

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.10.2019

PRONOUNCED ON : 19.11.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.328 of 2005

and

CROS. OBJ. No.10 of 2012

and

CMP Nos. 5432 of 2005 & 12876 of 2019

A.S.No.328 of 2005

A. Fathima Faridunnissa

...Appellant

Vs.

1. T.A.H. Zubaida Ammal

2. Zeenath Unnisa

3. M/s. Crystal Transport Pvt. Ltd.

4. M.O.H. Farook (died)

5. F. Malliga

6. F. Shahjahan

7. F. Yasmin

...Respondents

R5 to R7 are impleaded as legal heirs of deceased 4th respondent vide Court order dated 17.06.2019 and Memo dated 15.06.2019.

Prayer: First Appeal filed under Section 96 of Civil Procedure Code, against the judgment and decree dated 23.04.2004 and made in I.A.No.33 of 1995 in O.S.No.286 of 1978 on the file of the II Addl. District Judge, Pondicherry.

For Appellant : Mrs. Chitra Sampath, Senior Counsel.
for Mr. T.S. Baskaran

For Respondents: Mr. S.V. Jayaraman, Senior Counsel
for Ms. Usha Raman for R1 to R3, R6, R7.

CROS. OBJ. NO. 10 OF 2012

1. T.A.H. Zubaida Ammal

2. Zeenath Unnisa

3. M/s. Crystal Transport Pvt. Ltd.

4. M.O.H. Farook (died)

5. F. Shahjahan

6. F. Yasmin

...Cross Appellants

1. A. Fathima Faridunnissa
2. F. Malliga

...Respondents

For Appellants : Mr. S.V. Jayaraman, Senior Counsel
for Ms. Usha Raman

For Respondents : Mrs. Chitra Sampath, Senior Counsel.
for Mr. T.S. Baskaran for R1.

Prayer: Cross Appeal filed under Order 41 Rule 22 of CPC against the final decree passed in 23.04.2004 in I.A.No.33 of 1995 in O.S.No.286 of 1978 on the file of the II Additional District Judge at Pondicherry.

JUDGMENT

A.S. No. 328 of 2005 and Cross Objection No. 10 of 2012 are directed against the fair order and decretal order dated 23.04.2004 passed in I.A.No.33 of 1995 in O.S.No.286 of 1978 on the file of the II Additional District Judge, Pondicherry.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. O.S.No.286 of 1978 has been laid by the petitioner / plaintiff for the dissolution of the firm Crystal Transport Service, for taking the accounts, for appointment of the receiver and for permanent injunction restraining the defendants 1 and 2 from dealing with or dispose of the assets of the partnership firm. The abovesaid suit laid by the petitioner / plaintiff has been resisted by the respondents / defendants on various grounds. Based on the pleadings put forth by the respective parties, the trial was conducted and on the appreciation of the oral and documentary evidence, the preliminary decree was passed by the trial court on 19.09.1988 as follows:

"This Court Doth order and decree:

1. That the proportionate share of the plaintiff in the partnership is one fourth share.

2. That it is hereby declared that this partnership firm Crystal Transport be and hereby deemed to have been dissolved from the 7th day of October 1978 as per Sec. 42(b) r/w Sec. 44(g) of the Indian Partnership Act.

3. And it is ordered that the accounts be taken:-

a) That an account be taken to ascertain the plaintiff's share of capital and income if any upto the date of dissolution aforesaid according to Order 20 Rule 15 C.P.C.

b) That 3 months time is granted to plaintiff

to verify and defendants 1 to 3 do file statement of final accounts, balance sheet and profit and loss account duly audited by auditors of the firm for five completed accounting years before the date of dissolution.

c) And that the result of the accounts be certified by the auditors of the suit firm and be filed in court.

4. That the quantum of additional court fee if any payable by the plaintiff be enquired and decided after ascertainment of the quantum of plaintiff's share if any after the accounts are taken.

5. That the prayer for appointment of receiver for suit firm may be considered after the final accounts, balance sheet and profit and loss account are filed by the parties and if any debts or assets to be realised by the firm.

6. That the suit against D4 be and the same is hereby dismissed since no relief is found necessary or warranted in this suit without prejudice to the rights of plaintiff according to law.

