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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: April 28, 2009  
Date of Order: May 28, 2009

**+OMP 464/2008**

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**Ashwani Kumar Verma**

Through : Mr. Vineet Chadha, Advocate

Versus

**Rajbir Singh & Anr.**

Through: Mr. D.P. Bhatia, Advocate

**28.05.2009**

**...Petitioner**

**...Respondent**

**JUSTICE SHIV NARAYAN DHINGRA**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

**JUDGMENT**

This petition has been made by the petitioner under Section 9 of the Arbitration & Conciliation Act, 1996 (for short, "the Act") stating therein that he was a partner in the firm New Jagran Enterprise vide a partnership deed dated 3<sup>rd</sup> May 2003. He submits that respondent No.1 who was also a partner of the firm had forged and fabricated various documents including his letter of resignation from the partnership and respondent No.2 in order to mislead the bankers, had written letters that only respondent No.1 was to operate the bank account. Same misrepresentation was made to various other clients of the firm and under this misrepresentation, respondent No.1 collected dues from parties on behalf of the firm. Respondent No.1 also impleaded the petitioner in false case of the theft of a truck belonging to the partnership firm. A prayer was made that the respondent should be restrained from collecting, realizing and misappropriate the payments due from the debtors

of the said firm including acceptance of cash bills, cheques etc and he should be restrained from raising funds from the market in the name of partnership firm and from transferring, selling, alienating or creating third party rights qua the partnership assets and operating bank account standing in the name of the firm, issuing any cheque on behalf of the firm and in favour of the persons including the creditors.

2. Vide an order dated 3<sup>rd</sup> September 2008, this Court had issued an ex parte interim injunction in favour of the petitioner observing that the petitioner has made out a prima facie case and thus Court restrained the respondent from operating the existing bank account of the firm and from opening any new bank account in the name of the firm and from receiving payments from the creditors of the said firm in any form other than by cheque or pay orders and from depositing such pay order/ cheque in any bank account other than the existing bank account.

3. The contention of the respondent No.1 is that the petitioner had resigned from the firm vide retirement deed dated 26<sup>th</sup> April 2008 and all the accounts of the petitioner were settled. A copy of retirement deed has been placed on record.

4. The contention of the petitioner is that this retirement deed was a forged document.

5. A perusal of the documents filed by the parties would show that on 9<sup>th</sup> April 2008, Mr. J.B. Bansal, Advocate on behalf of respondent served a notice on the petitioner wherein it was categorically stated that the petitioner was

partner of the firm New Jagran Enterprises along with one Mr. Kapil who were looking after the business sites of the firm all over India while Mr. Rajbir Singh, respondent herein, was handling the finance and other issues of the firm from Delhi. It was alleged that Mr. Kapil was not interested and was acting against the interests of the firm and he, therefore, retired from the firm on 14<sup>th</sup> November 2007 and his name was deleted from the record of Registrar of Firms and the firm was re-constituted and the petitioner and respondent became partners in the ratio of 30% and 70% in the loss and profits of the firm. It was alleged in the same notice that the petitioner in connivance with Mr. Kapil was acting against the interests of the firm and the petitioner illegally and unlawfully, without consent or permission of respondent, took HDD Machines and one truck and one Alto Car. Thus, the petitioner committed criminal breach of trust and criminal contravention of the properties. It was further stated in the notice that respondent was not interested in any partnership business with the petitioner and the petitioner was expelled from the partnership and petitioner shall have no authority to act on behalf of respondent. The petitioner was called upon to handover HDD Machines, truck and Alto car within three days of receipt of notice. It was also stated that since the petitioner has been expelled from the partnership firm, he was no more partner in the firm and it was threatened that action will be taken against the petitioner.

