

Gujarat High Court

Coronation Agro Industries Ltd. vs Coronation Flour Mills on 20 November, 2002

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Bench: R R Tripathi

JUDGMENT

1. The Appeal From Order No.195 of 1995 is filed being aggrieved of the order dated 9th March, 1995 passed by the City Civil Court, Ahmedabad, below Exhs.5 and 6 in Civil Suit No.4984 of 1982.

2. This Court, while admitting the Appeal From Order No.195 of 1995, passed an order in Civil Application No.1846 of 1995 on 5th July, 1995, whereby the amount ordered to be paid by way of rent in paragraph-(V) of the operative part of the order dated 9th March, 1995 was reduced from Rs.65,000=00 to Rs.32,500=00. Against the aforesaid order of this Court, Special Leave Petition (Civil) No.17437 of 1995 was preferred before the Apex Court. By an order dated 12th August, 1996, the Apex Court allowed the same and set aside the order of this Court, resulting into restoration of the trial Court's order dated 9th March, 1995.

After the order of the Apex Court, applications, being Exh.112/113, were filed before the trial Court, which came to be dismissed by an order dated 25th January, 1999 passed by the learned Auxiliary Chamber Judge of the City Civil Court at Ahmedabad. This order dated 25th January, 1999 is the subject matter of challenge in this Appeal From Order.

3. Mr.A.H.Mehta, learned counsel for the appellants, strenuously contended that the order dated 25th January, 1999 does not give any convincing reasons for rejecting the applications filed by the appellants. He submitted that the learned Judge has erred in stating that the point regarding the use of trademark is not available to the defendant; and, that electric supply is now availed of by the defendant, may be, on deposit of Rs.5,50,000=00, which is earning interest at the rate of 12% per annum and, therefore, there is no harm caused to the defendant. The learned Judge also observed that disconnection of the telephone facility is a negligible damage and that the defendant had already obtained new telephone connection and, therefore, no reduction in the amount payable by way of rent/licence fees is warranted.

4. Mr.Mehta strenuously contended that last, but not the least, the learned Judge has given an innovative reason for not reducing the amount of Rs.65,000=00 by stating that according to the valuation report submitted by the plaintiff, land, building and machinery are worth more than Rs.3 crores, on which even if a reasonable return at the rate of 12% per annum is to be taken into consideration, it will come to about Rs.74,500=00 per month.

5. Mr.Mehta submitted that the learned Judge is not right in any of his observations and none of the grounds, on which the applications, Exh.112/113, are rejected, are tenable at law. He submitted that the learned Judge ought to have taken into consideration an important aspect of the matter, namely, the agreement by which the property was taken on lease by the defendant had following ingredients, namely, possession of the land and building, possession of the machinery, three telephone connections, use of trademark and supply of electricity. Out of which, admittedly, except the

possession of land and building and possession of machinery, remaining three ingredients were not continued, therefore, at least, on that account, the learned Judge ought to have granted reasonable reduction in the amount of rent which was Rs.65,000=00.

6. Mr.Mehta invited the attention of the Court in detail to the contents of Exh.112/113, but, could not successfully point out any material on which reduction in the amount could have been worked out.

7. In view of the foregoing discussion, though the reasoning of the learned Judge for passing the order rejecting Exh.112 and 113 is not very palatable, the fact remains that in absence of any cogent material, on the basis of which reduction could have been worked out, and in absence of any lesser amount being suggested, the present Appeals fail and are dismissed. However, it is clarified that will be open for the appellants herein to produce necessary material before the trial Court at the time of final hearing of the suit and to pray for reduction of the amount of Rs.65,000=00 right from day one. The trial Court shall consider such material if so placed by the appellants in support of their prayer for reduction of the amount of Rs.65,000=00 towards rent/licence fees and shall pass appropriate order in that regard.