

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.39 of 2023

Sri Nirode Chandra Das

.....Petitioner(s)

Versus

M/s Rajlaxmi Bricks Industries and others

.....Respondent(s).

For Petitioner(s) : Mr. Abir Baran, Advocate.

For Respondent(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Kawsik Nath, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

04/01/2024

Heard Mr. Abir Baran, learned counsel for the petitioner and Mr. P. Roy Barman, learned senior counsel assisted by Mr. Kawsik Nath, learned counsel for the respondents No.1 to 8.

[2] The petitioner has approached this Court after rejection of his application under Section 152 of the Civil Procedure Code for correction of decree vide impugned order dated 6th June, 2023. The judgment in Title Suit No.05 of 2014, was delivered on 07th June, 2022 by the Court of the learned Civil Judge (Senior Division), South Tripura, Belonia. The suit was for rendition of accounts and dissolution of partnership between the plaintiff and the private parties who are respondent Nos.1 to 8 in the present petition. The plaintiff had prayed before the court for the following reliefs:

A. Directing the defendant No.3 to render accounts of the partnership firm for the period from 2009-10, 2010-11 and 2011-12 within a period as directed by the learned Court during proceeding of the suit.

B. For decree for dissolution of Partnership Firm under the name and style of "M/S. Rajlaxmi Bricks Industries", the defendant No.1, constituted by the plaintiff and the defendant Nos.2, 3, 4 & 5 by a registered Deed of Partnership dated 10.07.2009.

- C. An interim order directing the defendants Nos. 2 & 3 to liquidate the outstanding loan lying with S.B.I, Santirbazar Branch, so that the lands of the plaintiff are not taken over by the said Branch.
- D. Any other relief/reliefs to which the plaintiff is entitled according to law, justice, equity and good conscience and for full cost of the suit.”

[3] The following issues were framed upon completion of the pleadings for adjudication by the learned trial court:

- i. “Is the suit maintainable in its present form and nature?
- ii. Whether the plaintiff is liable to liquidate the outstanding loan amount Rs. 20,00,000/- along with interest as per terms of the Deed of Partnership, out of which an amount of Rs.5,00,000/- has already been refunded?
- iii. Is the plaintiff entitled to get an amount of Rs.3,50,974/- being the share of profits on the basis of audited accounts submitted by the plaintiff and for the balance period ended on 30.03.2014 to be audited fresh?
- iv. Is the plaintiff entitled to get proportionate share of fixed/ immovable assets and movable assets of the Firm as per ratio of the plaintiff after dissolution?
- v. Is the plaintiff entitled to get compensation for submitting the manufacturing and burning of bricks and keeping the industry idle for the period from 30.06.2013 till dissolution?
- vi. Is the defendant No.3 under obligation to render accounts of the Partnership Firm for the years 2009-2010, 2010-2011 and 2011-2012?
- vii. Among the plaintiff and defendant Nos.1 to 5 who is/are responsible for liquidate the loan amount secured by the plaintiff from defendant No.6 giving mortgage of the land belonging to the plaintiff?
- viii. Is the Partnership Firm under the name and style as “M/S. Rajlaxmi Bricks Industries” liable to be dissolved, if so, what shall be the share of the plaintiff and the defendant Nos. 1 to 5 in the capital, assets and liabilities of the Partnership Firm as on the date of dissolution?
- ix. To what other relief/ reliefs the parties are entitled to?”

[4] The findings of the learned court on issue Nos. (iv) and (vii) are at para 40 of the judgment which reads as under:

"[40] It is seen that the business of the partnership firm was closed w.e.f. 30.06.2012 and all accessories relating to manufacturing and burning of bricks have been lifted by the defendants and there is no possibility of reopening the partnership business. For the interest of all the partners, both the plaintiff and defendants want the partnership firm to dissolve. The DW-1, who is one of the partner also stated in his examination-in-chief that defendants have no objection to dissolve the firm as prayed by the plaintiff. The share of the plaintiff in the profit and loss of the business carried out by the partnership is 20% and that of defendant No. 2 is 44.98%, defendant No. 3 is 25%, defendant No. 4 is 10%, defendant No. 5 is 0.02% and it has been mentioned in the Deed of Partnership marked as Exbt. 1 Series. So, the plaintiff and defendants will have to share the profit and loss of the business of the firm as per the share mentioned in the Deed of Partnership after dissolution of the firm. The plaintiff and defendants have placed separate statement of accounts and audit report of the firm. They have engaged their choice of Chartered Accountant for preparation of those statement of Account and Audit report. Defendants have produced computer typed Cash book marked as Exbt. I, J, K, L and Ledger book marked as Exbt. E, F, G, H, respectively (subject to objection) and those Cash book and Ledger book have created doubt regarding its authenticity in the mind of this court. Generally, entries in the Cash books and Ledger books are

made on daily basis showing daily transaction of business. The cashier or any competent person authorized, put signature after completion of making entries. But, in this instance case, the Cash books and Ledger books produced by the defendants does not have entry in the cash books regarding daily business of the firm. It seems that the defendants have made those Cash books and Ledger books in a hurry, soon after the dispute erupted between partners to show that daily business of the firm is maintained properly. So, with this documents in hand, this court cannot come to conclusion in deciding the share of the partners. Besides that without dissolution of the firm, it is not wise to decide and declare the share of the partners in a partnership firm. The business of the firm came to an end just after three years of start of its business and the partnership firm could not be dissolve amicable between the partners inspite of attempt made by the plaintiff for amicable settlement. Thus, from the above discussion, I am of the considered view that the partnership firm name and style as "M/S. Rajlaxmi Bricks Industries" situated at Ratanpur under Belonia Sub-Division has to be dissolve and the statement of accounts and audit report shall be prepared afresh by a competent Chartered Accountant relying on the actual documents of the firm and on the basis of Statement of Accounts and Audited Reports, the plaintiff is entitled to get his share in the business of the firm as per the terms and condition of the Deed of Partnership. So, issue No. (iv) and (viii) are decided in favour of the plaintiff."

