IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.18 OF 2013
IN
COURT RECEIVER'S REPORT NO.577 OF 2012
IN
ARBITRATION PETITION NO.1214 OF 2010

L & T Finance Limited, a Company incorporated under the provisions of The Companies Act, 1956, having its Registered Office at L & T House, Ballard Estate, Mumbai 400 001 and Corporate Office at 8th Floor, Metropolitan, C-25/C-26, 'E' Block, Bandra Kurla (East), Mumbai – 400 051	) …. Appellant. (Original Petitioner)

V/s

1. AGT Infrastructure Pvt. Ltd., (Borrower), having his address at Block – 16, Haveli Complex, Opp Zilla Parishad Office, Chandrapur, Maharashtra	) ...Respondent (Original Respondent)

And

2. The Court Receiver, High Court, Bombay	) Respondent.

Mrs. S.I. Joshi i/b S.I. Joshi & Co. for the Appellant

Mr. C.M. Korde, Senior Counsel i/b Mr. Sasikumar T.C for Respondent No.2.

CORAM: V. M. KANADE &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

Judgment reserved on : 26/08/2015.
Judgment pronounced on : 06/10/2015.

<u>ORAL JUDGMENT</u> (Per V.M. Kanade, J.)

1. Appellant, being aggrieved by the Order passed by the learned Single Judge dated 05/11/2012 confirming the demand of the Court receiver seeking 1% commission, has filed this appeal.

2. Brief facts are that the Appellant advanced a loan of Rs 32,40,000/- to AGT Infrastructure Pvt. Ltd., who is Respondent No.1 herein, to purchase two TATA LPK 2518 vehicles on hypothecation of the said vehicles with the Appellant. The Appellant and the Respondent - AGT Infrastructure Pvt. Ltd. executed a Loan-cum-Hypothecation Agreement dated 08/05/2008. By the said agreement, the loan which was paid to the Respondent was repayable in 35 equated monthly installments with interest @ 6.35% per annum. Dispute was referred to the Arbitrator and during the pendency of the arbitration proceedings, Petition was filed to secure the claim of the Appellant. The learned Single Judge, while disposing of the Arbitration Petition, appointed the Court Receiver who was directed to take symbolic possession of the vehicles and appoint Respondent - AGT

Infrastructure Pvt. Ltd as agent of the Court Receiver.

3. Accordingly, representative of the Court Receiver along with the staff of the Office of the Court Receiver went to the suit site and took symbolic possession of the two vehicles and appointed the Respondent - AGT Infrastructure Pvt. Ltd as an agent of the Court Receiver. Respondent - AGT Infrastructure Pvt. Ltd deposited a sum of Rs 3,30,630/- towards royalty. The matter between the parties was settled and the Court Receiver was discharged, subject to payment of cost, charges and expenses, if any, incurred by the Court Receiver.

4. Thereafter, the Court Receiver submitted his report and demanded inter alia Rs 24,276/- towards 1% commission on the value of the movable property mentioned in the particulars of claim which was Rs 24,27,595/-. This report was placed before the learned Single Judge. An objection was raised by the Appellant before the learned Single Judge that 1% commission on the particulars of claim could not have been charged, firstly because possession of the vehicles was not taken and the relevant rule under which 1% commission was charged clearly mentioned that if possession of the property is taken only then 1% commission could be charged. Secondly, it was submitted that the Court Receiver had erred in demanding 1%

commission on particulars of claim. It was submitted that particulars of claim included not only value of the vehicles but also the other claims including damages, compensation, interest etc. A reply has been filed by the Court Receiver to the affidavit in support filed in Notice of Motion taken out by the Appellant.

5. The appeal was taken up for hearing and we have heard both the parties at length.

6. The learned Counsel appearing on behalf of the Appellant invited our attention to Rule 591 of the High Court (Original Side) Rules, 1980. She submitted that Court Receiver had claimed charges under Rule 591(5) for the said transaction. The relevant Rule 591(5) reads as under:-

> "591(5) For taking charge of movable property which is not sold on the estimated value."