7. That both sides do bear their costs.

And lastly, it is ordered that this suit stand adjourned for making a final decree to the 18th day of December 1988.

4. Aggrieved over the judgment and decree of the trial court, as above pointed out, the plaintiff preferred the first appeal in A.S.No.215 of 1988 and the first appellate court by the judgment and decree dated 08.08.1989, allowed the appeal as extracted below:

"This Court doth order and decree

1. That the appeal be and the same is hereby allowed:-

2. That the decree dated 19.09.1988 in O.S.No.286/78 passed by the Principal Sub Judge, Pondicherry, be and the same is hereby set aside:

3. that there shall be a preliminary decree in the following terms:

4. that the suit firm Crystal Transport Private Limited, Karaikal, stands dissolved on and from 15.11.1978.

5. that Sri C.S.Narasimhan, advocate, Pondicherry is appointed commission to take accounts from 01.05.1971 till 15.11.1978.

6. that in taking accounts the commission shall have due regard to Sections 37 and 48 of the Indian Partnership Act.

7. that this fee shall be 10% of gross collections:

8. that the defendants 1 and 2 are hereby restrained by means of an injunction from

converting or transferring or disposing of in any manner the assets of the partnership firm till the accounts are finally settled.

9. that the decree binds the 4th defendant i.e. Crystal Transport Private Limited, Karaikal and

10. that the cost of the suit and appeal shall come out of the partnership assets."

5. It is found that the Second Appeal preferred against the Judgment and decree of the first appellate court, as abovestated, in S.A. No. 170/91 has been dismissed, thereby, the judgment and decree of the first appellate court dated 08.08.1989, above pointed out, had been confirmed.

6. As per the judgment and decree of the appellate court, above pointed out, one Mr. Narasimhan has been appointed as commissioner to take the accounts from 01.05.1971 to 15.11.1978. As could be seen from the materials available on record, inasmuch as the abovesaid Advocate Commissioner was unable to comply with the task assigned to him, the lower court had appointed one Mr. Thirunavukarasu as Receiver. It is found that the defendants preferred an appeal challenging the abovesaid appointment of Thirunavukarasu as Receiver in CMA No.6 of 1991 on the file of the Principal District Judge, Pondicherry, and the abovesaid CMA was disposed of confirming the appointment of the receiver with the modification that the Receiver should be appointed only to take charge of the management and administration of the Crystal Transport Private Limited and accordingly directed the trial court to recall the warrant, modify it and issue a fresh warrant to the Receiver to take charge of the management of the Crystal Transport Pvt. Limited Company only and with the abovesaid observations and modifications, the abovesaid CMA came to be dismissed. It is seen that aggrieved over the abovesaid order passed in CMA, Civil Revision Petition No. 1142/91 had been preferred in the High Court and the High Court by order dated 30.07.1991 confirmed the abovesaid order passed in CMA and dismissed the Civil Revision Petition. Not satisfied with the same, the defendants took up the matter further to the Apex Court in Civil Appeal No.485 of 1992 arising out of the S.L.P. (Civil) No. 12953 of 1991 and finally the Apex Court in the abovesaid lis had passed the order on 12.11.1992 as follows:

"Leave granted. Counsel heard.

By consent, it is directed that the Court Receiver to appoint the appellant as his agent to carry on the business of the company on such terms and conditions regarding royalty, security and other matters as he thinks fit. The receiver may also take such undertakings from the appellant as he thinks proper. The terms and conditions to be settled after giving both the parties an opportunity of being heard. In case the appellant is not willing to accept the agency to run the business on the terms and conditions

determined by the receiver, the receiver may make an application to the court for further directions.

Appeal disposed of with no order as to costs."

7. From the materials placed on record, it is further seen that the petitioner/plaintiff preferred an application in I.A.No. 2176/92 for giving suitable direction to the Receiver to take the possession of the firm and it is found that in the abovesaid application, the lower court had, on the basis that the receiver had not taken proper steps to comply with the conditions, removed him and appointed one Mr.K.Renganathan as Receiver in the place of Thirunavukarasu. The appeal preferred against the same in CMA No. 26/93 came to be dismissed and still aggrieved, the petitioner/plaintiff had preferred CRP No. 27 of 1995.

