IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.320 OF 2015
IN
ARBITRATION PETITION NO. 663 OF 2013

ALONGWITH
COURT RECEIVER'S REPORT NO. 391 OF 2014
IN
ARBITRATION PETITION NO. 663 OF 2013

Reid & Taylor (India) Ltd. ….. Applicant

IN THE MATTER BETWEEN

L & T Finance Limited ….. Petitioner

VERSUS

Reid & Taylor (I) Limited & Ors. ….. Respondents

Ms.S.I.Joshi, i/b. M/s.S.I.Joshi & Co. for the Petitioner.
Mr.Chirag Modi, i/b. M/s. Little & Co. for the Respondents.
Mr.S.S.Deshpande, Court Receiver present.
Mr.A.B.Malvankar, Section Officer present.

CORAM : R.D. DHANUKA, J.

DATED : 9th JULY, 2015

P.C.

By this chamber summons, the applicant (original respondent no.1) seeks an order and direction that the order dated 22nd August, 2014 passed by the learned Court Receiver fixing the ad-hoc royalty be set aside. In the Court Receiver's Report No. 391 of 2014, the learned Court Receiver seeks direction about the steps to be taken in view of the applicant to the chamber summons having failed and neglected to pay the royalty from 8th January, 2014 as decided in the meeting held on 22nd August, 2014 and for further directions and costs.

2. On 8th January, 2014, N.M.Jamdar, J. in the Arbitration Petition No.663 of 2013 after hearing the parties appointed the Court Receiver, High Court, Bombay as ad-interim receiver in respect of the property described in Schedule II to the Deed of Hypothecation with a direction to the Court Receiver to appoint the respondents and/or occupants of the said properties as agent of the Court Receiver on usual terms and conditions, on furnishing security and on payment of royalty. It was made clear that if the respondents or such occupants refuse to accept the agency on the terms decided by the Court Receiver within two weeks from the date of offer, the Court Receiver will submit report in that regard to this court for further orders.

3. The said order passed by this court has not been impugned by the respondents by filing any appeal.

4. Pursuant to the said order dated 8th January, 2014, the learned Court Receiver fixed various meetings for offering the agency of the assets to the respondents and for fixation of the royalty amount.

5. In the adjourned meeting held on 22nd August, 2014, the learned Court Receiver heard the submissions of both parties advanced through their learned counsel. It was pointed out by the learned counsel for the petitioner that the respondent no.1 had availed of loan of Rs.50 crores and had executed facility agreement on 13th October, 2011. In view of the default committed by the respondents, the petitioner issued a demand notice on 18th March, 2013 and called upon the respondents to pay Rs.51,03,66,127.61 towards the claim of the petitioner as on 15th March, 2013 with further interest thereon. It was pointed out by the learned counsel for the petitioner that the installments payable by the respondents

under the said facility agreement was in the range of 56,24,975/- for the first year in the range of Rs.1,58,29,082/- and Rs.1,14,66,837/- between 2012 to 2015 and an amount of Rs.1,08,92,857/- agreed to be paid by installments from 19th May, 2016 onwards to Rs.1,03,17,986/- upto October 2016. The petitioner also filed their statement of accounts as on 13th June, 2014 showing an amount of Rs.41,85,51,412/- to be recovered from the respondents and upon receipt of Rs.1,20,938,791/- an amount of Rs.29,76,12,621/- was shown as due from the respondent company with further interest thereon.

6. The respondents through their learned counsel before the Court Receiver canvassed that the respondent company was facing financial crisis and was agreeable to pay royalty to Rs.2,00,000/- per month while possessing the hypothecated property in occupation as an agent of the Court Receiver. It was also submitted that as per the summary statement of accounts placed on record an amount of Rs.861.16 lacs was already paid till 31st March, 2014 and as on 31st March, 2014 sum of Rs.2285.61 lacs was payable and total outstanding amount shown was as Rs.4795.92 lacs by the respondent company to the petitioner.

7. The respondents submitted that the bank account of the respondent company with Axis Bank Ltd. and ING Vysya Bank Ltd. were already blocked by the Income Tax Department towards the TDS liability of Rs.2,04,58,710/- and they were unable to operate the said accounts. The Deputy Commissioner of Commercial Tax–Mysore had issued three separate orders for demanding Rs.2,32,60,865/-. The respondents also pointed out that the company court has directed the respondents by an order dated 12th August, 2014 to pay an amount of Rs.2 crores to the petitioner which amount has been paid.

8. Learned counsel for the applicant submits that the applicant company has already submitted a scheme for consideration before the company court. He submits that there are large number of creditors and there is no cash flow. He submits that the learned Court Receiver ought to have obtained valuation report before fixing any royalty amount. He submits that the royalty amount fixed cannot be such which would be in the nature of penalty for use of the assets hypothecated in favour of the petitioner.