7. It is an admitted position that a representation was made by the Appellant through its advocate to the High Court on the administrative side and a Committee was appointed which looked into the matter and thereafter the said Rule 591(5) has been amended sometime in 2013.

8. The learned Counsel appearing on behalf of the Appellant submitted that physical possession of the property was not taken. Reliance was placed upon the correspondence between the Court Receiver and the Appellant and the Minutes of the Meeting. It was submitted that the Court Receiver Could not, by any stretch of imagination, charge 1% commission, firstly because physical possession of the said two vehicles was not taken and, secondly, even otherwise, 1% commission could not have been charged on the particulars of claim. She invited our attention to the Court Receiver's Report which, according to her, clearly indicated that physical possession of the said two vehicles was not taken. Thirdly, it was submitted that valuation of the two vehicles as per the order dated 29/11/2012 was not done. She submitted that the Appellant had requested the Court Receiver to appoint Mr. P.S. Rao who was a Panel Valuer and the Appellant had also agreed to bear cost, charges and expenses of the Valuer. It was also pointed out that the said two vehicles were in possession of the the Respondent – AGT Infrastructure Pvt. Ltd and they were available with the said Respondent for the purpose of valuation. It was then submitted that the Court Receiver had not obtained market value of the said two vehicles and also had not written any letter to the Respondent - AGT Infrastructure Pvt. Ltd., calling upon them to point out the location of the said vehicles to enable the valuer to get the

valuation done. Grievance was made that the Court Receiver had not taken any efforts to get the valuation done. It was submitted that the Court Receiver, on the other hand, informed the Appellant that it was a Finance Company and it should be aware of the valuation of the hypothecated goods.

9. It is an admitted position that as per the Invoices, price of the vehicles was Rs. 19,07,827/- each and the cost of two vehicles was Rs 38,15,654/-. Reliance was also placed by the Appellant on Rule 123 of the Manual of the Court Receiver which prescribed the manner in which the commission could be charged. Our attention was drawn to the said Manual and it was pointed out that nowhere in Rule 123 or in the Manual, it was provided or stated that the Court Receiver was entitled to charge 1% commission on particulars of claim of the suit or Petition. It was submitted that the Appellant was ready and willing to pay all charges of the Court Receiver which they were entitled to charge as per Rule or Manual.

10. On the other hand, Mr. Korde, the learned Senior Counsel appearing on behalf of the Court Receiver invited our attention to the report submitted by the Court Receiver. He submitted that pursuant to the order passed by the learned Single Judge, the Court Receiver fixed an appointment for taking possession of the vehicles on 26^{th},

27th October, 2010 and the representative of the Court Receiver proceeded at suit site at Chandrapur and took formal possession of the vehicles/equipments by affixing two possession boards indicating possession of the Court Receiver. After the formal possession was taken, a meeting was fixed in the office of the Court Receiver on 21/12/2010. In the said meeting, Advocate for the Appellant submitted that the Respondent - AGT Infrastructure Pvt. Ltd was liable to pay royalty from October, 2010 as the possession of the vehicles had been taken by the Court Receiver in October, 2010. The Appellant's Advocate suggested that royalty may be fixed @ Rs 1,10,210/- and this was accepted by the Respondent - AGT Infrastructure Pvt. Ltd., who agreed to deposit three months' royalty. Thereafter, meetings were held and again on 21/06/2011, representative of the Court Receiver went to the suit site at Chandrapur on which date the representative of the Respondent - AGT Infrastructure Pvt. Ltd. agreed to pay Rs 30 lakhs to the Appellant. Again, representative of the Court Receiver went to the suit site on the next date i.e. on 22/06/2011. However, possession was not handed over.

