

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

+ RFA 700/2003

% Date of Decision: 8th September, 2010

DAVINDER SINGH Appellant

! Through: Mr. Neeraj Malhotra & Mr. Anand Singh,
Advocates

versus

\$ **VARINDER SINGH** Respondent

^ Through: None.

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the judgment? (No)
2. To be referred to the Reporter or not? (No)
3. Whether the judgment should be reported in the digest? (No)

JUDGMENT

P.K.BHASIN, J(ORAL):

The appellant is the unsuccessful plaintiff in a suit for dissolution of partnership and rendition of accounts in respect of partnership business which was being carried on by the appellant – plaintiff and the respondent – defendant in the name and style of M/s Guru Kripa Travels. The suit has been dismissed by the learned Additional District Judge vide judgment and decree dated 14th May, 2003 on the ground that the plaintiff had failed to prove that there was any partnership agreement with the defendant. Feeling aggrieved the plaintiff has come up in appeal.

2. The relevant facts are that the appellant-plaintiff claimed that he had entered into a partnership with the respondent-defendant vide partnership deed dated 28th October, 1992 and he had contributed a sum of ₹ 1,65,000 in the partnership business but he was denied the fruits of the partnership business by the respondent-defendant and therefore he had sought dissolution of the partnership by sending to the respondent-defendant a notice dated 3rd October, 1996 to that effect. The respondent-defendant did not respond to that notice nor rendered the accounts of the partnership business and consequently suit for dissolution of the partnership and rendition of accounts had to be filed.

3. Respondent-defendant filed his written statement and contested the suit and denied the partnership mainly on the ground that there was no partnership entered into between the parties. Regarding the averment made in the plaint that the plaintiff had contributed a sum of ₹ 1,65,000/- towards the partnership, his reply was that that money was not spent by the plaintiff on account of his share in the partnership firm but the fact was that he had taken a friendly loan of that amount from the plaintiff and the same had been repaid also. He also claimed that bus No. DL-1P-4995 which the plaintiff claimed to be a partnership property, in fact, was exclusively owned by him since he had purchased the same with his own money by taking a loan from Delhi Scheduled Caste Financial Development Corporation and the permit to ply that business also in his name.

Regarding the notice dated 3rd October, 1996 sent by the plaintiff for dissolution of the partnership, the defendant's stand was that that notice was uncalled for as there was no partnership in existence and the defendant was within his rights not to take any notice of that notice.

4. The pleadings of the parties had led to the framing of the following issues for trial by the trial Court:-

- “(I) Whether there was a partnership agreement between the Plaintiff and the defendant to run the business of public transport in the National Capital Territory of Delhi? OPP*
- (II) Whether the bus having registration No. DL-1P-4995 was purchased out of the funds of the Defendants? OPP*
- (III) Whether the Defendant is not liable to share the proceeds of the business in equal proportion with the Plaintiff? OPP*
- (IV) Whether the money spent towards the purchase of the partnership vehicle was a loan advanced to the Defendant? OPP*
- (V) If Issue No.1 is decided in favour of the Defendant, whether the partnership of the plaintiff and Defendant is liable to be dissolved? OPP*
- (VI) Whether the Defendant is liable to render account to the plaintiff? OPP*
- (VII) Relief”*

5. In support of his case the appellant-plaintiff had examined himself as PW-1 and had claimed in his examination-in-chief that

partnership deed dated 28th October, 1992 had been executed between him and the defendant Varinder Singh(the respondent herein). That partnership deed was exhibited as Ex.PW1/1. The examination-in-chief of the appellant-plaintiff was recorded on 18th January, 2000. His cross-examination was, however, deferred at the request on behalf of the respondent-defendant. On 9th October, 2000 the cross-examination of the plaintiff commenced but on that day remained inconclusive and further cross-examination was deferred. On 23rd March, 2001 when the case was fixed for further cross-examination of PW-1 there was no appearance on behalf of the respondent-defendant so he was ordered to be proceeded against ex-parte. Thereafter also respondent-defendant did not participate in the trial and finally after hearing the arguments on behalf of the appellant-plaintiff the learned Additional District Judge dismissed his suit vide judgment under challenge mainly on the ground that the plaintiff had failed to prove execution of the partnership deed dated 28th October, 1992. It was also held that the defendant had also not proved that he had taken a loan from the plaintiff.

6. I have heard learned counsel for the appellant only since there has been no appearance on behalf of the respondent in this appeal despite service of notice of the appeal by way of publication.

7. Since the plaintiff had categorically deposed in his examination-in-

chief that Ex.PW1/1 was the partnership deed executed between him and the defendant and in the limited cross-examination of the plaintiff conducted on behalf of the defendant there was no challenge to that statement of PW-1, the learned trial Court was not justified in coming to the conclusion that plaintiff had failed to establish execution of the partnership deed. The statement on oath made by the plaintiff in his examination-in-chief to the effect that he had entered into partnership vide partnership deed Ex.PW1/1 having not been challenged in cross-examination by the defendant and the defendant himself having not entered in the witness box in support of his defence that there was no partnership entered into between the parties and that the amount of ₹ 1,65,000/- being claimed by the plaintiff as his contribution towards the partnership business was in fact a payment made on account of friendly loan to the defendant the plaintiff's case stood admitted and admission of a fact by a party to a suit is the best evidence in favour of the other party who is expected to establish that fact. This Court is, therefore, of the view that the findings on issues no.1 and 4 given by the trial Court cannot be sustained. Consequently issues no.1 and 4 stand answered in favour of the appellant-plaintiff and against the respondent-defendant.

8. As a result of the reversal of the finding of the trial Court on issues no.1 and 4 covering the main controversy between the parties the judgment and decree of the trial Court rejecting the appellant-plaintiff's claim for a

decree of dissolution of the partnership have to be set aside and the same are accordingly set aside. There shall now be a preliminary decree in favour of the appellant-plaintiff for dissolution of the partnership firm M/s Guru Kripa Travels. The date of dissolution of the partnership shall be 13th September, 1996 when the appellant-plaintiff conveyed to the respondent-defendant his intention not to continue the partnership and had called upon the respondent-defendant to render the partnership accounts and to pay to him his share. The shares of the parties as per the partnership deed were 50:50 and so it is declared as such. There shall also be a preliminary decree directing the respondent-defendant to render accounts of the above named partnership firm and in case respondent-defendant does not himself render the accounts within a month the trial Court shall take further steps for getting the accounts settled including appointment of a Receiver/Local Commissioner.

9. The appellant shall be entitled to the costs of the suit as well as the present appeal.

10. The trial Court shall now take up the matter for further appropriate proceedings/orders on 30th September, 2010 at 2.00 p.m.

P.K. BHASIN,J

September 08, 2010

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