

psv

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

**APPEAL (LODGING) NO.310 OF 2018
IN
REPORT NO.14 OF 2015
IN
NOTICE OF MOTION NO.240 OF 2014
IN
THIRD PARTY NOTICE NO.6,13 AND 14 OF 2014
IN
SUIT NO.173 OF 2014
WITH
NOTICE OF MOTION (L.) NO.674 OF 2018
WITH
NOTICE OF MOTION (L.) NO.673 OF 2018**

Loil Overseas Foods Limited & Ors.

...Appellants

Vs.

Modern India Ltd. & Ors.

...Respondents

Mr.Kevic Setalvad, Senior Advocate, with Mr.Sagar Ghogre and Mr.Amrendra Mehta i/b. Mr.Deepak Lad for Appellants.
Mr.Chirag Balsara with Madhu Gadodia i/b. Naik Naik & Co. for Respondent No.6.

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.**

DATE : 16th JULY 2018

P.C.:

Heard the learned Counsel appearing for the parties. We have perused the impugned order dated 30th January 2018 passed by the learned Single Judge and the report dated 7th September, 2015 submitted by the three members Committee headed by Justice V.C. Daga (Retired) as a Chairman of the Committee. We have perused paragraph

19 of the said report which reads as under:-

“19. In the circumstances, it is respectfully submitted that for purpose of carrying out the functions of the Committee under the Order dated 2nd September 2014 and determining the amount payable by LOIL Overseas Foods Ltd., LOIL Health Foods Ltd., LOIL Continental Foods Ltd., to NSEL and by Punjab Greenfield Resources Ltd., to LOIL Overseas Foods Ltd., and by LOIL Continental Foods Ltd., to LOIL Health Foods Ltd., and by LOIL Health Foods Ltd., to LOIL Continental Foods Ltd., notices may be issued by the Hon'ble Court to LOIL Overseas Foods Ltd., LOIL Health Foods Ltd., LOIL Continental Foods Ltd., and Punjab Greenfield Resources Ltd., directing them to appear before the Committee in person or through their Advocate or Authorised Representative on 29th September 2015 at 02.00 p.m., and subsequent dates as may be fixed by the Committee and to produce documents as may be required by the Committee.”

(emphasis added)

2. Our attention was invited to the order dated 2nd September 2014 passed by the learned Single Judge (Mr.S.C. Gupte, J.) in batch of motion (page 114) which order was subject matter of the appeal before the Division Bench of this Court of which one of us (Naresh H. Patil, J.) is a Member. Admitting the appeal, the Division Bench passed the following order:-

“

ORDER

(a) The appeals are admitted.

(b) By an interim order we direct that the impugned order of learned Single Judge passed on 2nd September, 2014 shall not be operative against the appellant N.K. Proteins Limited.

(c) The impugned order passed by learned Single Judge shall be operative against the appellants in two appeals i.e. Appeal (L) Nos. 766/2014 and 767/2014 on the following conditions.

i) The Committee shall function in accordance with Section 75 of the Civil Procedure Code while discharging its functions under the Minutes of Order and the directions issued by the learned Single Judge.

ii) The Committee shall not have any adjudicatory powers.”

3. The learned Senior Counsel appearing for the appellants

submits that the impugned order in paragraph 23 directing the appellants group to comply with the directions in paragraph 19 of the Report dated 7th September, 2015 submitted by the Three Members Committee is in the teeth of the order passed by the Division Bench as stated above. The appellants cannot be compelled to comply with the directions for the purposes of determination of the liability. A reference is also made to the report submitted by the committee on 26th April 2018 which admittedly was not placed for consideration of the learned Single Judge at the time when the impugned order was passed on 30th January 2018.

4. The learned Senior Counsel for the appellants submits that the said report dated 26th April 2018 will now be placed before the Single Judge when the matter will be listed day after tomorrow. The learned Senior Counsel for the appellants has serious apprehension in view of the directions and observations made by the Committee in paragraph 46.5, 47.14 and 48.13 of the report which amounts to determination of the liability. As a principle of law, the learned Counsel submits that a commission appointed as per the order of the learned Single Judge, does not have jurisdiction to determine the liability of the party. The appellants apprehend that in case of non-compliance of directions issued in paragraph 23 the appellants may suffer serious

adverse consequence, therefore, the learned Counsel seeks protection for the appellants.

5. The learned Counsel for the respondents submits that the apprehension expressed by the appellants is misplaced. At the time when the impugned order is passed, the report dated 26th April 2018 was not a part of the record, nor it was available to the learned Single Judge for consideration of the issue. In view of the reluctance of the appellants to co-operate with the committee, the learned Single Judge passed the order which is perfectly in consonance with the view adopted by the learned Single Judge (S.C. Gupte, J.) for the object and purpose for which the committee of three members was constituted (retired Judge of this Court). The learned Counsel submitted that the appellants are entitled to list their objections and press them before the learned Single Judge in respect of the report submitted by the committee. The learned Counsel does not dispute the proposition that it is for the Court to determine the liability and therefore, the appellants need not have an apprehension of any sort that their objections would not be taken into consideration.

6. We considered the submissions advanced and perused the record placed before us. We reiterate that the committee shall function

and discharge its duties in accordance with the orders passed by the Division Bench as reproduced above. We have perused the order dated 2nd September 2014 passed by the learned Single Judge (page 117). In letter and spirit, the essence of the order read with the provisions of Code of Civil Procedure would reflect that the powers of the Committee are restricted to calling for information and arrive at proposals of settlement in conjunction with the parties before the Court for collection and custody of the funds and assets involved. The learned Single Judge permitted the committee to call upon the various defaulting members or other parties and seek information and documents for the purpose of determining the extent of liability, if any, by making a report to the Court for further directions.

7. The directions issued by the learned Single Judge to the appellants to comply with the direction of paragraph 19 shall be therefore read and understood in the light of the reference made by the learned Single Judge (S.C. Gupte, J.), the committee and the order passed by the Division Bench of this Court.

8. Needless to mention that the report submitted by the committee shall be subject to the objections filed by the contesting parties which the learned Single Judge would take into consideration

and deal with the appropriate issues in determining the liability in accordance with law.

9. In the facts, we do not express any opinion on the merits of the contesting claims of the parties. With these observations, the appeal stands disposed of.

10. In view of the disposal of the appeal, nothing survives in the notice of motion (l.) No.674 of 2018. It is accordingly disposed of.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]