IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

RFA.No. 503 of 2006 ( )

(AGAINST THE DECREE AND JUDGMENT IN OS.NO. 97/2001 OF PRINCIPAL SUB COURT, NORTH PARAVUR DATED 31-07-2006)

APPELLANT(S)/DEFENDANTS :
----

1. JOSEPH C.PAUL, MANAGING DIRECTOR,
   J.C. PRINTOGRAPHIKS(P) LTD, PERUMBAVOOR.

2. LEELAMMA JOSEPH, DIRECTOR,
   CHITTAYARAYALIL BUILDING, NEAR GOVERNMENT HOSPITAL,
   A.M.ROAD, PERUMBAVOOR.

3. PRADEEP.K., S/O.KURIAKOSE (DIRECTOR),
   CHENNAKATTEL, KOLENCHERY.

4. SOOSAN PRADEEP, W/O.PRADEEP.K. (DIRECTOR)

5. MARY JOSEPH, D/O.JOSEPH, CHITTAYARAYALIL HOUSE,
   A.M.ROAD, PERUMBAVOOR (DIRECTOR)

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENT(S)/PLAINTIFF :
----

*P.I.JOY, PAINADATHU HOUSE,
NEAR NAS THEATRE, ANGAMALY KARA,
DO VILLAGE, ALUVA TALUK. (DIED)

*<u>ADDL.R2 TO R4 IMPLEADED</u>

*ADDL.R2: MRS.ALEYAMMA JOY @ KUMARI,
W/O.LATE P.I.JOY, PAINADATH HOUSE,
NEAR NAS THEATRE, ANGAMALY,PIN-683 572

*ADDL.R3: BIJI JOY, D/O.LATE P.I.JOY,
DENTAL SURGEON, DO DO.

R.F.A.NO.503/2006

*ADDL.4: BINDU JACOB, D/O.LATE P.I.JOY,
FLAT NO.405M BUILDING NO.4, B-WING,
GREEN FIELD COMPLEX, MIRA ROAD EAST,
MUMBAI-401 107

*THE LEGAL REPRESENTATIVES OF THE DECEASED SOLE RESPONDENT ARE IMPLEADED AS ADDL.RESPONDENTS 2 TO 4 VIDE ORDER DATED 2/7/13 IN IA.NO.1147/2012

ADDL.R2 & ADDL.R3 BY ADVS. SRI.P.B.KRISHNAN
SMT.GEETHA P.MENON
SRI.N.AJITH
SRI.P.B.SUBRAMANYAN

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 22-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH JJ.

....

R.F.A. No. 503 of 2006

....

Dated this the 20th day of May, 2015

<u>JUDGMENT</u>

<u>T.R.Ramachandran Nair, J.</u>

This appeal is filed from the judgment and decree in O.S. No. 97/2001 of Sub Court, North Parur. The appellants are the defendants in the suit . The plaintiff in the suit was respondent herein and during the pendency of the appeal, he died and the legal representatives have been impleaded as additional respondents 2 to 4.

2. By the decree under challenge the court below has decreed the suit in part directing the defendants to pay Rs.2,71,826/- with future interest @6% per annum from the date of the suit till realization.

3. We heard learned counsel Sri.P.Chandrasekhar for the appellants and the learned Senior counsel Sri.S.V. Balakrishna Iyer for the additional respondents.

4. The plaintiff's case, going by the averments in the plaint would show that the deceased plaintiff and first defendant were

family friends and in the year February, 1998, both of them entered into discussions to have a joint busines in ayurvedic medicines. The first defendant was the Managing Director of J.C. Printographics Pvt. Ltd., Perumbavoor. It is stated that there was an agreement to sell 49% shares to the plaintiff and to retain the remaining shares with the first defendant. It is further averred in the plaint that the first defendant agreed that he will continue to be the Managing Director and the plaintiff will be the Executive Director and Chairman and a decision to that effect was taken in the meeting of the Director Board on 1.3.1998. It is also stated that the value of share certificate will be Rs. five lakhs and the minimum share of a Director will be Rs.20,000/- (2000 shares of value 10 each) and the shares to be allotted to the plaintiff will be of the value of Rs.2,45,000/- and the defendants 1 to 5 will be having the share value of Rs.2,55,000/-. The plaint proceeds to say that applications were given to the plaintiff for allotment of shares to the value of Rs.2,45,000/- in favour of the plaintiff as well as his wife, daughters and son-in-law. The plaintiff by a demand draft dated 18.3.1998 had transferred an amount of Rs.2 lakhs as investment in business, which was adjusted towards share value and another amount of Rs.45,000/- was also invested for the business. It is also stated that on 18.2.1998 itself, it was agreed to have the business in the room No.XX1-171X in Kallookkaran Tower in Angamaly Municipality on an agreed rent of Rs.Rs.4,000/- per month and to have the administrative office-cum branch of the company there. It is also his case that sale of ayurvedic medicines in the name of Amritha Pharmacy was also started subsequently. The first defendant had handed over the seal and letter pad of the company to convince him that the plaintiff will be the Chairman of the Company. They had also allowed the plaintiff to have the management of the administrative office-cum-branch at Angamaly. The sales tax registration was taken in the name of Angamaly Branch and they agreed to pay salary to the tune of Rs.2,500/- per month to the plaintiff. It is stated by him that the first defendant was being apprised about the monthly sales and accounts as well as cash balance. He did not allow the plaintiff to avail the salary as well as the monthly rent and only two months' salary was paid. Towards the balance rent and maintenance charges Rs.45,185/-