8. It is also seen that the petitioner/plaintiff preferred an application in I.A.No. 2004 of 1993 before the lower court to permit him to summon and examine the above appointed Receiver K.Renganathan with reference to his report filed and the same having come to be rejected by the trial court, aggrieved over the same, the petitioner/plaintiff had preferred CRP No. 891 of 1995.

9. The abovesaid CRP Nos 27 of 1995 and 891 of 1995 came to be dismissed by this court on 17.11.1998.

10. At this juncture, it is relevant to advert in brief the way in which the appellate court in A.S. No. 215 of 1988 proceeded to dispose of the abovesaid appeal on the merits of the case. The appellate court, in the abovesaid appeal, formulated the following points for determination.

1. Whether the partnership is one 'at will' and if so what is the date of dissolution?
2. Whether the trial court is right in not having granted the relief of appointment of receiver?
3. Whether the plaintiff is entitled to relief of injunction?
4. Whether the fourth defendant is liable to answer the plaintiff's claim?
5. Whether the copy of judgment filled along with the application can be received as additional evidence?

The first appellate court answered the first point holding that the partnership is one 'at will' and further determined that the accounts of the abovesaid partnership firm have to be taken from 01.05.1971 till 15.11.1978, the date of dissolution. As regards the point number 2, held that a commissioner has necessarily to be appointed to take the accounts of the firm in question. As regards the point number 3 noted that the anxiety of the petitioner/plaintiff to

safeguard the assets of the firm transferred to the fourth defendant is not without substance and further held that before the petitioner/plaintiff reaped the fruits of the decree if any of the assets were converted or transferred, the petitioner/plaintiff would get nothing and therefore, deemed it fit to restrain the defendants 1 and 2 by means of an injunction from disposing of or converting the assets of the firm till the matter is finally disposed of and accordingly held that the petitioner/plaintiff is entitled to the relief of injunction. As regards the point number 4, held that the fourth defendant has been impleaded in the matter on the ground that the assets and liabilities of the suit firm has been transferred to the fourth defendant and further noting that the transferred firm in question had not been dissolved and further noting that the defendants have admitted in the written statement that the assets and liabilities of the suit firm had been transferred to the fourth defendant company and therefore, holding that all the assets and liabilities of the suit firm having been taken over by the fourth defendant and accordingly both on factual and legal aspects, the fourth defendant company is answerable to the plaintiff's claim and therefore, any decree that may be passed should necessarily bind fourth defendant also and therefore determined the abovesaid point by holding that any decree that may be passed should necessarily bind fourth defendant also. The point number 5 is only pertaining to the reception of additional evidence and finding that the additional evidence projected had not satisfied Order 41 Rule 27 of CPC, accordingly, dismissed the application for the reception of additional evidence.

11. Accordingly, the first appellate court, as above pointed out, disposed of the appeal in A.S. No.215 of 1988 by judgment and decree dated 08.08.1989 as referred to supra.

12. Thereafter it is found that the petitioner/plaintiff has preferred an application in IA No. 33/95 contending, after advertng to all the abovesaid facts in brief, that a final decree should be passed in the matter and accordingly prayed that a Receiver may be appointed with powers to look into the accounts of the suit firm and also the Limited Company, i.e., the fourth defendant and ascertain the exact amount that is payable to the petitioner/plaintiff and the receiver may be invested with the power to sell the goodwill to the partners and then the court may pass the final decree granting such reliefs to the petitioner/plaintiff. The abovesaid application of the petitioner/plaintiff has been resisted by the respondent contending that inasmuch as Mr.Renganathan had already been appointed as the receiver and as per the order of the Apex Court, he had been looking into the accounts of the fourth defendant company regularly and submitting the accounts to the Court after scrutinizing the books and monthly accounts of the company regularly and the abovesaid accounts had been duly audited by the Chartered Accountant,

accordingly put forth that the case was not made out by the petitioner/plaintiff to remove the said receiver by way of the present petition and therefore, urged that there is no ground or necessity made out by the petitioner/plaintiff to appoint another Receiver to ascertain the exact amount payable to the petitioner/plaintiff and accordingly prayed for the dismissal of the petition.

