

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE R.MAHADEVAN

O.S.A.Nos.234 to 237 of 2008
and connected miscellaneous petitions

Sri Narasu's Coffee Company Limited,
16, Court Road, Johnsonpet,
Salem-636 007,
rep. by its Managing Director
Mr.P.Sivanantham. .. Appellant in

all appeals

(Cause title amended vide order
dt. 5.1.2012 in M.P.Nos.1 to 1 of 2012 in
OSA.Nos.234 to 237 of 2008)

vs

- 1.Narasu's Roller Flour Mill,
A Firm represented by its Partner
Mr.M.V.Balasubramaniam
- 2.M.V.Balasubramaniam
Partner, Narasu's Roller Flour Mills.
- 3.R.P.Sarathy,
Partner, Narasu's Roller Flour Mills.
- 4.B.Latha,
Partner, Narasu's Roller Flour Mills.

.. Respondents in
all appeals

Appeals filed under Order XXXVI, Rule 9 of Original Side
Rules read with Clause 15 of Letters Patent against the order in
O.A.Nos.424, 425, 426 & 427 of 2007 in C.S.No.291 of 2007, dated
07.11.2007.

For Appellant .. Mr.Rajesh Ramanathan

For Respondents .. Mr.K.Rajasekaran

COMMON JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

The impugned order is in the nature of practical working arrangements in respect of the family business which has been prevalent for eight years' period of time. On our query, we are informed that over this period, neither parties filed their documents nor any documents have been exhibited and Issues have also not been framed. Obviously, the parties do not seem to be seriously concerned with the interim arrangements made.

2. It is trite to say that this Court will not sit in appeal over the discretion of the Court of first instance to examine the same and substitute its own views to find out as to what decision it would have taken in the given facts and circumstances.

3. We are fortified in our view by the judgment of the Hon'ble Supreme Court in *Wander Limited and another v. Antox India Pvt. Ltd.*, reported in 1990 (Supp) SCC 727, where it has been opined that the Appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle.

4. We are of the view that none of the aforesaid parameters is met in these appeals. If the parties were seriously interested in the suit, steps would have been taken to prosecute the suit. The appeals have been really posted on the scrutiny by the Court directing that the appeals against the interlocutory orders be listed before this Court.

5. We are, thus, not inclined to interfere with the impugned order.

6. The appeals are dismissed. No costs. Consequently, all connected miscellaneous petitions are also dismissed.

7. The learned counsel for parties state that in view of what has been observed aforesaid and considering the suit is quite old, they are willing to take steps to expedite the trial in the suit. Thus, the following agreed directions are passed:-

- (1) In the suit in question as well as the connected suit, pleadings be completed. Written statement, if not filed, will be filed within four weeks from today.
- (2) Replication be filed within two weeks thereafter.
- (3) Parties will file the respective original documents in their possession within the same period of time.
- (4) The suits be listed before the Master of this Court for exhibiting the documents on 01.11.2016.
- (5) The suits will be listed before the Court for settlement of Issues on 16.11.2016.
- (6) In view of the heavy board of the Master of this Court, the parties will get the evidence recorded before a retired Judicial Officer to act as the Commissioner and the fee and expenses will be shared equally between the parties.
- (7) The Commissioner will endeavour to complete the recording of evidence within a period of four months of the first date fixed by him.
- (8) On conclusion of the evidence, the suits will be listed before the Court for direction for final hearing.

(9)Mr.J.Krishnamurthy, retired District Judge (Mobile No.9442092363), B2/D, First Floor, Nu-Techkrishna, Old No.15, New No.37, Soundarajan street, T.Nagar, Chennai-17 is appointed as the Commissioner to record the evidence and the fee of the Commissioner is fixed at Rs.50,000/- (Rupees Fifty Thousand), apart from out of pocket expenses to be shared equally between the parties.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to Mr.Rajesh Ramanathan, Advocate Sr.48812

O.S.A.Nos.234 to 237 of 2008

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srg 14/09/2016

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