6. Mr. Kapil Kumar and Mr. Ashwani Kumar had also got a notice dated 19<sup>th</sup> May 2008, served upon the respondent through their advocate wherein it was stated that the partnership was initially between Mr. Kapil Kumar and the petitioner. Their partnership firm New Jagran Enterprises was recognized as A-Class Contractors and was having roaring business when respondent

expressed his desire to become a partner. He was inducted as a partner on 3<sup>rd</sup> May 2003 to the extent of 1/3<sup>rd</sup> share. Initially things moved smoothly and the petitioner and Mr. Kapil Kumar put hard work to take the firm to new heights and when the profits of the firm started increasing, the respondent started misappropriating the profits and embezzling large amounts for personal purposes. The respondent with the help of this embezzled amount build a new house and sent his son to England for education. The petitioner and Mr. Kapil Kumar got inspected the account books and found that several entries were missing and the account books were not being properly maintained. It was also alleged that respondent started pressurizing the petitioner and Mr. Kapil Kumar to resign and when they refused to resign, he forcibly obtained signatures of the petitioner on some blank letters and letterheads of the firm which were later on misappropriate and misused. It was also alleged that respondent with the help of anti-social elements (*gundas*) forced the petitioner and Mr. Kapil Kumar to sign certain blank papers and even threatened them to kill. It was alleged that the misappropriated amount was to the extent of Rs.1 crore.

7. The retirement deed placed on record by respondent is of 26<sup>th</sup> April 2008. Obviously, this retirement deed is of a date subsequent to notice of the respondent served on the petitioner whereby the respondent had claimed that the petitioner stood expelled from the partnership firm as the respondent was not interested in doing business with the petitioner. Once the petitioner had been expelled from the partnership firm, obviously the partnership firm had come to an end and all what remained was to settle the accounts of partners in the partnership firm. There is no document showing that the account of the partnership firm were settled and a profit and loss statement

showing assets of the firm, list of creditors and debtors, bank accounts, properties was prepared and the parties had after settling the account dissolved the partnership firm. The petitioner was equally entitled to goodwill of the firm being a partner. There is no document showing any value of the goodwill or assets of firm was arrived at and the petitioner was paid his due amount. It only seems that the parties lost trust in each other. The respondent lodged an FIR about theft of the assets and the petitioner was arrested in that FIR. Although the name of the petitioner was not mentioned in the FIR but the petitioner could not have been arrested unless the respondent had expressed doubt about the involvement of petitioner. The petitioner remained in police custody and was interrogated but no recovery was effected from him. He was ultimately granted bail. All this shows that the story of retirement of petitioner after settling the account is highly doubtful. The disputes between the parties concerning partnership are to be resolved by arbitration as partnership contained an arbitration clause. Since the parties have lost faith and are at loggerheads the assets and the bank accounts of the partnership firm are required to be protected till the matter is resolved through arbitration. The petitioner thus has a prima facie case in his favour. The balance of convenience also lies in favour of the preserving the assets and liabilities till they are divided as per share of the partners in the firm.

8. Learned counsel for respondent relied upon *Atul Singh & ors. v. Sunil Kumar and others* 2008(1) RCR 908 and contended that the partnership was superseded by the new partnership deed and fresh partnership deed was in existence and, therefore, only new partnership deed would govern the relationship between the new partners and the earlier partners who were not

partners in the new partnership deed can file a civil suit for declaration, if so advised.

9. In my view, the above case relied upon by the respondent is of no help to the respondent. The facts of the present case are altogether different. This petition is under Section 9 with a prayer for preserving the assets of the firm. The case referred to is in respect of civil suit wherein an application under Section 8 was made.

10. The application of the petitioner is allowed. The petitioner and respondent are restrained from operating existing bank accounts of M/s New Jagran Enterprises or from opening any new bank account in the name of the firm and they are also restrained from receiving any payment from debtors in cash and all payments must be received only by cheque or pay order and be deposited in the existing account of M/s New Jagran Enterprises. The respondent shall keep the account book of the firm intact. Parties are also restrained from selling, disposing of or giving on lease the movable and immovable assets of the firm M/s New Jagran Enterprises and from carrying on any business in the name of the firm till the disputes between the parties be resolved through arbitration. The petitioner is directed to initiate the arbitration proceedings within 8 weeks from today.

With above directions, this petition stands disposed of.

**May 28, 2009**  
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**SHIV NARAYAN DHINGRA J.**