

REPORTABLE

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

I.A. No.13030/2008 in CS(OS) No.2101/2007

Date of Decision: April 16, 2009

RAKESH KUMAR & ANR Plaintiffs
Through: Mr. S.S.Gautam, Advocate

VERSUS

UMESH KUMAR & ANR Defendants
Through Mr. M.A.Niyazi, Advocate

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

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

REKHA SHARMA, J.

This is a suit by the plaintiffs for dissolution of partnership and rendition of accounts. The reliefs claimed are as under:-

- a) That the partnership business of M/s Bharat Chatai Bhandar, 6534, Khari Baoli, Delhi as per partnership deed dated April 01, 1999 may be dissolved.
- b) The accounts of the business including profit, interest, capital, rent, damages for use and occupation and goodwill of the partnership business M/s Bharat Chatai Bhandar and M/s New Bharat Chatai Bhandar may be rendered to the plaintiffs and the amount so ascertained as due to the plaintiffs and against the defendants may be paid to the plaintiffs and the plaintiffs undertake to make the payment of the deficient court fees according to law.
- c) The plaintiffs may be allowed interest at the rate of 15% p.a. pendente lite and future till payment.

- d) Costs of the suit may be allowed to the plaintiffs against the defendants.

The defendants not only have filed written statement to the plaint and thereby have controverted the averments made therein but have also filed an application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure (hereinafter called the Code) seeking rejection of the plaint on the ground that the reliefs claimed are barred by limitation. It is this application which is the subject matter of the present order.

It is well settled that for the purpose of deciding an application under Order 7 Rule 11 of the Code, it is only the facts pleaded in the plaint which are to be taken into account and if on the basis of those facts it is found that the suit is barred by any law or is hit by any other clause of Order 7 Rule 11 of the Code, then alone is the plaint liable to be rejected. It is, therefore, necessary to notice the facts but only such facts which emerge from the plaint. They are as under:-

Way-back in the year 1958, father of plaintiff No.1 and defendant No.1 and grand-father of plaintiff No.2 and defendant No.2, namely, Shri Amar Nath started his business of mats and other allied items under the name and style of M/s Bharat Chatai Bhandar. He was the sole proprietor of the said concern and he operated his business from shop No.6534, Khari Baoli, Delhi which he had taken on rent in his name. He continued to run his business as a proprietorship concern till March 31, 1980 and thereafter from April 01, 1980 it was converted into a partnership concern comprising of three partners including himself and his two sons who are plaintiff No.1 and defendant No.1. A Partnership Deed dated April 08, 1980 containing detailed terms and

conditions was executed and it was made effective from April 01, 1980. The partnership firm adopted the same name as was the name of the sole proprietorship concern, i.e. M/s Bharat Chatai Bhandar.

It so happened that certain amendments as to payment of salary, commissions, loans, remuneration and interest to partners were made in the Income Tax Act, 1961 and as a result thereof, consequential amendments were required to be made in the terms and conditions of the Partnership Deed. Therefore, a fresh Partnership Deed dated April 01, 1992 was executed and except for the changes made consequent to the amendment in the Income Tax Act, 1961, the remaining terms and conditions of the Partnership Deed were, by and large, kept intact. Thereafter, in the year 1999 the Partnership Deed underwent yet another change. This time on account of the fact that the sons of plaintiff No.1 and defendant No.1 were also inducted into the partnership business and consequently, a fresh Partnership Deed dated April 01, 1999 was executed. However, the name of the partnership business continued to be the same and so also some of the terms and conditions.

The further facts which emerge from the plaint are that Shri Amar Nath expired on April 23, 2004 and consequent upon his death, sometime in the year 2004 defendants acquired shop No.7251, Beri Wala Bagh, Pul Bangash, Old Rohtak Road, Delhi-110006 and started running their own partnership business in the name and style of M/s New Bharat Chatai Bhandar. It also emerges from the plaint that not only did the defendants start their own partnership business, but also transferred the entire stock, purchase assets of the firm M/s Bharat

Chatai Bhandar to the new partnership firm, M/s New Bharat Chatai Bhandar.

