

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7927 of 2012

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Surendra Prasad, Son of late Ram Chandra Prasad, resident of Village-Hemantpur, P.S.-Dighwara, District-Saran.

.... Petitioner

Versus

Mannu Lal Sah, Son of late Narayan Sah, resident of Mohalla-Pathar Bazar, P.S.-Chapra Town, District-Saran

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Mahesh Narayan Parbat, Sr. Adv.
Mr. Sanjay Kumar Jha
Mr. Parveen Bashakar

For the Respondent/s : Mr. Rajendra Narayan, Sr. Adv.
Mr. Kumod Kr. Shrivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

17 21-12-2015 Second supplementary affidavit has been filed on behalf of the petitioner and that has been taken on the record.

Petitioner along with respondent are the partners of duly constituted firm, namely, M/s Mannu Lal Sah regarding which, there happens to be a disclosure that at an earlier occasion there was commencement by way of oral agreement however, was transformed in writing on 11.11.1976 and was registered on 01.12.1976. While the aforesaid partnership firm was running, the parties developed some sort of suspicion, mistrust against each other, whereupon, the parties opted for dissolution, however to settle the dispute, in terms of para 11 of the partnership deed of the year 1976, whereunder there happens to be provision for



appointment of arbitrator, Misc. Case No. 45 of 1977 was filed in terms of Section 8 of the Arbitration and Conciliation Act for appointment of arbitrator. Subsequently thereof, as has been alleged the respondent changed the nomenclature of the firm whereupon Title Suit No. 122 of 1981 was instituted. During course of pendency of Title Suit No. 122 of 1981, as is admitted amongst the parties, the parties entered into compromise (Annexure-7) of supplementary counter affidavit, whereupon Title Suit No. 122 of 1981 concluded and the aforesaid compromise petition happens to be part and parcel of the judgment and decree. The aforesaid eventualities got completed in the year 2007. Subsequently thereof, as is evident, from supplementary affidavit filed on behalf of the petitioner that Misc. Case No. 4 of 2009 has been drawn up wherein judgment & decree passed in T.S. No. 122/81 on the basis of compromise has been challenged and witnesses on behalf of respondent are being examined.

As the petitioner failed to follow up Misc. Case No. 45 of 1977 on account thereof, the same was dismissed on 02.08.2008. For restoration of the same Misc. Case No. 31 of 2008 has been drawn up which, by the order impugned dated 21.01.2010 has been rejected on account thereof, the instant petition has been filed.



It has been contended on behalf of learned counsel for the petitioner that relief of both the cases that means to say Misc. Case No. 45 of 1977 as well as Title Suit No. 122 of 1981 happens to be quite distinct. Misc. Case No. 45 of 1977 was instituted for appointment of arbitrator in terms of para 11 of the agreement deed, with regard to settle the dispute over entitlement of the partners relating to the partnership firm and for that, the arbitrator was to verify the assets as well as liabilities and further, the malpractices committed by the respondent during continuance of the aforesaid firm whereunder assets have been siphoned by the respondent for their personal gain. While Title Suit No. 122 of 1981 has been instituted on account of dubious activity of respondent whereunder the respondent had surrendered the license of K.oil standing in the name of the firm which was, during course of compromise was represented by the respondent to be running and on that very score, persuaded the petitioner to come in terms of which ultimately petitioner could be able to locate subsequently, during midst thereof, Title Suit No. 122 of 1981 got disposed of on the basis of the compromise and accordingly Misc. Case has been filed under Order 22 Rule 3(a) of the C.P.C. in order to challenge the same. Therefore, both the suits have got their independent identity having no prospect of overlapping each

other.

Furthermore, it has also been submitted that terms of compromise so arrived at, that happens to be relating to the subject matter of Title Suit No. 122 of 1981 which was also not properly honoured at the end of the respondent which the respondent assured at the time of compromise, but deceitfully embedded, at the other end, the petitioner keeping the assurance as sacrosanct, did not pursue the matter as a result of which Misc. Case No. 45 of 1977 got dismissed. Being adzed, petitioner filed Misc. Case No.31/2008 which stood dismissed on account of confusing as well as ambiguous submissions made on behalf of respondent by the order impugned. As the order impugned lacks merit as well as happens to be contrary to the settled principles of law attracts reversal.

Per contra, it has been submitted on behalf of learned counsel for the respondent that respondent is an old fellow having no male issue on account of which, petitioner is struggling tooth and nail to prolong the litigation so that after death of respondent, he will be able to engulf the assets of the firm which, now, as per compromise been allotted to the respondent. It has further been submitted that both the cases that means to say Misc. Case No. 45 of 1977 as well as Title Suit No. 122 of 1981 happen to be



amongst the same parties and germane to the lis happens to be same partnership firm having engaged in different kinds of business activities including that of dealership relating to distribution of K.oil. While Title Suit No. 122 of 1981 was running on, the parties entered into compromise and from the terms of the compromise petition (Annexure-7), it is apparent that parties have virtually dissolved the partnership firm by way of identifying half and half share relating to assets and liabilities which, they got. Not only this, they have also shown their relinquishment against each other on that very score. Therefore, the Annexure-7, compromise petition did not confine the parties relating to Title Suit No. 122 of 1981 only irrespective of the fact that Misc. Case No. 45 of 1977 as well as Title Suit No. 122 of 1981 happens to be at two different scores having different kinds of reliefs. As such, till the time the aforesaid compromise petition (Annexure-7) is found invalidated in the eye of law and for that, the parties are on litigating terms, which the petitioner by way of supplementary affidavit has himself disclosed under Misc. Case No. 4 of 2009, the aforesaid compromise petition has got influence over Misc. Case No. 45 of 1977 because of the fact that parties on their own resolved the dispute by entering into compromise. Hence, there was/is no need for appointment of arbitrator.

Therefore, the order impugned did not require interference.

Gone through the order impugned. The prayer which the learned lower court should have considered relating to whether there was any cogent ground for restoration of Misc. Case No. 45 of 1977 irrespective of steps taken by the parties in another suit.

Furthermore, from the order impugned it is evident that learned lower court had swum on the basis of the compromise having arrived amongst the parties in Title Suit No. 122 of 1981. He had not dealt with the grounds enumerated under Misc. Case No. 31 of 2008 for restoration of Misc. Case No. 45 of 1977 and further, whether there was justification in the prayer made on behalf of the petitioner. Being so, the order impugned is set aside. Petition is allowed.

The matter is remitted back to the learned lower court to proceed afresh in accordance with law. However, the learned lower court is fully competent to impose/inflict any kind of condition during course of passing of the order.

(Aditya Kumar Trivedi, J)

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