13. The trial court formulated the following points for determination in the abovesaid petition.

1. Whether a Commissioner or Receiver has to be appointed with powers to look into the accounts of the suit firm and also the limited company/4th defendant and ascertain the exact amount that is payable to the petitioner?
2. If so, what will be final decree based upon the preliminary decree?
3. To what relief the petitioner is entitled to?

14. In support of the petitioner/plaintiff's case P.W.1 was examined and Exs.A1 to A9 were marked. On the side of the respondents D.Ws.1 to 6 were examined and Exs.B1 to B262 were marked. Further Exs.X1 to X6 were marked.

15. It is also found that during the pendency of the proceedings, the Receiver had filed various interim reports as well as the final report and objections were filed by the petitioner/plaintiff to the report filed by the Receiver and reply to the same has been preferred by the defendants and furthermore, it is also seen that the petitioner/plaintiff has endeavoured to submit certain copy of the accounts filed by her auditor Natarajan and to the same, replies had been preferred by the respondents and further to the same, the petitioner/plaintiff has filed the reply. It is also seen that certain remarks had been filed by the Receiver and objections were also filed by the petitioner/plaintiff to the receiver's remarks.

16. On the basis of the abovesaid materials placed on record, the trial court had concluded the proceedings and passed the final decree by rejecting the prayer of the petitioner/plaintiff seeking the appointment of the Commissioner/Receiver and further held that the petitioner would be entitled to receive a sum of Rs.1,10,815/- in terms of money value towards her 1/4 share in the firm and accordingly directed the respondents/defendants to pay the abovesaid sum with interest at the rate of 9% per annum from 1978 till the date of the final decree with subsequent interest upon the accrued amount at the rate of 6% per annum till the date of disbursement. Challenging the same, as above pointed out, the petitioner/plaintiff has preferred the first appeal and the respondents/defendants had preferred the cross objection.

17. The trial court, under point number 1, noting that as Mr.K.Renganathan had already been appointed as the Receiver by the competent court as confirmed by the Apex Court as adverted supra and as the Receiver had already taken over the charge and submitted his reports as directed and the same are available in the Court for perusal and for passing further orders, accordingly, proceeded to uphold the contention of the respondents that there is no need or ground made out for appointing another Receiver to ascertain the exact amount which has to be paid to the petitioner/plaintiff as per the preliminary decree and accordingly determined the abovesaid point against the petitioner/plaintiff.

18. As to why the court below had rejected the appointment of another Receiver to ascertain the exact amount payable to the petitioner/plaintiff as per the preliminary decree, as rightly contended by the petitioner/plaintiff's counsel, absolutely there is no reason given by the trial court. On the other hand, the trial court has determined the above issue by holding that inasmuch as the Receiver who had been appointed already, having taken over the charge and submitted his reports as ordered to him and when the reports are available in the court for perusal for passing further orders, on that premise, the court below determined that there is no need for appointing a separate Receiver as prayed for by the petitioner/plaintiff. Whether the abovesaid determination of the court below is justified has to be seen.

19. Prior to the same, as to how the court below had assessed, analysed and determined the truth and validity of the reports filed by the receiver and the documents put forth by the respondents for determining the reliefs to be granted to the petitioner/plaintiff by way of a final decree have to be discussed in detail. The court below after adverting to the facts under point number 2, proceeded to hold that on perusing the exhibits filed on either side as well as the written arguments submitted by them, according to the trial court, the accounts submitted by the respondents/defendants are not a full fledged one and accepted the case of the petitioner/plaintiff that the respondents had not filed any voucher, collection statement, counterfoil of the ticket books, bank passbooks and day books of the vouchers in support of the statement of accounts, balance sheets and income tax returns projected by them and also further held that the respondents had adduced evidence that the day books for certain period are missing and the respondents have not accounted or given reason or explanation for not filing the ledgers between 01.07.1980 to 30.06.1981 and further proceeded to hold that though the Receiver appointed by the court had submitted his report on the basis of the balance sheets of the fourth defendant company, according to the trial court, they are in a suspicious nature and further entertained a doubt qua the fact that the Receiver had submitted his report based upon the inspection of the reports and verification of the

