

GAHC010148242023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3946/2023

MRS. PURABI DEKA AND ANR
W/O MR. DHARMESWAR DEKA, R/O CHANDMARI, P.O.-SILPUKHURI, P.S.-
CHANDMARI, DIST-KAMRUP (M), PIN-781003, ASSAM

2: NABA KANTA BORA
S/O LATE GOLAK CHANDRA BORA
R/O PRAGATI RESIDENCY
BLOCK X
BARNACHAL PATH
BYE LANE NO. 1
BAMUNIMAIDAM
GUWAHATI-781021
DIST-KAMRUP (M)
ASSA

VERSUS

THE STATE BANK OF INDIA AND 3 ORS
REPRESENTED BY THE CHAIRMAN, STATE BANK BHAWAN, M.C. ROAD,
NARIMAN POINT, MUMBAI, MAHARSTHRA, PIN-400028

2:THE BRANCH MANAGER
STATE BANK OF INDIA
G.N.B. ROAD
SILPUKHURI
GUWAHATI-781003
DIST-KAMRUP (M)
ASSAM

3:THE BRANCH MANAGER
STATE BANK OF INDIA
M.C. ROAD
BAROWARI

GUWAHATI-781001
DIST- KAMRUP (M)
ASSAM

4: PARESH KUMAR GOGOI
S/O LATE KULA DHAR GOGOI
R/O FLAT NO. 410
LAXMI NIWAS
SAMMANYA PATH
SURVEY
BELTOLA
GUWAHATI-781028
KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : MR. B CHAKRABORTY (R-4)

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 22.04.2024

Heard Mr. M.K. Choudhury, learned senior counsel, assisted by Mr. M. Sarma, learned counsel for the petitioners. Also heard Mr. K. Das, learned counsel for the respondent nos. 1, 2 and 3; and Mr. S.P. Bhattacharjee, learned counsel for the respondent no.4.

2) Alleging that the respondent no. 2 and 3 have frozen the operation of the bank account of M/s. Pragati, a partnership firm of the petitioners and respondent no.4 contrary to the account operating mandate, the petitioners have filed this writ petition under Article 226 of the Constitution of India, *inter alia*, praying to allow the petitioners to operate the (i) bank account no. 3437770919 with State Bank of India, GNB Road, Silpukhuri, Guwahati

(respondent no.2), and (ii) bank account no. 33039627910 with State Bank of India, M.C. Road, Barowari, Guwahati (respondent no.3), in the name of M/s. Pragati, as it stood before 23.05.2023.

3) Bereft of unnecessary details, the case of the petitioners, in brief, is that the two petitioners herein along with the respondent no. 4 had entered into a partnership agreement on 01.12.2011, by which the petitioner no.2 and the respondent no. 4 had admitted the petitioner no.1 into partnership on and from 01.12.2011 in the partnership firm under the name and style of M/s. Pragati, with principal place of business at Guwahati. The said partnership was registered before the Registrar of Firms and Societies, Assam. Thereafter, the petitioners and the respondent no. 4 had entered into a fresh partnership agreement on 23.03.2022, which entitled the partners to share profit and loss as follows, viz., (i) respondent no. 4 had a share of 15.089%; (ii) petitioner no. 2 had a share of 30.819%; and (iii) petitioner no. 1 had a share of 54.901%.

4) As per clause 9(b) of the said partnership agreement, any two partners had the power and authority to sign cheques drawn on the partnership firm. The learned counsel for the petitioners had submitted that the account operating mandate given to the respondent nos. 2 and 3 also permitted any two of the partners to operate the bank accounts in the name of the partnership firm. However, a partnership dispute arose between the parties, which lead the parties to exchange advocate's notice. Thereafter, at the request made by the respondent no.4, the respondent nos. 2 and 3 informed the petitioners vide letter dated 11.04.2023 that the operation of the two bank accounts referred herein before were stopped. Be it stated that the petitioners claim that the partnership under the name and style of M/s. Pragati stands dissolved on

23.05.2023, the date on which the notice dated 22.05.2023, issued by the petitioner no.2 to the petitioner no.1 and respondent no. 4 for dissolution of partnership was served.

