respondent Nos.1 to 3 are related to each other as sister and brothers. According to the appellant, she has not been paid her rightful share in the profits of the partnership firm from January, 2021 i.e., 3 years and 9 months. It is the case of the appellant that

the working partners have withdrawn a sum of Rs.2.5 cores and Rs.1.6 crores from the account of the firm on a single day i.e., on 31.03.2023. According to the appellant, respondent Nos.1 and 3 have not shared the books of accounts and have excluded her completely from the properties of the firm and are misappropriating the funds of the firm and are likely to alienate the assets of the firm. On the other hand, respondents have denied the aforesaid allegations and have pointed out that the respondents have withdrawn the amount for making payment of salaries to the employees of the firm. They have denied the allegations of misappropriation of the fund as well as the assets of the firm made on behalf of the appellant. This Court had made an attempt for resolution of the dispute between the parties by way of mediation. However, even the aforesaid attempt has failed. The aforesaid facts clearly show that the relationship between the parties is strained and there is a lack of trust in each other.

20. In **Firm Ashok Traders** (supra), the Supreme Court did not deal with a partnership, whose duration of business was at will. In the aforesaid decision, the Supreme Court was dealing with running of business of a Firm, which dealt with retail

liquor trade. In the aforesaid decision, in the facts and circumstances of the case, it was held that the business of the Firm should be allowed to continue at the hands of the persons who were running it so far. The aforesaid decision is not an authority for the proposition that a party can be appointed as Receiver in case where the relationships are severely strained and there is a lack of trust between them. The aforesaid decision is of no assistance to the respondents.

(vi) CONCLUSION:

21. For the aforesaid reasons, the order dated 14.03.2024 passed in C.O.P.No.82 of 2023 by the Commercial Court insofar as it directs appointment of Managing Partner of the Firm as a Receiver cannot be sustained. It is accordingly set aside.

22. Admittedly, the Cafe is closed on 10.10.2024. It is in the interest of the parties that the same is made functional. The Insolvency and Bankruptcy Board of India has prepared a panel of Resolution Professionals who are based in Hyderabad and are looking after the hotel business during the pendency of the proceedings under the Insolvency and Bankruptcy Code. There is a need to appoint a neutral person as Receiver to manage the

affairs of the Firm. The Managing Partner of the Firm can also not be permitted to manage the affairs of a dissolved Firm as before. Therefore, Mr. Dantu Indu Sekhar, Resolution Professional in the panel of Insolvency and Resolution Board of India is appointed as Receiver to manage the affairs of Firm, M/s.Cafe Bahar Restaurant, subject to the following terms and conditions:

(i) The Receiver shall maintain the accounts of the business property and vouch the receipts and payments properly including cash counters, online orders by way of e-commerce apps.

(ii) The Receiver shall maintain the sale proceeds properly accounted for and no part of the proceeds is siphoned off and/or carried away unaccounted by anyone.

(iii) The Receiver shall deposit the day to day sale proceeds in the Firm's bank account bearing A/c No.34833697002, State Bank of India, Old MLA Quarters, Hyderabad.

(iv) The Receiver shall operate the accounts of the Firm and withdraw or transfer the money from the said accounts

strictly for the purpose of running the business of M/s.Cafe Bahar Restaurant.

(v) The Receiver shall ensure that no amount shall be transferred to the accounts of any third party, unless such transfer is required for the business of the Firm.

(vi) The Receiver shall maintain the record of all expenses, incurred during the course of business including payments to vendors, price of raw materials, utility charges and salaries to staff etc., and submit the same to all the partners by enclosing supporting vouchers or bills or invoices at every fortnight, and

(vii) The partners shall have reasonable right to visit the Cafe during business hours and watch the activities going on, without interfering with the business activities run by the Receiver.

23. Needless to state that the parties shall cooperate with the Receiver to enable him to ensure that the business of the Partnership Firm is managed efficiently during the pendency of the *lis*. It is clarified that any observations/findings in this order has been made only for the purposes of deciding this

Appeal and shall have no bearing on the merits of any proceeding which may be initiated/pending between the parties. The interim order dated 27.09.2024 is vacated.

24. The Appeal is accordingly disposed of. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

ALOK ARADHE, CJ

J.SREENIVAS RAO, J

28.10.2024
Pln