is due. The business was stopped ultimately on 30.9.1999. The first defendant on 30.9.1999 removed major items except balance stock and certain furniture items of the shop. The plaint proceeds to say that the share certificate forms were not issued and even though the plaintiff wanted the first defendant to allot the shares and to account for the money received, he did not agree. In spite of the efforts of mediators it did not yield any positive result. He informed the plaintiff that share to the extent of Rs.80,000/- has been allotted in favour of wife and daughters and Rs.1,65,000/- was accounted as trade advance.

5. Ultimately, the plaintiff sought for a decree for the amounts shown in the plaint and a total amount of Rs.3,11,826.40 was claimed. It was sought to be realized from the first defendant personally from the assets of the company.

6. The 1st defendant in a detailed written statement denied these averments. The sum and substance of the contentions of the 1st defendant is actually that the amount was meant only as trade advance and the business was being run by the plaintiff himself. Great stress was made to the plea that

ultimately the plaintiff was answerable for the balance stock as well as the statement of accounts and only after settlement of accounts, the plaintiff will be entitled for any amount if there is profit, otherwise he will be answerable for the loss also.

7. Both parties adduced evidence in the matter. The plaintiff marked Ext.A1 to A20 and defendants marked Exts.B1 to B25(a) documents and Ext. X1 to X1(d) have also been marked. The first defendant was also examined as D.W.1.

8. At the outset the learned counsel for the appellant vehemently submitted that, as the company has not been properly made a party in the suit, the decree now granted cannot survive. It is submitted that the appellant cannot be made personally liable for any amount found due, if at all, the plaintiff is entitled to succeed. The learned counsel invited our attention to various documents produced by the appellants. especially Ext.B6 to B9 in support of his plea that even going by the evidence adduced by the defendant it can be seen that the business was being conducted by the plaintiff, to which he was accountable. Learned counsel further submitted that it requires a proper statement of accounts to be taken to find out ultimately

whether any amount is liable to be paid to the plaintiff; if at all, the court comes to a conclusion that the plaintiff is entitled to be paid any amount. It is submitted that the trial court did not address these questions in the correct perspective. The learned counsel therefore submitted that the findings entered by the learned trial Judge and the conclusion arrived at cannot be supported. Our attention was invited to the discussion of evidence also. It is also the case of the learned counsel for the appellant that proper issues have not been framed in tune with the pleadings of the parties.

9. The learned Senior Counsel Sri.S.V.Balakrishna Iyer submitted that the case pleaded by the defendants could not be established by them and the plaintiff had succeeded in proving that Rs.2,45,000/- was advanced for the purpose of allotment of shares, out of which Rs.2 lakhs was paid as demand draft dated 18.3.1998. The learned counsel also referred to the various documents produced in evidence in support of the plea of the plaintiff.

10. The learned Senior Counsel further submitted that even if the company was liable to be made a necessary party, in

the light of Section 21 and sub-section (1) and its proviso of Limitation Act, the non-implementation of the company can only be treated as an omission and an opportunity may be granted to implead the Company for getting effective relief.

11. It is seen from the written statement that the first respondent had filed written statement on behalf of the company also. We are not finally pronouncing on the above aspect in the light of the view proposed to be taken by us.

12. What we find from the judgment is that the learned Judge has referred to certain portions of the evidence without fully discussing the contents of the documents which are crucial, as far as the parties are concerned. The evidence adduced by both sides have not been discussed in full. It is seen from the findings that the plea of a plaintiff that he was appointed as a Manager under the company has not been accepted and that part of the claim for arrears of salary has not been decreed. By recalculating the amount a decree has been granted for an amount of Rs. 2,71,826/-.

13. According to us, two questions, going by the pleadings and evidence of the parties should have been addressed by the

court below. Whether the plea of the plaintiff that it was really a case for allotment of shares and whether the plea of the defendants that actually he was conducting the business and it should have been a case of settlement of accounts to find out whether any amount is payable to the plaintiff? These questions should have been addressed properly. We find that such an approach has not been made by the court below in the judgment. In the plaint there is an averment that the business was stopped on 30.9.1999 and except balance stock and certain furniture and others were took over by the 1st defendant. The evidence includes the Minutes of the Company produced as Ext.B14 and in a case where the parties alleged dealings with the company various matters which may reflect the decisions of the company also may have to be discussed for arriving at a correct conclusion and to find out the truth. The question as to how the parties settled the terms between them, had to be addressed with the help of materials. The same is crucial for a proper decision. In that view of the matter as the approach made is totally unsatisfactory the only alternative is to remand the matter for fresh consideration.

Accordingly, we allow the appeal and set aside the judgment and decree and remand the suit for fresh consideration by the trial court. The court fee paid by the appellant will be refunded. No costs. The parties will appear on 6.7.2015 before the trial court. Registry will send back the records.

Sd/-
T.R.RAMACHANDRAN NAIR
JUDGE

Sd/-
K.P.JYOTHINDRANATH
JUDGE

rka