



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.7709-7710 OF 2023**

**M/S CRYSTAL TRANSPORT PRIVATE LIMITED & ANR.
...APPELLANT(S)**

VERSUS

A FATHIMA FAREEDUNISA & ORS. ...RESPONDENT(S)

J U D G M E N T

MANOJ MISRA, J.

1. These two appeals are against common judgment and order of the High Court of Judicature at Madras¹ dated 19.11.2019 passed in First Appeal No.328 of 2005 and Cross Objection No.10 of 2012 preferred against a final decree passed by the Court of II Additional District Judge, Pondicherry in I.A. No.33 of 1995 arising out of Original Suit No.286 of 1978 instituted by the first respondent, *inter alia*, for dissolution of a partnership firm.

FACTUAL MATRIX

2. The first respondent (i.e., the original plaintiff) instituted Suit No.286 of 1978 *inter alia* for: (a)

¹ High Court

dissolution, settlement of accounts and distribution of shares of a partnership firm, namely, Crystal Transport Service (for short the firm); (b) appointment of receiver to take charge of the management and assets of the firm till it is wound up; and (c) restraining the defendants from recovering, receiving or disposing of the property and effects of the firm.

3. The plaint case, *inter alia*, was that -- the firm was constituted in 1972-73 with four partners (i.e., the original plaintiff and defendants 1 to 3) each having one-fourth share; the partnership was at will; in 1978, without the consent of the plaintiff, defendants 1 to 3 diverted funds of the firm to a private limited company (defendant no.4 - appellant no.1 herein); and when the plaintiff demanded accounts from defendants 1 to 3, they refused. Hence, the suit.

4. The appellants contested the suit, *inter alia*, claiming that - the firm was constituted on 07.07.1971, with effect from 01.05.1971; it was not a partnership at will; a joint stock company was formed with the approval of the partners including the plaintiff; and by agreement dated 25.06.1978 all assets and liabilities of the firm were transferred to the fourth defendant (appellant no.1 herein).

5. The trial court passed a preliminary decree on 19.09.1988, *inter alia*, in the following terms: (i) the firm stands dissolved with effect from 07.10.1978 in terms of

Section 42(b) read with Section 44 (g) of the Indian Partnership Act, 1932²; (ii) the plaintiff has one-fourth share in the firm; (iii) accounts shall be taken up to the date of dissolution as per Order XX Rule 15 of the Code of Civil Procedure, 1908³ ; (iv) defendants 1 to 3 shall, *inter alia*, file statement of final accounts along with a balance sheet and a profit and loss account duly audited for the last 5 years since before the date of dissolution; (v) the prayer for appointment of a Receiver shall be considered after the final accounts, balance sheet, etc. are filed; (vi) suit against the fourth defendant (first appellant herein) is dismissed; and (vii) both sides shall bear their own costs.

6. Aggrieved with the trial court decree, the original plaintiff preferred First Appeal No.215 of 1988. The appeal was allowed *vide* judgment and order dated 08.08.1989 pursuant to which a preliminary decree was drawn *inter alia* in the following terms: (i) the firm shall stand dissolved with effect from 15.11.1978 (i.e., date of institution of the suit); (ii) Sri C.S. Narasimhan Advocate would be the Commissioner to take accounts from 01.05.1971 till 15.11.1978; (iii) while taking accounts the Commissioner shall have due regard to Sections 37 and 48 of the 1932 Act; (iv) the Commissioner's fee shall be 10% of gross collections; (v) defendants 1 and 2 shall

² 1932 Act

³ CPC

neither convert nor transfer or dispose of assets of the firm till the accounts are finally settled; and (vi) the decree shall bind the fourth defendant (i.e., the first appellant herein).

7. A second appeal preferred against the appellate decree failed. Hence, the aforesaid preliminary decree attained finality.

8. The Receiver/Commissioner appointed by the first appellate court could not comply with the task, therefore another Receiver was appointed. The defendants challenged the order changing the Receiver, which was disposed of by confirming his appointment with a direction that he would take charge of the management of Crystal Transport Pvt. Ltd. (i.e., the first appellant). Aggrieved by the aforesaid order, a civil revision was preferred before the High Court which was dismissed *vide* order dated 30.07.1991. The defendants thereafter challenged the order of the High Court before this Court in Civil Appeal No.4856 of 1992 which was disposed of *vide* order dated 12.11.1992 in the following terms:

“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.”

9. Subsequently I.A. No.2176 of 1992 was filed by the original plaintiff for a direction to the Receiver to take possession of the firm. When the trial court found that proper steps were not taken by the Receiver, a fresh Receiver was appointed after removing the earlier Receiver. Appeal preferred against that order was dismissed. Still aggrieved, a revision petition was filed. In the meantime, the original plaintiff moved I.A. No.2004 of 1993 to summon the Receiver with reference to his report, which too was rejected. Another revision petition was filed against this order. Finally, on 17.11.1998 both the aforesaid revisions were dismissed.

10. In the meantime, original plaintiff had filed I.A. No.33 of 1995 under Order XX Rule 15 CPC for appointment of a Receiver to ascertain the exact amount payable to the original plaintiff and to pass a final decree in terms of the preliminary decree. On the said application, the trial court passed a final decree on 23.04.2004 thereby holding that the plaintiff would be entitled to get a sum of Rs.1,10,815/- as full and final settlement of her one-fourth share to be paid by the fourth defendant (i.e., the first appellant) with 9% p.a. interest from 1978 till the date of the order with

subsequent interest upon the accrued amount at the rate of 6% p.a. till the date of disbursement. While passing the final decree the application of the original plaintiff to change the Receiver was rejected.

