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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1030 OF 2019
IN
APPEAL FROM ORDER NO. 887 OF 2016
WITH
APPEAL FROM ORDER NO. 797 OF 2016
WITH
APPEAL FROM ORDER NO. 798 OF 2016
WITH
COURT RECEIVER REPORT NO. 171 OF 2017

Eruch Boman Khaver ... **Applicant**
(Org. Plaintiff No.2.)

In the matter between :-

Eric Parviz Khaver and Anr. ... **Appellants.**
(Org. Plaintiffs)

Versus

Manilal Premji Gala and Ors. ... **Respondents.**
(Org. Defendants)

. . . . . .

Mr.Ashwin Thakkar i/b Mr. Nainesh N. Amin for Appellants in AO/887/2016 and Respondent Nos. 1(b) and 2 in AO/798/2016 and AO/797/2016.

Mr. G. S. Godbole a/w Mr. Niranjan C. Parekh and Mr. Nirav J. Marjadi i/b Mansukhlal Hiralal & Co. for Appellant in AO/798/2016 and AO/797/2016 and Respondent No.2 in AO/887/2016.

Mr. N. A. Bandodkar, 2nd Assistant to Court Receiver a/w Mr. S. S. Toraskar, Section Officer present.

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CORAM : S. C. GUPTE, J.

DATE : 17 SEPTEMBER, 2019

<u>P. C.</u> :

1. This order disposes of the civil application filed by the Original Appellant in Appeal from Order No. 887 of 2016.

2. Appeal From Order No. 887 of 2016, along with the companion appeals, namely, Appeal from Order Nos. 797 of 2016 and 798 of 2016, challenges a common order, namely, the order passed by the City Civil Court at Bombay on interim applications of the parties in Suit No. 9070 of 2015 (in short "the suit") which is for dissolution and accounts of partnership. By the impugned order, the City Civil Court partly allowed the notice of motion of the Appellants.

3. The Appellants in Appeal from Order No. 887 of 2016 challenge the impugned order to the extent it denies the other prayers made by them. These other prayers pertain to (a) preliminary decree of dissolution of suit partnership; (b) appointment of a commissioner for taking accounts of the suit partnership, and (c) for possession of the suit premises occupied by the Respondents. These Appellants are successors in interest of the original managing partners of the suit firm. So far as the companion appeals are concerned, namely, Appeal from Order Nos. 797 of 2016 and 798 of 2016, they are filed by the other partners, who claim to be in possession of the suit premises, and entitled to carry on the suit business in their own right.

4. After the matter is heard at some length, it is agreed by learned counsel for the Appellants in Appeal from Order No. 887 of 2016, that his clients would not press this appeal. Learned counsel, however, submits that their civil application taken out in the appeal from order may be considered as an interim application in the other two companion appeals. Appeal from Order No. 887 of 2016 is accordingly disposed of as not pressed, by making it clear that the civil application of the Appellants

in this appeal shall be considered as an interim application in the other two pending appeals, namely, Appeal from Order Nos. 797 of 2016 and 798 of 2016.

5. After that civil application is heard at some length, it is agreed by learned counsel for the parties, after taking instructions from their respective clients, who are present in Court, that the civil application may be disposed of in terms of the following order and it is accordingly ordered as follows :-

(A) Respondent No.1(b) to the civil application shall continue to occupy the suit premises, namely, Shop No.7 (part), ground floor of the building known as Zaver Gallery, now known as 'Premsons House', 63, Bhulabhai Desai Road, Breach Candy, Mumbai-400 026, as an agent of the Court Receiver on payment of ad-hoc royalty of Rs.300/- per sq. ft. per month.

(B) Considering the area of the suit premises, which is presently considered as 1250 sq.ft., the ad-hoc royalty comes to a sum of Rs. 3,75,000/- per month. This amount shall be deposited by Respondent No.1(b) with the Court Receiver, High Court, Bombay. The amount for the month of September 2019 shall be deposited latest by 30 September 2019 and the amount for each succeeding month shall be deposited on or before the 10th day of such month. Considering the fact that Respondent No.1(b) has already deposited a sum of Rs. 1,20,000/- for the month of September 2019, his liability shall be for deposit of Rs. 2,55,000/- for the month of September 2019.

(C) M/s Nadkarni and Associates are appointed as valuers for assessing the fair rent of the suit premises described above for being fixed as monthly royalty and also for determining the value of the security for the agency of the suit premises.

(D) M/s Nadkarni and Associates shall hear the parties, take into account such material as may be produced by the parties in support of their respective cases of valuation, and make their report within a period of six weeks from today.

(E) Based on the report sent by M/s Nadkarni and Associates, the Court Receiver, High Court, Bombay shall place the Receiver's report before this Court in Appeal from Order Nos. 797 of 2019 and 798 of 2019 seeking directions for fixation of royalty as well as security for the agency of the suit premises.

(F) The parties will be heard on the Receiver's report and accordingly the amounts of royalty and security shall be determined.

(G) In the meantime, the security amount presently deposited by Respondent No.1(b) with the Court Receiver shall be treated as an Ad-hoc security, to be adjusted in accordance with the amount that may be fixed by the Court on the Receiver's report.

(H) M/s Nadkarni and Associates shall assess the fair market rates and propose amounts of royalty and security without being influenced in any way by the ad-hoc determination of royalty and security fixed under the present order.

(I) M/s Nadkarni and Associates shall consider specific instances of sale as well as rental/licence agreements of comparable premises within the same locality and preferably premises in the same building or building/s in the vicinity on either side of the suit premises.

(J) M/s Nadkarni and Associates shall also take into account the ready reckoner rates for their determination and arrive at a fair estimate of royalty and security.

(K) From the royalty amount deposited by Respondent No.1(b) in accordance with this order, the Applicant shall be entitled to withdraw a sum of Rs. 1,87,500/- per month. The Applicant undertakes to this Court to bring back such amount or any other amount as may be ordered by the Court in its further orders passed in the matter. The undertaking is accepted.

(L) Rival contentions of the parties on the amount of royalty and security to be determined as well as the date from which such royalty and security may become payable, as also the entitlement of Respondent No.1(b) to use the name "Roopsons" and any amount payable for such user, and withdrawal by the Applicant to be permitted from the deposits made by Respondent No.1(b), are all kept open, to be determined as and when the receiver presents his report in accordance with this order.

6. In view of the disposal of the civil application in the above terms, Court Receiver's Report No. 171 of 2017 is also disposed of. The cost of the report is fixed at Rs. 3000/-. This cost shall be recovered from the amount held by the Court Receiver to the account of the suit.

7. Appeal from Order Nos. 797 of 2016 and 798 of 2016 shall appear on board for admission as and when the Court Receiver's report is made before the Court in terms of this order along with such report.

(S. C. GUPTE, J.)