

(1978) 03 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 826 of 1977

Pritam Singh

APPELLANT

Vs

Sarup Singh and others

RESPONDENT

Date of Decision: March 3, 1978

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 40 Rule 1

Hon'ble Judges: Rajendra Nath Mittal, J

Bench: Single Bench

Advocate: H.L. Sarin, with Mr. M.L. Sarin and Mr. G.S. Sachdeva, for the Appellant; Y.P. Gandhi, for the Respondent

Judgement

Rajendra Nath Mittal, J.

This Judgment will dispose of Civil Revision Nos. 103/1975 and 826/1977.

2. The plaintiff instituted a suit for dissolution of partnership and rendition of accounts against the defendant-respondents, It was alleged by the plaintiff that he and defendant Nos. 1 to 3 were carrying on business of manufacturing the rubber goods in the name and style of M/s Sarup Rubber Works at Jullundur on the basis of an oral agreement. On April 1, 1959, they executed a deed of partnership. Subsequently, Rawal Singh and Raghbir Singh defendant-respondents were taken as partners, and a fresh partnership deed was executed on April 2, 1960. It is alleged that the said defendants were required to maintain accounts books and render the accounts to the plaintiff, which they failed to do. It is further alleged that the defendants had removed a part of the machinery belonging to the partnership and misappropriated the same. He also averred that defendant Nos. 1 to 3 let out part of the premises of the factory to Ashok Kumar at a monthly rent of Rs 200/- and another part to Jodh Singh at the rate of Rs. 250/- P.M. and they had been realising the rent from them.

3. The plaintiff also filed an application under Order 40, Rule 1, CPC for appointment of Receiver, in which he stated that the defendants were not allowing him to look after and manage the affairs of the partnership business nor they were paying his share of profit. He further stated that the defendants would prepare false and incorrect accounts in order to defeat his rights.

4. The application for appointment of Receiver was contested by defendant Nos. 1 to 3. It was dismissed by the Subordinate Judge 1st Class, Jullundur on June 15, 1974. The plaintiff went up in appeal before the Senior Subordinate Judge who affirmed the order of the Subordinate Judge First Class and dismissed the same. He came up in Civil Revision No. 103 of 1975 against the order of the Appellate Court to this Court.

5. At the time of admission on February 12, 1975 this Court passed the following order :

Affidavit has been filed. Notice Official Receiver is directed to visit the premises of the factory in dispute, make an inventory of all the partnership assets including books so that they cannot be replaced in whole or in part and submit his report to the trial Court within two days of receiving this order. He shall include, in the inventory all goods lying in the said premises, whether or not their ownership by the partnership is disputed.

The Official Receiver, as directed by the Court, visited the partnership premises and submitted his report dated February 20, 1975. In the report he stated that he prepared the inventory upto 9 P.M. On February 18, 1975 and thereafter he postponed the signing of the account books which were lying in the bundle in the wooden almirah in the factory premises, as the record was huge. On the next day he visited the premises, and found that the entire record had been removed from the almirah. He further stated that when he asked Raghbir Singh and Rawel Singh to produce the account-books, stock registers and all other relevant registers which had been removed from there, they refused to produce the same before him on the ground that they had no such record with them and did not know where the same had gone. After the receipt of the report, contempt proceedings were started against respondent Nos. 1 to 3 wherein they tendered apologies and the same were accepted by this Court. The rule was consequently discharged.

6. The petitioner again filed an application dated May 14, 1975 for appointment of the Receiver in the trial Court and in that application stated the aforesaid facts. The application was opposed by the defendants. Mr. S.K. Garg, Subordinate Judge 1st, Class, Jullundur, before whom the matter came up held that similar pleas were taken in the previous application which was dismissed by his predecessor, and as such, there was no ground for appointment of a Receiver. Consequently, he dismissed the application. The petitioner went up in appeal to the Court of Senior Subordinate Judge, Jullundur who dismissed it. He has come up in Civil Revision No.

826/1977 against that order, to this Court.

7. The only question that arises for determination is whether the Receiver should have been appointed on the facts and circumstances of this case. Order 40, Rule 2, Civil Procedure Code, provides that where it appears to the Court to be just and convenient, it may appoint a Receiver for any property. It is well settled that discretion has been given to the Court for appointment of Receivers, but it has to be exercised judiciously. No inflexible rules can be laid down in which a Receiver can be appointed. The circumstances and fact of each case have to be gone into for appointment of a Receiver.

