Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 546 OF 2016

WITH

CIVIL APPLICATION NO. 703 OF 2016

AND

CIVIL APPLICATION NO. 336 OF 2017

Jaywanti D Sangoi & Ors ...Appellants
Versus
Vallabhji Nanji Sangoi ...Respondent

Mr Arshil Shah, *i/b Preeti Gada, for the Appellant.*
Mr Rajesh P Chheda, *with Preeti Limbchiya, for the Applicant/ original Respondent No. 1.*

CORAM: G.S. PATEL, J
DATED: 5th July 2017

PC:-

1. Heard.

2. The Plaintiffs are in Appeal against an order dated 5th May 2016 passed on a Notice of Motion filed by the Defendant for recovery of royalty charges from November 2014 at the rate of Rs. 49,200/- per month with permission to withdraw this with interest. A brief background is necessary. The Plaintiffs are the legal heirs of one Dhirajlal Nanji Sangoi. The Defendant Vallabhji Nanji Sangoi is Dhirajlal's elder brother. The Suit was originally filed in this Court on its Original Side bearing Suit No. 1829 of 2010. This Court appointed the Court Receiver in respect of the business of the firm and asked the Court Receiver to call for bids. The Court Receiver did so. The Plaintiffs were found to be the highest bidder. The monthly royalty was fixed at the rate of Rs. 82,000/- per month. This was then directed to be divided between the Plaintiffs and the Defendants in the ratio of 60:40, i.e., so that the Plaintiffs would get 60% and the Defendants 40%. The stock in trade was valued. The Plaintiffs deposited the value of stock entry and advance three months' royalty in the 60:40 ratio. On this basis, the Defendant is entitled to receive Rs. 49,200/- per month. The Plaintiffs renovated the furniture and fixtures and started the business in the suit shop No. 5. The Plaintiffs deposited the royalty periodically.

3. The Defendant filed Notice of Motion No. 2199 of 2012 to withdraw the amount accumulated by then. The withdrawal was permitted and the Defendant was allowed to further withdraw Rs. 49,200/- per month in future. In December 2014, the Defendant received a letter from the Plaintiffs saying that the royalty for two months, i.e., November and December 2014 was being adjusted against the security deposit, and that while the Plaintiffs had paid the royalty up to October 2014, they intended to discontinue the agency and would not be able to pay royalty charges after December 2014.

4. The point to be noted is that there is no discontinuance of agency by or under an order of the Court. The discontinuance, if it can be called that, is unilaterally by the Plaintiffs simply by writing a letter to the Court Receiver. The agency was created under an order of the Court. Unless that order allowed the Plaintiffs to discontinue it at will, the agency could not and cannot be discontinued unless there is a proper application made to Court and the Court rules on that application.

5. This is not merely a matter of form. It is a matter of substance. The reason is self-evident. If a party once appointed as an Agent of the Receiver wishes to terminate that agency, this must be done with notice to the others who have a stake and can only be done under the supervision of and by an order of the Court so that the equities are correctly balanced. Such an agency cannot be cancelled by the Court Receiver. Writing to the Court Receiver, therefore, has no effect at all. The Court Receiver does not have the authority to act on a letter purporting to terminate the agency from the agent himself. This agent is very much a party before the Court and must make an application to the Court if there is to be any variation or change in the previous order.

6. Consequently, such a unilateral act by a party means effectively that an earlier judicial order of the Court is sought to be nullified by simply writing a letter to the Court Receiver. This is unthinkable. If permitted, it would lead to complete chaos in matters where Receivers are appointed.

7. There is nothing before me and there was nothing before the Trial Court to indicate that the Plaintiffs at any time applied to the

Court for cancellation of agency. The argument in support is that there is some difficulty with VAT registration and the Plaintiffs are, therefore, unable to carry on business. This is unacceptable. If the Plaintiffs were unable to persuade the VAT authorities that they were acting only as agents of the Court Receiver, they could have applied to Court for an order or direction to the VAT authorities. Even this they did not do. In fact other than writing letters to the Court Receiver, the Plaintiff have done nothing at all to validly revoke or cancel the agency. It is for this reason, the Trial Court has correctly observed in paragraphs 25 and 28 of the impugned order:

> "25. It cannot be ignored that while entering into the Agency Agreement with the Court Receiver, plaintiffs were well aware about all the requirements of law and must have entered into the Agency Agreement having the knowledge of the compliance of provisions of law. Thus, abruptly after carrying on the business for two years, plaintiffs cannot be escaped from the Agency Agreement on such ground of not approaching to this Court for issuing directions to the Court Receiver. So also the conduct of the plaintiffs of not approaching to this Court for issuing directions to the Court Receiver to co-operate for getting permission, speaks in volume. Such conduct reflects that the plaintiff has created the said illusory grounds to discontinue the business without the prior orders of the Court.
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> 28. Till today plaintiffs have not claimed the termination of the Agency Agreement from this Court. Thus, the claim of the defendant appears to be reasonable and justified. Merely as the plaintiffs intend to discontinue the business having some distort with the Court Receiver, the defendant

> cannot be made disentitle from receiving the royalty, which appears to be the source of income of the defendant. From the facts and documents on record, according to the plaintiffs, defendant was running the business prior to the appointment of the Court Receiver. Thus, business of the defendant is now stopped by the orders of appointment of the court Receiver and the plaintiffs agreed to be the agent of the Court Receiver. Now the defendant has no earnings from the business of the Firm. Thus, in view of the terms and conditions of the Agency Agreement and the orders passed by this Court, the defendant is entitled for the royalty charges of Rs. 49,200/- per month till termination of the Agency Agreement."

8. The Trial Court allowed the Notice of Motion in part directing the Plaintiffs to deposit the royalty from November 2014 at Rs. 49,200/- per month till termination of the agreement by an order of the Court. This is absolutely the correct order that was required to be passed.

9. I am informed that about a month after the impugned order, on 14th July 2016, the Trial Court allowed the Plaintiffs' Notice of Motion for cancellation of agency and cancelled it with effect from that date. The question, therefore, remains of the payment of royalty from December 2014/January 2015 till July 2016 when the agency was terminated.

10. There is no doubt in my mind that the Plaintiffs cannot be exempted from paying the royalty for this period.

11. An amount of Rs. 8 lakhs has been deposited pursuant to the order dated 9th December 2016 passed by GS Kulkarni J. That amount needs to be re-computed and adjusted at the prescribed rate for the period from January 2015 till July 2016. The balance, if any, is to be paid on or before 8th October 2017.

12. The Appeal is dismissed. No costs.

13. The Civil Applications do not survive and are disposed of as infructuous.

(G. S. PATEL, J)