9. Learned counsel for the applicant placed reliance on the judgment of this court in case of ***Humayun Dhanrajgir & Ors. vs. Ezra Aboody*** reported in ***2008(6) Bom.C.R.862*** and in particular paragraphs 34 to 36. He submits that while fixing the royalty, there cannot be any intention of making any profit while fixing royalty to be paid by the agent of the Court Receiver.

10. Mrs.Joshi, learned counsel for the original petitioner supported the order passed by the learned Court Receiver and submits that though under the agreement entered into between the parties the applicant was liable to pay installment at much higher rate, the learned Court Receiver has considered the ad-hoc royalty payment of Rs.1 crore only per month. She submits that the respondents having committed default cannot be permitted to be an agent on payment of the royalty amount lesser than the amount which was payable by the respondents to the petitioner under the Deed of Hypothecation entered into between the parties in installments.

11. She submits that the respondents having been admittedly using the hypothecated assets and have been carrying on business and making profit by use of such assets, the amount of royalty fixed by the learned Court Receiver being a reasonable amount, the said order shall not be interfered with by this court in this

chamber summons. The learned counsel distinguished the judgment of this court in case of ***Humayun Dhanrajgir & Ors.(supra).***

12. The learned Court Receiver invited my attention to the minutes of the meeting held on 1st October, 2014 and submits that though the learned Court Receiver had given an opportunity to the applicant to take steps for making valuation report of the suit equipments, the representative of the applicant did not think it necessary to take any steps to get any valuation report.

13. A perusal of the record indicates that there is no dispute that under the Deed of Hypothecation entered into between the parties, the installments payable to the petitioner by the respondent no.1 for the relevant period was more than Rs.1 crore per month. There is no dispute that the respondents had committed default in making payment of the installments to the petitioner. The applicant never obtained any valuation report before the learned Court Receiver while determining the ad-hoc royalty by the Court Receiver. Even in this chamber summons filed by the applicant, the applicant has not placed any reliance on such valuation report. In my view there is thus no substance in the submission of the applicant that the Court Receiver on his own ought to have obtained report in such a situation.

14. Insofar as submission of the learned counsel for the applicant that the royalty amount should not be such which would be in the nature of penalty or no profit can be allowed to be made by fixing a royalty is concerned, in my view if the respondents would not have committed default under the deed of hypothecation, for use of such hypothecated assets, the installments due and payable under the deed of hypothecation by the respondents in favour of the petitioner would have been much more than the ad-hoc amount of royalty fixed by

the learned Court Receiver. A party who has committed default cannot be beneficiary of his own default and seek to pay the amount lesser than what he was liable to pay under the deed of hypothecation without committing any default.

15. Insofar as judgment of this court in case of ***Humayun Dhanrajgir & Ors. (supra)*** relied upon by the learned counsel for the applicant is concerned, a perusal of the said judgment clearly indicates that this court has taken a cognizance of the fact that the Court Receiver has to strike the balance which would enable the plaintiff to realize the amount while protecting the security and at the same time to see that the occupant is not deprived of use, occupation and possession of the premises pending litigation. In my view the respondents cannot be allowed to use the hypothecated assets after committing default at the rate lesser than that what they were liable to pay under the deed of hypothecation without committing any default. The said judgment of this court in case of ***Humayun Dhanrajgir & Ors. (supra)*** assist the case of the original petitioner and not the case of the applicant.

16. A perusal of the record indicates that though an order was passed by this court appointing Court Receiver as far back as on 8th January, 2014, till date no agency agreement has been executed by the applicant. The applicant has also not paid any ad-hoc royalty fixed by the learned Court Receiver and has impugned the same in this chamber summons.

17. In my view the order passed by the learned Court Receiver is passed after considering the submissions made by both the parties and has rightly considered the amount of installments payable by the respondents to the petitioner under the deed of hypothecation as the basis for the purpose of payment of ad-hoc royalty. I do not find any infirmity with the order passed by the Court Receiver.

18. I, therefore, pass the following order :-

(a) Chamber Summons No.320 of 2015 filed by the applicant is dismissed.

(b) Since the applicant has not paid any ad-hoc royalty as fixed by the Court Receiver, the Court Receiver is directed to take forcible possession of the hypothecated assets from the respondents or any third party found in occupation and if necessary with assistance of the police.

(c) Since the order passed by the learned Court Receiver is upheld by this order, the applicant is directed to deposit the ad-hoc royalty fixed so far, till the possession is handed over within two weeks from today without fail.

(d) On oral application of the learned counsel for the applicant, operation of this order is stayed for a period of two weeks.

(e) Court Receiver's Report is disposed of in the aforesaid terms with cost of Rs.3,000/- on this application which shall be paid by the applicant within one week from today.

[R.D. DHANUKA, J.]