statement of accounts personally or not, having not been ascertained and projected in the matter and further holding that the respondents/defendants having not made available the account books for the verification of the Receiver, consequently, determined that the Receiver's statement and the balance sheets prepared by the auditors and submitted by the Receiver would not have full importance in ascertaining the amount to be paid to the petitioner/plaintiff and also further determined that the same could not be relied upon without any support of vouchers and accounts of statements which are stated to be missing and concluded that the report of the receiver dated 27.07.1993 could not be relied upon. Furthermore, proceeded to hold that no opportunity had been given to the petitioner/plaintiff to cross examine the author and maker of the accounts with reference to its genuineness and found fault with the respondents/defendants for not examining the abovesaid authors as witnesses on their side and thereby determined that the respondents had failed in their duty to disclose the genuineness of the documents projected by examining the competent witnesses and rejected the arguments of the respondents that the accounts submitted by them having been accepted by the Income Tax Department, the same should be relied upon and noted that the copies of the returns submitted by the respondents had not been scrutinised by the Income Tax Department officer on submission of the accounts and they are merely accepted by the Income Tax Department and therefore, they could only be treated as self serving documents of the respondents and accordingly further determined that the return of income tax projected by the respondents could not be taken for consideration as it is.

20, Therefore, it is found that, in toto, the court below had not taken into acceptance the balance sheets and statement of accounts projected by the respondents on the basis that they are not supported by vouchers, collection statements, counter-foils, bank passbooks, etc., and the respondents had also not placed the relevant ledgers over a certain period of time and the day books over a certain period of time are reported to be missing and entertain the doubt that the receiver appointed in the matter would not have at all properly scrutinised the statement of accounts projected by the respondents and also further held that the same having also not been brought home in any manner and the respondents having also failed to examine the authors of the statement of accounts submitted by them and the statement of accounts not buttressed by any materials whatsoever and thereby concluded that the report of the receiver cannot at all be relied upon and no importance or weightage could be attributed to the same.

21. The court below having come to the abovesaid conclusion, particularly having noted and determined that the respondents/defendants had not produced any books of accounts in support of the balance sheets and income tax returns put forth by them, as contended by the petitioner's counsel, erred

in granting the decree in the matter based on the very same inadmissible documents. Having come to the abovesaid conclusion and when the petitioner/plaintiff has put forth various objections to the receiver's report and there is no material placed that the receiver had submitted his report based on the actual verification of the statement of accounts projected by the respondents particularly when the statement of accounts / balance sheets projected by the respondents are not supported or buttressed by any reliable material as above pointed out, in such view of the matter, as rightly put forth by the petitioner/plaintiff's counsel, the determination of the court below under point number 1 that inasmuch as the receiver had already submitted his report, there is no scope or necessity or ground made out for the appointment of a fresh Receiver, as such, cannot at all be countenance in any manner. When as above discussed, when from the inception, the petitioner/plaintiff has been raising various objections to the conduct of the Receiver and also put forth serious objections to the reports submitted by him and the court also having concurred with the abovesaid contentions of the petitioner/plaintiff and found the report submitted by the receiver not to be relied upon and no weightage could be attributed to the same, despite the position being above, the determination of the court below under point number 1 that there is no need or ground made out for the appointment of the fresh Receiver for ascertaining the amount to be paid to the petitioner/plaintiff, as per the preliminary decree, cannot at all be sustained, particularly, when the abovesaid conclusion of the trial court is only on the footing that no fresh Receiver need be appointed since the report had already been submitted by the receiver concerned. However, when the report of the said Receiver had been subsequently held by the court below not to be relied upon in any manner and the receiver having also failed to substantiate that he had submitted his report based on the personal verification of the statement of accounts as put forth by the respondents and when the same also not having been substantiated by the respondents, inasmuch as the statement of accounts put forth by the respondents/defendants are not substantiated by vouchers and day books and ledgers, as above pointed out, and the same having also been so determined by the court below, in such view of the matter, in my considered opinion, having come to the abovesaid conclusion and furthermore, when the respondents/defendants have not endeavoured to examine the authors of the statement of accounts projected by them, particularly by examining their auditors as to on what basis they had submitted the same in the absence of any supporting materials, to sustain the same, resultantly, the court should have endeavoured atleast to examine the Receiver as a court witness directing him to explain as to how he had prepared his report, whether on a proper appreciation of the statement of accounts submitted by the respondents/defendants and as to whether he had perused any supporting materials to sustain the same, whether he had examined the auditors of the

