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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.133 OF 2016

IN

CHAMBER SUMMONS NO.320 OF 2015

WITH

APPEAL (L) NO.175 OF 2016

Reid and Taylor (India) Ltd. … Appellant
Vs.
L and T Finance Ltd. and Ors. … Respondents

Mr. Chirag Mody a/w Mr. Nirav Shah and Mr. Aditya Singh i/by M/s. Little & Co. for the Appellant.

Ms. Shakuntala Joshi a/w Ms. Jalpa Pithadia i/by S.I. Joshi & Co. for the Respondent No.1.

Dr. M.S. Deshpande, Court Receiver present.

CORAM : A.S. OKA &
A.K. MENON, JJ.

DATE : 21st APRIL, 2017

P.C.

1 The Appeal is preferred by the respondent in a Petition filed by the first respondent under Section 9 of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act"). The prayer in the said Petition was for appointment of Receiver, Injunction, etc. pending the arbitral proceedings. The case of the first respondent was

that the appellant was granted a loan to the tune of Rs.50 Crores by the first respondent. A Facility Agreement, a Deed of Hypothecation and a Pledge Agreement were executed by the petitioner. In the said Petition, ad-interim injunction was granted by the learned Single Judge by the order dated 8th January, 2014. The Petition under Section 9 was disposed of by appointing the Court Receiver as ad-interim receiver in respect of the properties mentioned in Schedule II to the Deed of Hypothecation admittedly executed by the appellant with a direction to the Court Receiver to appoint the appellant as an agent of the Court Receiver on usual terms and conditions, including furnishing security and payment of royalty. The Court Receiver proceeded to fix ad-hoc royalty of Rs.1 Crore per month. Ad-hoc royalty was fixed after hearing the appellant and the first respondent in meeting dated 22nd August, 2014. Admittedly, as of today, final royalty has not been fixed by the Court Receiver.

2 Chamber Summons was taken out by the appellant for setting aside the said order dated 22nd August, 2014. By the impugned order dated 9th July, 2014 the learned Single Judge has dismissed the said Chamber Summons.

3 We may note here that there is no order passed by the learned Single Judge discharging the Court Receiver. On 6th May, 2015 the learned Arbitrator has made an Award against the appellant directing the appellant to pay a sum of Rs.51,03,66,127.61 which was the amount due as on 15th March, 2013 along with interest thereon at the rate of 18% per annum on the said amount from 16th March, 2013. A Petition filed by the appellant for challenging the said Award has been dismissed by the learned Single Judge by order dated 23rd March, 2016. An Appeal preferred by the appellant against the said judgment and order has been admitted but there is no interim relief granted in the said Appeal.

4 The submission of the learned counsel appearing for the appellant is that the entire basis for fixing the royalty is erroneous. He urged that the Receiver has taken into consideration only the installment agreed to be paid by the appellant to the first respondent and the Court Receiver has not followed settled law laid down by this Court laying down the parameters for fixing the royalty amount. He submitted that certain material is placed on record to show that it is impossible for the appellant to pay ad-hoc royalty fixed by the Court Receiver. He submitted that as the Court Receiver has not followed the law laid down by this Court while fixing ad-hoc royalty, the order of the Court Receiver ought to have been set aside.

5 We have considered the submissions. Firstly, we may note here that by the order dated 22nd August, 2014 only ad-hoc royalty has been fixed. Secondly, as noted earlier, now liability of the appellant has been crystallized in the form of Arbitral Award which is confirmed by the learned Single Judge. According to the learned counsel appearing for the appellant, the amount payable as of today is Rs.50 Crores. According to the first respondent, the amount payable is Rs.60 Crores.

6 The royalty fixed under the order dated 22nd August, 2014 is only ad-hoc royalty which will be subject to final royalty amount which will be decided by the Court Receiver. The amount which is fixed by way of ad-hoc royalty can be reduced or can be enhanced while carrying out the exercise of fixing final royalty amount undertaken by the Court Receiver.

7 We find that the learned Single Judge while passing the impugned order has taken into consideration the decision of this Court in the case of *Humayun Dhanrajgir & Ors. Vs. Ezra Aboody*[1] which holds that while fixing the royalty, there cannot be any intention of making any profit.

1 2008(6) Bom. C.R. 862

8 For the purposes of fixing interim/ad-hoc royalty, the Court Receiver in his order has noted that the Legal Manager of the appellant who was present was unable to make any statement about the turnover of the appellant during the last three years. In the light of the contentions raised by the first respondent that the turnover of the appellant was more than Rs.1,000 Crores, the Court Receiver has also noted that as per the terms of the Facility Agreement, the appellant had undertaken to pay monthly installment in the range of Rs.1.03 Crores to 1.05 Crores from the year 2013 onwards.

9 In paragraph 13 of the impugned order, the learned Single Judge has noted that it is undisputed that the installments payable by the appellant to the first respondent for the relevant period was more than 1 Crores per month and that admittedly, the appellant has committed default. The learned Judge has noted that even in the Chamber Summons, the appellant has not placed reliance on any valuation report. In paragraph 14, the learned single Judge has observed thus :-

> "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."

10 Paragraph 16 notes that till the date of the order, even the agency agreement has not been executed.

11 Considering the aforesaid facts, we agree with the view taken by the learned Single Judge in paragraph 17 that there is no infirmity in the view taken by the Court Receiver when he fixed ad-hoc royalty.

12 In any event, ad-hoc royalty fixed is subject to final royalty which will be fixed by the Court Receiver in accordance with law. Accordingly, we find that there is no merit in the Appeal and the same is dismissed.

(A.K. MENON, J) **(A.S. OKA, J)**