5) The learned senior counsel for the petitioners has submitted that there are various statutory dues like CGST, GST, Income Tax, etc. and statutory fees, charges and other taxes as well as consultant's fees are required to be paid to the authorities and/or consultants as and when it becomes due and payable. However, those dues could not be cleared, which has accumulated to a substantial amount and moreover, other business debts are also required to be paid and non-payment thereof is likely to expose the petitioners to legal proceedings and/or criminal prosecution. Hence, it has been submitted that this was a fit and proper case for issuance of a direction upon the respondent nos. 2 and 3 to allow the petitioners to operate the bank account at least for making government payments.

6) It has also been submitted that the petitioners have filed a suit against the respondent no. 4 for rendition and/or settlement of the accounts of the partnership firm, which is registered as T.S. No. 323/2023 and pending for adjudication before the Court of Civil Judge (Senior Division) No.2, Kamrup (M), Guwahati.

7) It was submitted that writ petition is maintainable against a private individual and in this regard, reliance is placed on the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. v. V.R. Rudani & Ors., (1989) 2 SCC 691*.

8) The respondent no. 3 by filing an affidavit-in-opposition on

behalf of respondent nos. 1 and 3 has taken a stand that on receipt of a letter dated 06.04.2023, from the respondent no. 4, the operation of bank account of M/s. Pragati was stopped. It is also stated that as the bank has not received a mutual consent letter jointly from all partners to allow operation of bank account, the bank has put on hold the said bank account no. 33039627910 with State Bank of India, M.C. Road, Barowari, Guwahati (respondent no.3). A similar plea has been taken by the respondent no. 2 by filing an affidavit-in-opposition regarding putting on hold the operation of bank account no. 3437770919 with State Bank of India, GNB Road, Silpukhuri, Guwahati (respondent no.2).

9) By filing a common affidavit-in-reply against the affidavit-in-opposition filed by respondent nos. 1 and 3 and by respondent no. 2, the petitioners have taken a stand that the said two bank accounts are sought to be operated in terms of the mandate of the parties and therefore, the operations could not have been stopped at the request of respondent no. 4, which is contrary to the mandate given by the partners to the respondent nos. 2 and 3 bank.

10) The learned counsel for the respondent nos. 1, 2 and 3 has produced a scanned copy of the mandate of the partnership firm to operate the said two bank accounts, which is perused and made a part of record.

11) The respondent no. 4 has also filed an affidavit-in-opposition and he has taken a stand that there is a dispute between the partners and therefore, it is justified that the operations of the said two bank accounts was stopped until the disputes amongst them is resolved in accordance with partnership agreement dated 01.12.2011.

12) On a query of the Court, the learned counsel for the respondent no. 4 has produced a photocopy of the plaint of T.S. No. 323/2023. On a perusal thereof, it appears that plaint was filed on 31.05.2023 and summons of the Court was issued on 02.06.2023. In para-15 of the plaint, it is pleaded that the respondent no. 4 was responsible for maintaining accounts and other official works including filing of Income Tax returns and payment of GST. In para-17 of the plaint, it is pleaded that by blocking the bank accounts it has become difficult to run the proper functioning of the firm and that the affairs of the firm has come to a grinding halt. In para-18 of the plaint, it is pleaded that by letter dated 22.05.2023, issued by the petitioner no. 2 herein, seeking dissolution of the firm, the firm stands dissolved on 23.05.2023, the date of receipt of the said letter.

13) This present writ petition has been filed by the petitioners on 01.07.2023. The petitioners herein are the plaintiff nos. 2 and 1 respectively. Therefore, it is seen that on the date the suit was filed, the petitioners were aware that the bank accounts of the partnership was stopped by the respondent no. 4. Yet no relief was sought for in respect of the said bank account in the suit despite knowing that the operation of the bank accounts were stopped due to communication made by the respondent no. 4. It is a well settled position of law that one cannot be allowed to file multiple proceedings for relief, which can be clubbed in one proceeding. Therefore, the present writ petition is against the principles engrained under the provisions of Order II, Rule 2 of the Civil Procedure Code. Therefore, the Court is constrained to hold that the present writ proceeding before this Court after filing of a civil suit is an abuse of the process of law. By omitting to claim relief in respect of operation of bank

accounts in the suit, the petitioners have become disentitled to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India. This writ petition is an abuse of the process of law. By simultaneously approaching the Civil Court as well as this Court, the petitioners have resorted to forum hunting. Therefore, in the considered opinion of the Court, the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. (supra)*, does not help the petitioners in any manner.