[5] After conclusion of the trial the suit was decreed on contest with the following order:

"[50] In the result, the suit of the plaintiff is hereby decreed on contest with cost with the following decrees:

- (i) The partnership firm under the name and style of "M/S. Rajlaxmi Bricks Industries" the defendant No.1, constituted by the plaintiff and the defendant Nos.2, 3, 4 and 5 by a registered Deed of Partnership vide No.IV-134 dated, 10.07.2009 is hereby dissolved and,
- (ii) The defendant No.3 is directed to render correct accounts of the partnership firm to the plaintiff for the period 2009-10, 2010-11 and 2011-12 within 03(three) months from the date of judgment.

[51] Thus, the suit is disposed of.

[52] Prepare decree accordingly and put-up for signature before me within 14(fourteen) days from today, latest on 20th June, 2022.

[53] The judgment is given under my hand and seal of this court on this the 7th June, 2022.

[54] Make necessary entry in the relevant trial register and as well as CIS."

[6] The decree was prepared in the following terms:

"It is ordered and decreed that***

"In the result, the suit of the plaintiff is hereby decreed on contest with cost with the following decrees:

- i. The partnership firm under the name and style of "M/S. Rajlaxmi Bricks Industries" the defendant No.1, constituted by the plaintiff and the defendant Nos.2, 3, 4 and 5 by a registered Deed of Partnership vide No.IV-134 dated 10.07.2009 is hereby dissolved and
- ii. The defendant No.3 is directed to render correct accounts of the partnership firm to the plaintiff for the period 2009-10, 2010-11 and 2011-12 within 03(three) months for the date of judgment.

Thus, the suit is disposed of.

Prepare decree accordingly and put-up for signature before me within 14(fourteen) days from today, latest on 20th June, 2022."

[7] Petitioner was aggrieved as the findings in relation to issue Nos. (iv) & (viii) relating to proportionate share of fixed/immovable assets and movable assets of the Firm and the share of the plaintiff and defendant Nos.1 to 5 in the capital, assets and liabilities of the Partnership Firm on the date of the dissolution were not incorporated in the decree. The learned court rendered its findings on the issue Nos. (iv) & (viii) in the judgment dated 7th June, 2022 but in the operative part of the judgment it only held that the partnership firm under the name and style of “M/S. Rajlaxmi Bricks Industries” the defendant No.1, constituted by the plaintiff and the defendant Nos.2, 3, 4 and 5 by a registered Deed of Partnership dated 10.07.2009 was dissolved. Further, defendant No.3 was directed to render correct accounts of the partnership firm to the plaintiff for the period 2009-10, 2010-11 and 2011-12 within 03(three) months from the date of judgment. The suit was disposed of with a direction to prepare the decree. Two of the issues in relation to the determination of the share of the plaintiffs and defendant Nos. 1 to 5 in the partnership firm which stood dissolved, though dealt with by the learned trial court, did not mention in the operative part of the judgment. The learned trial court passed the decree confining it to the operative part of the judgment which dealt with only the dissolution of the partnership firm and for rendering of correct accounts by respondent No.3, for the period 2009-10, 2010-11 and 2011-12 in question. In such circumstances, the decree did not reflect the findings of the learned trial court. Both the parties would, therefore, be affected if the share of the dissolved partnership firm is not proportionately apportioned between the erstwhile partners, which comprises the plaintiff/petitioner and the respondent Nos. 2, 3, 4 and 5. This could also

amount to denial of effective relief after a duly contested litigation between the parties.

[8] Mr. P. Roy Barman, learned senior counsel for the respondents has pointed out that the provision of Section 152 of the CPC may not be the correct remedy for the plaintiff/petitioner to seek correction of the decree as this provision confines for clerical or arithmetical mistakes only. Section 152 of the CPC reads as under:

“152. Amendment of judgments, decrees or orders.- Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”

[9] However, if the impugned order is allowed to survive, the parties may not get effective relief as determined by the learned trial court on all the issues. As such, this court is of the opinion that the impugned order deserves to be set aside. However, this Court leaves it open to the parties to approach the learned Trial Court under the relevant provision of the CPC for correction of the judgment and decree in question for incorporating the reliefs granted by the learned trial court in substance.

[10] Accordingly, the instant petition is allowed. However, any observations made hereinabove are limited to the correctness of the impugned order dated 6th June, 2023 and may not be treated as view expressed by this Court on the question of apportionment of the proportionate share of the dissolved firm which of course is to be governed by the findings rendered by the learned trial court in the judgment dated 07.06.2022.

(APARESH KUMAR SINGH), CJ