respondents/defendants who had prepared the balance sheets/statement of accounts and the court should have also proceeded and provided an opportunity to the petitioner/plaintiff as well as the respondents/defendants to cross examine the Receiver with reference to the same and on the other hand, when the matters projected are as such as adverted supra and the court having come to the conclusion that the report of the Receiver cannot at all be relied upon in any manner and also found that the statement of accounts projected by the respondents/defendants cannot be accepted in the absence of any material to sustain the same, as above discussed, and determined by the trial court, in such view of the matter, in my considered opinion, the court should have, thereafter atleast, directed the respondents/defendants to examine the authors of the statement of accounts projected by them and provide an opportunity to the petitioner/plaintiff to cross examine the said witnesses to put forth her side of the matter and thereby determine the issues involved in the case in the right perspective. On the other hand, the court has not endeavoured to proceed on the abovesaid lines and despite having come to the conclusion as regards the unreliability and unacceptability of the receiver's report and the statement of accounts projected by the respondents/defendants, is found to have embarked upon the quantification of the amount to be paid to the petitioner/plaintiff only based upon the inadmissible and unreliable documents projected by the respondents/defendants as well as the unreliable and unacceptable report of the receiver. After the court had held that the respondents had not submitted the accounts in a full fledged manner with corroborative evidence and documents as determined by it, the court has further proceeded that in such view of the matter, it has to decide the issue involved in the matter only approximately. Therefore, it is seen that the court has considered the issues involved in the matter and proceeded to pass the final decree based only upon the inadmissible and unreliable documents projected by the respondents/defendants as well as unreliable and unacceptable report of the Receiver and without providing an opportunity to the petitioner/plaintiff to cross examine the authors of the abovesaid documents, namely, the auditors of the respondents/defendants as well as the Receiver, thus the endeavour of the court below to determine the amount payable to the petitioner/plaintiff based upon the abovesaid unreliable and inadmissible documents, cannot at all be countenanced as per law and when the court had come to the conclusion that the receiver has not placed any proof as to he had filed his reports based on the actual scrutiny of the statement of accounts projected by the respondents/defendants and also when it is seen that the court has not cared to advert to the evidence adduced by the petitioner/plaintiff in any manner as well as the various objections put forth by her to the report preferred by the Receiver as well as the statement of accounts submitted by her through her auditor Natarajan in any manner, in such view of the matter, in my

considered opinion, the final decree passed by the court below cannot be sustained in the eyes of law.

22. During the course of arguments in the first appeal, the counsel for the petitioner had submitted a copy of the estimated statement of accounts filed by her in the court below and also contended that the accounts submitted by her auditor should have been taken for consideration for determining the amount payable towards her share. However, it is found that other than filing the accounts through her auditor, even the petitioner/plaintiff has not endeavoured to examine the said auditor in support of her case as to on what basis he had filed his statement of accounts and arrived at the figures as determined by him. Therefore, when the petitioner/plaintiff also owe a duty to enlighten the court as to what would be the probable income that could be arrived at during the relevant period, the petitioner/plaintiff having failed to substantiate the same by examining the author of the statement of accounts projected by her i.e, her auditor and as above noted, when the trial court has also determined that the respondents/defendants had failed to substantiate the statement of accounts by examining the authors of the statement of accounts projected by them, in all, and furthermore when the court below had also not endeavoured to examine the Receiver despite holding that his report is unacceptable in toto, in such view of the matter, with a view to enable the parties to adduce further evidence in support of their respective case, I am of the considered view that the matter requires remittance back to the trial court with the direction to the trial court to provide opportunities to both the parties to adduce further evidence particularly to sustain the statement of accounts projected by them respectively by examining the authors of the same. The trial court is also further directed that considering the facts and circumstances of the case and after assessing and analysing the further materials to be placed on record, if need be, if it still opines and concludes that the report of the receiver cannot be relied upon for one reason or the other and when the receiver had been appointed in this matter to only ascertain the income that could be derived during the relevant period for determining the share to be allowed to the petitioner/plaintiff, is empowered to examine him vis-a-vis the report filed by him and thereby provide opportunities to the parties concerned to cross examine him as to on what basis he had submitted his report.