11. Mr. Korde, the learned Senior Counsel appearing on behalf of the Court Receiver also invited our attention to the Minutes of the Meeting and the other correspondence between the parties. He submitted that as per Rule 591 of

the Bombay High Court (Original Side) Rules, the Court Receiver was entitled to claim 1% commission for taking charge of movable property. It was contended that even in cases of tenanted property always formal possession is taken by the Court Receiver and actual possession remains with the tenant. It was contended that therefore the submission of the Appellant that possession was not taken was incorrect. He then submitted that the representative of the Court Receiver had taken pains by going to site at Chandrapur and had called for police help since there was a possibility of resistance at the time of taking formal possession of the property. He submitted that though 1% commission could not be charged on the particulars of claim, if the value at which the vehicles were purchased was taken into consideration, the invoices indicated that the total value was Rs 38,15,654/- and after deducting depreciation and other expenses, the valuation of the property even otherwise was correctly estimated to be Rs 24,27,595/- It was therefore submitted that 1% of Rs 24,27,595/- was charged as commission. It was submitted that instead of appreciating the efforts taken by the Court Receiver in securing the property and ensuring return of money to the Appellant, the Appellant had made false and frivolous allegations and had challenged the said Report. He submitted that now the said Rule has been amended and this question has become academic.

12. In our view, we do not see any reason to interfere with the Order passed by the learned Single Judge. We are in agreement with the submission made by the learned Senior Counsel appearing for the Court Receiver. Perusal of the entire report indicates that representative of the Court Receiver had taken great efforts in securing the formal possession of the two vehicles, as a result of which parties have finally settled the dispute and the Appellant could recover the entire amount. It must be noted that the Court Receiver's Office in Mumbai is the only Office which sends its representative to various places for the purpose of securing the property and, as a result, Plaintiff's claim is secured. At times, Court Receiver's representative has to face serious situation as the Respondents have control over the location where they are residing and may oppose the representative of the Court Receiver. Many incidents have taken place where representative of the Court Receiver has even been attacked by the Respondents' hirelings. We are surprised at the approach of the Appellant. Technically, it may be correct that valuation of the property was not done. However, if the valuation had been done, expenses of the valuer also would have increased the cost. Even if rough and ready calculation is made, the figure arrived at by the Court Receiver namely Rs 24,27,595/- is not excessive. This can be seen from the fact that initially the total price of the two

vehicles was Rs 38 lakhs approximately, after deducting depreciation and other expenses, the valuation which was made at Rs 24,27,595/- also cannot be said to be an exorbitant amount showing the valuation of the property. The Court Receiver, far from being benefited or taking undue advantage, had taken great efforts to secure the property. Rule 591 of the Bombay High Court (Original Side) Rules clearly reveals the scale of fees which are to be charged by the Court Receiver. Clause (5) of Rule 591 talks about taking charge of movable property. By taking formal possession, the Court Receiver therefore had taken charge of the movable property. The submission of the Appellant that the actual possession is not taken and therefore the Court Receiver is not entitled to charge 1% commission therefore is without any substance.

13. We must also note that order for appointment of Court Receiver is passed only on the Original Side of the High Court, Bombay and the Court Receiver promptly acts on the said order and secures the property. We do not find such a practice being followed anywhere in Maharashtra and for that matter in other States. It is no doubt true that the Court Receiver is entitled to charge his commission as per the Rules and Regulations and as per the Bombay High Court (Original Side) Rules. However, we are surprised that the Appellant who is one of the leading Finance Companies

should make a grievance of this nature and that too after availing the services of the Court Receiver.

14. We do not find any substance in the appeal. In our our view, this is a fit case where exemplary costs should have been awarded. However, taking into consideration the fact that the litigants have right to challenge the order passed by the Court, we refrain ourselves from imposing heavy costs. Appeal is therefore dismissed. There shall be no order as to costs.

(DR. SHALINI PHANSALKAR-JOSHI, J.) **(V.M. KANADE, J.)**

bdpps

CERTIFICATE

Certified to be true and correct copy of the original signed judgment.