OD-1

ORDER SHEET

APO 4 of 2022
With
CS 45 of 2021
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
COMMERCIAL DIVISION

THE ALL INDIA TEA AND TRADING COMPANY LIMITED
Versus
THE LOOBAH COMPANY LIMITED

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice ANIRUDDHA ROY
Date: 1st April 2022.

Appearance:
Mr. Abhrajit Mitra, Sr. Adv.
Mr. D. N. Sharma, Adv.
Mr. S. Nigam, Adv.
Ms. Ananya Das, Adv.
. . .for appellant.

Mr. Jishnu Chowdhury, Adv.
Mr. Aritra Basu, Adv.
Mr. Souradeep Banerjee, Adv.
. . . . . for respondent.

The Court: The subject matter of this appeal is a tea estate - Ballacherra Tea estate in the district of Cachar in Assam. The respondent is its owner. A factory for manufacture of tea is located within it. The appellant is in possession of that factory by virtue of an agreement dated 14th December, 2017 between the parties followed by a supplementary agreement dated 16th October, 2019. Under this arrangement inter alia the respondent was to sell the tea leaves to the appellant as per the contract price. Part of that price would be deducted/utilised by the appellant to pay off the liabilities of the respondent.

The respondent claims to have terminated the agreement by their e-mail dated 6th August, 2021 which is disputed by the appellant on the ground that in terms of clause 19.2 of the original agreement its duration stood automatically extended on the failure of the respondent to make payment of the price of green tea leaves, in terms of the said agreement.

At this stage it is not necessary to go into the myriad details with regard to the performance of the agreement. We are only concerned with the enforcement sought by the appellant of a negative covenant in the agreement being clause 4 thereof restraining the respondent from selling the tea to any third party. This enforcement is sought on the case of the appellant that the respondent in breach of the agreement is selling the tea to third parties, as a result of which the provident fund dues cannot be paid in terms of the agreement and that the authorities sooner or later would come forward and shut down the garden and take coercive step to realise their dues.

As there are reciprocal promises binding the parties, so are there allegations of breach of each party against the other. At this interim stage, on affidavit evidence we are unable to form an opinion as to whether prima facie the appellant is entitled to enforce the negative covenant. Yet there is a substantial question to be tried.

Be that as it may, a large quantity of tea is lying in the said premises. It is a perishable commodity. We feel that this quantity of tea be immediately sold. The tea produced in the garden during the currency of the agreement which according to Mr. Mitra should be till December, 2023, should also be similarly dealt with.

In those circumstances, as an interim measure, we appoint Mr. Robi Prasad Mookerjee, Advocate, Bar Library Club (first floor) (m : 9836605366) and Mr. Deepnath Roy Chowdhury, Advocate, Bar Library Club (first floor) (m : 9831074844) as Joint Receivers at an initial remuneration of 3000 Gms each and a monthly remuneration of 2000 Gms each from May, 2022 to first make an inventory of the green leaves whether situated in the garden or in the factory premises of the respondent and then take possession thereof. The remuneration of the Joint Receivers shall be shared equally by the parties. The tea in the garden should be routed to the factory for processing and manufacture of tea. Thereafter the tea which is ready for sale should be sold by the Joint Receivers by auction. The appellant will be at liberty to participate in the auction or match the best price obtained in the auction to be held by the Joint Receivers. If the appellant is able to pay such best price, the tea shall be sold to them, if not, the tea shall be sold to the party successful in the auction. The sale proceeds for the time being shall be held by the Joint Receivers in a separate interest bearing account in State Bank of India, Kolkata High Court Special Branch. The Joint Receivers shall take decisions in meetings attended by the parties, of which minutes must be maintained. They shall also keep account of tea sale, to be countersigned by the parties. Quarterly reports are to be filed in the registry of this Court, the first of which should be filed by 16th May, 2022 or sooner as the Court may direct. Copies of the report are to be circulated to the parties.

Learned counsel for the parties had suggested to this Court various measures to deal with the tea and the proceeds of sale thereof for the purpose of management of the garden and repayment of loans. In our opinion, this matter is not within the scope of the appeal.

We grant liberty to either of the parties to immediately apply before the interlocutory court to obtain suitable direction with regard to the management of this fund in the hands of Joint Receivers or likely to come into their hands.

The appeal is disposed of.

(I. P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)

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