Before I proceed further, two clauses of Partnership Deed dated April 01, 1999 need to be noticed. They are clauses 6 & 12. As per clause 6, "the accounting year of the firm shall be the financial year and at the end of each financial year, a general account shall be taken and a complete statement of all the assets and liabilities of the firm shall be drawn and shall be entered in the account books and signed by the partners in token of the acceptance of the same as correct." And as per clause 12, "the partnership shall be at Will and any partner shall be entitled to retire from the firm by serving on the remaining partners one month's notice in writing of his intention to retire from the firm."

It is also the case of the plaintiff that the accounts of the firm were settled only till the year ending March 31, 2000 and thereafter, no accounts were settled or rendered by the defendants despite requests from the plaintiff.

The only other fact which needs to be noticed is that the suit was filed on October 10, 2007.

It is on these facts culled out from the plaint that the plaintiffs are claiming reliefs as noticed above.

The first prayer made in the plaint is for dissolution of the partnership firm, M/s Bharat Chatai Bhandar which as noticed above, initially came into existence on April 01, 1980 and thereafter because of change in its composition, a fresh Partnership Deed dated April 01, 1999 was executed. It is the plaintiffs' own case that one of the partners, namely, Shri Amar Nath died on April 23, 2004. What

happens if a partner dies? Does the partnership firm continue to exist notwithstanding the death of a partner or does it come to an end? The answer is provided in Section 42(c) of the Indian Partnership Act, 1932. It says that subject to contract between the partners, a firm is dissolved by the death of a partner. In view of this provision, it was open to the partners to incorporate a clause in the Partnership Deed that notwithstanding the death of one of the partners, the partnership would continue. However, no such clause was incorporated. Therefore, in terms of Section 42(c) of the Indian Partnership Act, 1932, consequent upon the death of Shri Amar Nath, the partnership firm stood dissolved by operation of law with effect from the date of his death, i.e. April 23, 2004.

It was sought to be contended by learned counsel for the plaintiffs that the partnership was at Will and it could be dissolved by any partner by giving one month's notice in writing to the other partners of his intention to dissolve the firm and as no partner had given notice for dissolution of the partnership in terms of the said clause, it continued to exist till the filing of the suit. The contention has no merit. As already held above, by virtue of clause 42(c) of the Indian Partnership Act, 1932 the partnership firm stood already dissolved on April 23, 2004. Hence, in the facts and circumstances of the case, the relief sought for dissolution of partnership does not arise.

By virtue of the second prayer, the plaintiffs are seeking the accounts of the business of partnership firms, M/s Bharat Chatai Bhandar and M/s New Bharat Chatai Bhandar. Insofar as the accounts of M/s Bharat Chatai Bhandar are concerned, it is the plaintiffs' own case that the accounts were rendered till the year ending

March 31, 2000 and only thereafter no accounts were settled. The limitation period for filing a suit for rendition of accounts of a dissolved partnership is 3 years from the date of dissolution of the partnership. It is so provided in Article 5 of the Limitation Act, 1963. As held above, the partnership in the present case stood dissolved on April 23, 2004 when Shri Amar Nath had died while the suit was filed on October 10, 2007. The suit is, thus, clearly beyond the period of limitation. Hence, the second relief also cannot be granted.

As regards the plaintiffs' prayer for rendition of accounts of M/s New Bharat Chatai Bhandar, the same in any case cannot be granted to them, for it is their own case that the firm M/s New Bharat Chatai Bhandar comprised only of the defendants and the plaintiffs were not partners in the said firm. They, therefore, have no right to seek rendition of accounts in relation to the said firm.

As the first two prayers have been declined, the question of granting relief with regard to other prayers does not arise.

For the foregoing reasons, I accept the application under Order 7 Rule 11 of the Code and hold that the suit filed by the plaintiffs is barred by limitation. Consequently, the plaint is rejected.

REKHA SHARMA, J.

APRIL 16, 2009
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