23. After the abovesaid exercise, the court below is directed to accordingly appreciate the materials placed on record in the right perspective in accordance with law and proceed with the contentions put forth by the respective parties in the matter and accordingly pass appropriate orders in the petition preferred by the petitioner/plaintiff for the appointment of a fresh Receiver for looking into the accounts of the firm and ascertaining the amount that is payable to her.

24. The counsel for the respondents/ defendants contended that the decree of the first appellate court is the basis for the passing of final decree in the matter and according to him when the subject matter of the suit as well as the decree passed by the first appellate court in A.S.No.215 of 1988 dated 08.08.1989 is only with reference to the two buses bearing registration Nos. PYK 2151 and PYK 1962 and the decree also stipulates that the suit firm stands dissolved on and from 15.11.1978 and the decree also directs only to take accounts from 01.05.1971 to 15.11.1978, according to him, the trial court had erred in embarking upon the enquiry as regards the income that would have been derived even after 15.11.1978. However, countering the same, the counsel for the petitioner/plaintiff contended that inasmuch as the assets of the suit firm had been taken over by the fourth defendant company, accordingly, even before the petitioner/plaintiff had realised the fruits of the decree, the assets of the suit firm had been converted or transferred, in such view of the matter held that the appellate court has also passed an order of injunction restraining the defendants from disposing of or converting the assets of the firm till the matter is finally disposed of and further according to her, when the assets and liabilities of the suit firm had been admittedly transferred to the fourth defendant company and all the assets and liabilities of the suit firm having been consequently taken by the fourth defendant company, the fourth defendant company is liable to answer the petitioner/plaintiff's claim till the final decree is passed. In this connection, she also relied upon the decision reported in 2011 (1) CTC 546 (Rajalakshmi and another vs. Sarojini and another) for the proposition that as per Sections 14 and 37 of Indian Partnership Act 1932, the profits and the good will are payable even after the dissolution of the firm and therefore, according to her, the arguments of the counsel for the respondents/defendants that the court below had erred in considering the income of the suit firm even after 15.11.1978, is erroneous and cannot be accepted. The above contention of the petitioner/plaintiff's counsel seems to be acceptable, particularly, when it is found that the assets and liabilities of the suit firm had been transferred to the fourth defendant company and accordingly, the fourth defendant company is liable to answer the petitioner's claim till the final decree is passed and therefore, the argument that the income of the said firm should be restricted only upto 15.11.1978 cannot be countenanced particularly when the fourth defendant company is found to be engaged in the business activity with the aid and assistance of the assets taken from the suit firm and thereby the fourth defendant company is liable to render the petitioner/plaintiff's claim till her accounts are finally settled as per the final decree.

CMP NO. 12876 of 2019

for the reception of additional evidence in CMP No.12876 of 2019 contending that the receiver had failed to discharge his duties properly and he has been taking sides and supporting the respondents/defendants and according to her, the receiver had filed vakalat on behalf of MOH Iqbal (R.W.6), the second defendant in O.S.No.341 of 2004 on the file of the Principal Subordinate Court, Pondicherry and has come forward with the certified copy of the vakalat filed by the receiver in the abovesaid suit on behalf of MOH Iqbal, the second defendant as additional evidence. The fact that the receiver had filed the vakalat on behalf of the second defendant in the abovesaid suit is not in dispute. However, in my considered opinion when the abovesaid vakalat had been filed by the receiver on behalf of the second defendant after the conclusion of the proceedings before the trial court, on that basis alone, it cannot be concluded straight away that the receiver had not properly discharged his duties and taking sides as put forth by the counsel appeared for the petitioner/plaintiff. In such view of the matter, the additional evidence projected by the petitioner/plaintiff in support of her case need not be considered for determining the issues involved in the matter as such. Therefore, the petition filed for the reception of additional evidence is dismissed.