11. Aggrieved with the final decree, the original plaintiff preferred First Appeal No.328 of 2005 *inter alia* claiming that the final decree was based on non-proven reports; objection to the report was not considered; documents submitted were not taken into consideration; and the prayer to change the Receiver was not properly dealt with. After hearing the parties, the High Court while allowing the appeal by the impugned order observed:

“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 aforesaid documents, namely, the auditors of the respondents/ defendants as well as the Receiver. Thus the endeavor 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 (*whether*) he had filed his reports based on the actual scrutiny of the statement of accounts projected by the respondent/ 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.

.....

I'm 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 rejected 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 analyzing the further materials to be placed on record, if need be, if it still opines 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 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 above said exercise, the court below is directed to accordingly appreciate the materials placed on record in the right perspective in accordance with the 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.”

12. In the cross objection preferred by the appellants to the final decree their contention was that the preliminary decree of the first appellate court is the basis for passing the final decree. When the subject matter of the suit as well as the decree passed by the first appellate court is only with reference to the two buses and the decree also stipulates that the suit firm stood

dissolved on and from 15.11.1978 and the decree further directs only to take accounts from 01.05.1971 to 15.11.1978, the trial court had erred in embarking upon an inquiry as regards the income that would have been derived even after 15.11.1978.

13. The above argument was countered by the plaintiff by submitting that the assets of the firm had been taken over by the fourth defendant even before the plaintiff could realize the fruits of the decree, in such view of the matter, bearing in mind the provisions of Section 14 and 37 of the 1932 Act, the profits generated even post dissolution of the firm would have to be accounted for by the fourth defendant till accounts are finally settled as per the final decree.

14. The first appellate court accepted the aforesaid submissions made on behalf of the original plaintiff and rejected the cross-objection. The operative portion of the impugned order is extracted below:

“In the light of the above said factors, the final (sic) decree order dated 23/4/2004 passed in I.A. No.33 of 1995 in OS No.286 of 1978 on the file of the IInd Additional District Judge, Pondicherry is 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 or the 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 above said 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 cross objection are disposed of.”

SUBMISSIONS

15. We have heard Mr. C. Aryama Sundaram for the appellants and Mr. Siddharth Naidu for the first respondent.

16. At the outset, we may observe that there is no serious challenge to the findings returned in the impugned order that the parties were not given proper opportunity to prove as well as question the reports which formed the basis of the final decree. For this reason, as well as detailed reasons recorded in the impugned order as to why the matter was being remanded, we do not find a good ground to interfere with the remand order.

17. However, the learned counsel for the appellants contended that once the partnership firm stood dissolved on 15.11.1978, when there was hardly any

property with the firm, there is no basis to seek for accounts and profits for the period beyond 15.11.1978. It is argued that liability cannot be fastened on the appellant company to share its profit for any period beyond 15.11.1978 i.e., the date of dissolution of the firm, particularly when the first appellant utilized no assets of the erstwhile firm.

18. Per contra, the learned counsel for the plaintiff (the first respondent) submitted that final decree would have to be prepared in terms of the preliminary decree. The preliminary decree which is binding on the fourth defendant (i.e. the appellant-company) in clear terms states that assets of the firm were taken over by the fourth defendant (i.e., the first appellant herein). In these circumstances as also that the impugned order is a remand order, no case for interference is made out.

ANALYSIS

19. Having considered the rival submissions and having perused the records, we notice that in the preliminary decree, *inter alia*, there is a clear direction to the following effect:

“that in taking accounts the Commissioner shall have due regard to Section 37 and 48 of the Indian Partnership Act”.

20. Section 37 of the 1932 Act reads thus:

“Where any member of a firm has died or otherwise cease to be a partner, and the surviving or continuing partners carry on the business of the firm with the

property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of 6% per annum on the amount of his share in the property of the firm:

Provided that where by contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material aspects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.”

21. In the instant case, the finding, which appears on the record, is to the effect that the fourth defendant (appellant company) had taken over the assets of the firm. Therefore, in light of the provisions of Section 37 of the 1932 Act, if the fourth defendant is carrying on business with the assets of the firm, till a final settlement is made, the plaintiff, who would fall in the category of an outgoing partner, would have the right to seek for accounts and a share in the profits which might be derived from his share in the assets of the firm.

22. As to what extent the business of the appellant company is derived from the assets of the firm is a matter of evidence which parties may have to adduce in

the course of the proceedings relating to the preparation of the final decree pursuant to the order of remand.

CONCLUSION

23. Considering that by the impugned order the matter has been remanded to the trial court, we do not find a good reason to interfere with the order impugned. We also observe that we have not expressed any binding opinion on the merits of the claim of either party as the same shall be subject to the evidence led by the parties during the course of the proceedings relating to the preparation of the final decree.

24. Subject to above, the appeals are disposed of.

25. Parties to bear their own costs. Pending application(s), if any shall stand disposed of.

.....CJI.
(Dr. D.Y. Chandrachud)

.....J.
(J.B. Pardiwala)

.....J.
(Manoj Misra)

New Delhi;
November 8, 2024