8. For the aforesaid view, I get support from *C. Ramchandrayya v. Nethi Ishwurayya* AIR 1952 Hyd 139, [Nihalchand L. Jai Narain and Others Vs. Ram Niwas Munna Lal and Others](#), and *Prem Parkash Kapoor v. Gobind Ram Kapoor* AIR 1976 J. & K. 37.

9. In *G. Ramchandrayya's* case (supra), it was held that no hard and fast rule can be laid down in so far as the question of appointment of a Receiver is concerned. The well accepted general principle is that a Receiver should be appointed where it is just and convenient. As to whether in a particular case it is just and convenient to do so the question would have to be determined on the particular facts of the case. The underlying principle under Order 40, Rule 1, CPC relating to the appointment of a Receiver, is that the subject matter of the suit should be allowed to remain intact in order to see that at the end of the final adjudication, the parties might be entitled to the benefit thereof. It was further held that no doubt ordinarily it is only where the Court is satisfied that there is danger apprehended of the subject-matter of the suit becoming unavailable, if the defendant were allowed to remain in possession of the same, or that the plaintiff would not be in a position to realise the fruits of his decree if he succeeds unless the property were protected, that the Court would be inclined to appoint a Receiver.

10. In *Nihal Chand L. Jai Narain's* case (supra), the learned Judge observed that a Receiver may be appointed where there is a reasonable apprehension to the property, assets or income are in danger of being injured, misused or dissipated. The property should be preserved from loss or wastage so that the final relief may be effective. The appointment of a Receiver in such circumstances does not result in harassment to a party but protects the rights of the injured party by keeping the property intact. Where a partner excludes another from the management of the partnership affairs, a case is made out for appointment of a Receiver and this doctrine is acted on even where the defendant contends that the plaintiff is not a partner or that he has no interest in the partnership assets. The learned Judge further held that the considerations which determine the grant or refusal of prayer to appoint a Receiver rest on well-known principles but no Court has been able to lay down unvarying and inflexible rules applying to all circumstances and eventualities. The facts of the actual case are of primary consideration which determine the exercise of the discretionary power.

11. A similar view was expressed by the Jammu and Kashmir High Court in Prem Prakash Kapoor's case (supra). I am in respectful agreement with the observations in the aforesaid cases.

12. Now I advert to the facts of the present case. It is clear from the partnership deed that the plaintiff petitioner was a partner in the partnership business carried on in the name and style of M/S Sarup Ruber Works. The petitioner applied for appointment of Receiver when he instituted the suit. That application was declined. In revision against that order, Koshal, J. as he then was, appointed the Official Receiver to prepare an inventory of all the partnership assets, including books of account. The learned Judge further directed that he should sign the books of account so that the same may not be replaced by the respondents : The Official Receiver visited the premises of the partnership business in the evening on February 18, 1975. From his report it is evident that some frivolous objections were raised before him by the respondents so that he might not start the work entrusted to him by this Court. After sometime, he was allowed to do the work. He prepared the inventory for two hours. Thereafter he adjourned the preparation of the inventory to the next date as it was 9 P.M. On February 19, 1975, he found that the books lying in the factory had been removed by the respondents. He found in the almirah only a few blank declaration forms of sales-tax. The Receiver reported that a portion of the factory was lying locked with certain machinery and material but the defendants did not hand over the key and told him that it was lying with some person who was trying to bring about a compromise between the parties. They did not disclose the name and particulars of that person. The Official Receiver could not, therefore prepare the inventory of the articles lying in that portion of the factory.

13. In view of the report of the Official Receiver, contempt of Court proceedings was started against the respondents. They, however tendered apology and the same was accepted by this Court. From the narration of the facts above, it is clear that the respondents did not permit the Official Receiver even to make an inventory of the articles lying in the factory and to sign the account-books. If the account books had been signed by the Official Receiver, there would have been certainty that the same would not be tampered with by the respondents. There is also a reasonable apprehension that the income and assets of the firm are in danger of being misused and dissipated. It is the duty of the Courts to preserve the property of the partnership, so that the plaintiff may be able to reap the benefit of his decree.

14. For the reasons recorded above, I accept the revision petitions with costs and appoint the Official Receiver as the Receiver of the property. He may take possession of the factory and run the same. In case he wants to have the assistance of the plaintiff and any one or more of the defendants, he may have the same so that the business may not suffer. It will, however, be proper that he should have the assistance either of both the parties, i.e., the plaintiff and at least one of the defendants or of none of them. Counsel's fee Rs. 150/-. The fee of the Receiver shall

be fixed by the trial Court.