26. In the light of the abovesaid factors, the fair and decreetal order dated 23.04.2004 passed in I.A.No.33 of 1995 in O.S.No.286 of 1978 on the file of the II Additional District Judge, Pondicherry, are set aside in toto and the matter is remitted back to the trial court with the direction to provide opportunities to both the parties to adduce further evidence particularly to sustain the statement of accounts projected by them respectively by examining the authors of the same. The trial court is also further directed that considering the facts and circumstances of the case and after assessing and analysing the further materials to be placed on record, if need be, if it still opines and concludes that the report of the receiver cannot be relied upon for one reason or the other and when the receiver had been appointed in this matter to only ascertain the income that could be derived during the relevant period for determining the share to be allowed to the petitioner/plaintiff, is empowered to examine him vis-a-vis the report filed by him and thereby provide opportunities to the parties concerned to cross examine him as to on what basis he had submitted his report. After the abovesaid exercise, the court below is directed to accordingly appreciate the materials placed on record in the right perspective in accordance with law and proceed with the contentions put forth by the respective parties in the matter and accordingly pass appropriate orders as per law in the petition preferred by the petitioner/plaintiff for the appointment of a fresh commissioner/receiver for looking into the accounts of the firm and ascertaining the amount that is payable to her. Accordingly, the first appeal and the cross objection are disposed of. Considering the facts and

circumstances of the case, there is no order as to costs. Consequently, CMP No.12876 of 2019 is dismissed and connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

bga

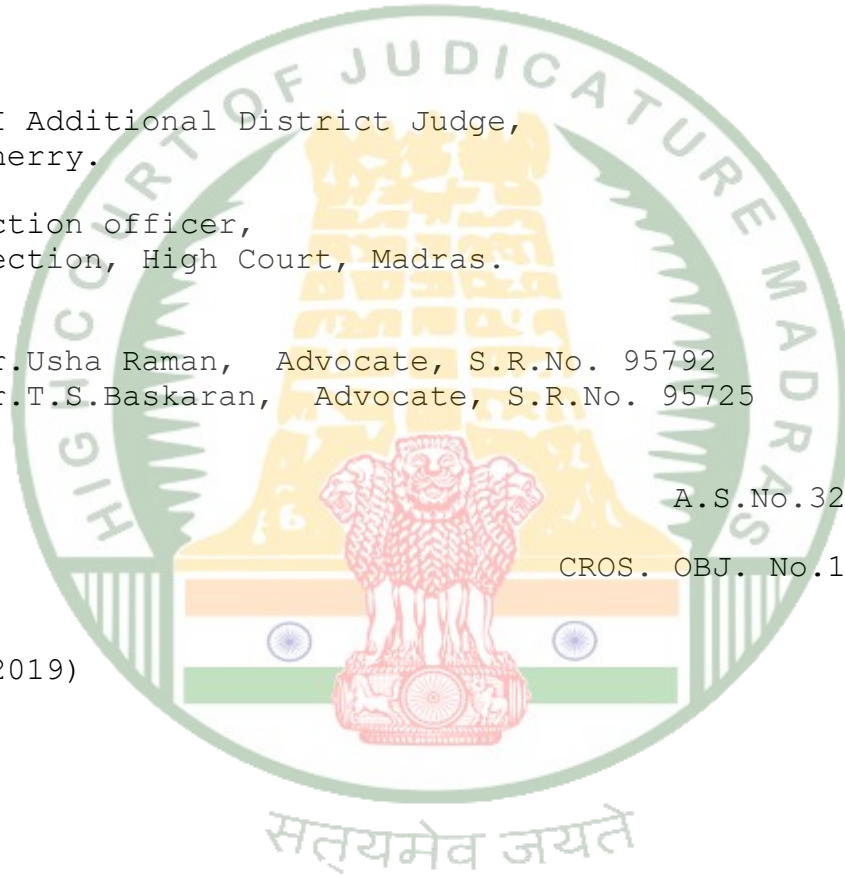
Copy to

1. The II Additional District Judge,
Pondicherry.
2. The Section officer,
V.R. Section, High Court, Madras.

+1cc to Mr.Usha Raman, Advocate, S.R.No. 95792
+2cc to Mr.T.S.Baskaran, Advocate, S.R.No. 95725

A.S.No.328 of 2005
and
CROS. OBJ. No.10 of 2012

RP(CO)
GN(17/12/2019)



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