14) Moreover, the relief claimed in this writ petition is held to be misconceived and abuse of the process of law because of the provisions of section 43 and 53 of the Partnership Act, 1932. Both the said provisions of law are quoted below for ready reference:-

43. *Dissolution by notice of partnership at will - (1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.*

(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

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53. *Right to restrain from use of firm name or firm property- After a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up:*

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

15) Thus, by operation of sub-section (2) of section 43 of the Partnership Act, 1932, the firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date

of the communication of the notice. The clear stand of the petitioners in this writ petition as well as in the suit is that their partnership firm stands dissolved on and from 23.05.2023, the date when notice of dissolution was received by on the partners. Consequently, by operation of section 53 of the Partnership Act, 1932, after a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up. It is not the case of the petitioners that money lying in the said two bank accounts is not a property of the partnership firm.

16) Therefore, once the respondent no. 4 has exercised his right to stop operation of the bank accounts, the same is within the scope and ambit of the provisions of section 53 of the Partnership Act, 1932. Therefore, the State Bank of India, i.e. respondent nos. 1, 2 and 3, which maintains money of the partnership firm in their bank accounts, is said to be holding money belonging to the partnership firm under the name and style of M/s. Pragati under trust in their bank. The respondent nos. 2 and 3 are entitled to stop transactions in the (i) bank account no. 3437770919 with State Bank of India, GNB Road, Silpukhuri, Guwahati (respondent no.2), and (ii) bank account no. 33039627910 with State Bank of India, M.C. Road, Barowari, Guwahati (respondent no.3), in the name of M/s. Pragati on and from the date when they received a communication from the respondent no. 4. This is definitely not a case where the mandate form submitted by the partners would permit any two partners to make outgoing transactions from those two accounts on the pretext of paying

taxes, statutory dues or any other payment whatsoever till the affairs of the said partnership is finally wound up.

17) In light of the discussions above, the Court is of the considered opinion that the action on part of the State Bank of India (respondent nos. 1 to 3) to stop operations of the (i) bank account no. 3437770919 with State Bank of India, GNB Road, Silpukhuri, Guwahati (respondent no.2), and (ii) bank account no. 33039627910 with State Bank of India, M.C. Road, Barowari, Guwahati (respondent no.3), in the name of M/s. Pragati on and from the date when they had received a communication from the respondent no. 4 cannot be faulted with.

18) The Court takes note of the fact that although the petitioners, who are also the plaintiffs in T.S. No. 323/2023 are fully conscious and aware that on the strength of two letters dated 06.04.2023 (Annexure-E collectively to this writ petition), issued by the respondent no. 4, the respondent nos. 2 and 3 have stopped operations in the herein before referred two bank accounts, yet the legality and enforceability of the said two letters dated 06.04.2023 issued by the respondent no. 4 has not been challenged by the petitioners in the suit or in this writ petition. Hence, with no challenge to the said two letters dated 06.04.2023, the relief claimed by the petitioners in this writ petition cannot be granted. Hence, this writ petition is found to be misconceived and untenable on facts and in law.

19) For the reasons as stated herein before, there is no merit in this writ petition and thus, this writ petition stands dismissed. The parties are left to bear their own cost.

20) However, before parting with the records, it is made clear that this judgment and order shall not preclude and/or debar the learned Trial Court in *seisin* of the proceeding of T.S. No. 323/2023 to pass such decree or order as may be permitted in law for appropriation of the balance available in the two hereinbefore referred bank accounts with the respondent nos. 2 and 3 in respect of M/s. Pragati, the partnership firm of the petitioners and the respondent no. 4, while granting reliefs in terms of prayer no. (3) of the plaint.

21) The copy of plaint, which was produced by the learned counsel for the respondent no. 4, is returned.

JUDGE

Comparing Assistant