

*

HIGH COURT OF DELHI AT NEW DELHI

Decided on : 27th April, 2015

+

FAO 320/2010

SAROJ ARORA & ORS

..... Appellants

Through Ms. Deepika V. Marwaha, Adv.

versus

MOHINDER PAL & ORS

..... Respondents

Through Mr. Ajay Bahl, Adv.

+

CM(M) 1105/2010

SAROJ ARORA & ORS

..... Petitioners

Through Ms. Deepika V. Marwaha, Adv.

versus

MOHINDER PAL & ORS

..... Respondents

Through Mr. Ajay Bahl, Adv.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This order shall dispose of CM(M) No.1105/2010 and FAO No.320/2010 both titled as Saroj Arora & Ors. v. Mohinder Pal & Ors. It may be pertinent here to mention that both the present CM(M) and the appeal are against the order dated 09.06.2010 by virtue of which the

petitioner was granted a sum of Rs.20,000/- by way of interim orders during the pendency of the suit and by the same order the court had observed that a receiver shall be deemed to have been appointed. However, no receiver was subsequent thereto appointed as no conditions were specified. This court had a reservation as to whether CM(M) and an appeal would lie in a case where the court has directed appointment of a receiver yet not named the receiver or specified the terms and conditions for appointment of the receiver.

2. Ms.Marwah has placed reliance on two judgments of the High Court in Govind Ram and Ors. v. Ganesh Ram & Ors; AIR 1922 Patna 577 and Srinivasa v.Baburao and Anr.; AIR 1970 Mysore 141 to contend that even if a court has appointed a receiver but the name of the receiver or other terms and conditions were not specified, it will be appealable order under Order XLIII. I have gone through the judgments cited by the counsel. No judgment to the contrary has been cited by the respondents, therefore, I am satisfied that the appeal against the impugned order would be maintainable.

3. In the FAO No.320/2010 and CM(M) No.1105/2010, the following reliefs respectively are being prayed.

RELIEF SOUGHT IN FAO No.320/2010

- a) Appoint a receiver in respect of the business of the partnership firm i.e. under the name and style of the “The Oriental Fruits and Mart” at E-23, Connaught Place, New Delhi.

RELIEF SOUGHT IN CM(M) No.1105/2010

- b) Direct the respondent Nos.1, 3 & 4 to pay the petitioners a sum of Rs.2 lacs per month for the time being during the pendency of the present proceedings, for her needs and living, considering the fact that in their latest income tax papers filed on record reflects that the monthly income of the business is Rs.17 lacs, as such for an admitted share of 26% in the said business Rs.2 lacs is small amount.

4. Briefly stated, the facts leading to the filing of the present petition are that the petitioners had filed a suit in September, 2008 with respect to the movable and immovable assets including the tenancy rights and the goodwill of the partnership firm constituted under the name of “M/S The Oriental Fruits and Mart”, stated to be operating its business since 1938 from E-23, Connaught Place, New Delhi.

5. The partnership firm was started by Satya Pal and Brat Pal, the two sons of Late Fakir Chand. After their death their legal heirs inherited their shares and the partnership deed was reconstituted vide partnership agreement dated 4.12.2001. The original shareholding patterns and the pedigree table is as follows:

Satya Pal (original shareholder)		Brat Pal (original shareholder)			
Legal Heirs of Satya Pal		Legal Heirs of Brat Pal			
Jai Pal (Deceased)	Shiv Pal (22% shares) (Respondent No.2)	Virender Pal (Retired with his share)	Narender Pal (26% shares) (Deceased)	Smt. Sunita Arora (26% shares) (Deceased)	Mohinder Pal (26% shares) (Respondent no. 1)
		Legal Heirs of Mohinder Pal			
		Jitender Pal (Respondent no. 3)		Ravinder Pal (Respondent no. 4)	

6. In the year 2006, Narinder Pal due to poor health became confined to bed and was unable to participate in the business. It is alleged by the plaintiff that the defendants took undue advantage of this fact and debarred Narinder Pal from entering the business premises as well as from operating the bank accounts. At this point a suit for permanent injunction was filed by Narinder Pal against Shiv Pal and Mohinder Pal. It was prayed in the said suit that Shiv Pal and Mohinder Pal be enjoined to not debar the said plaintiff namely Narinder Pal in the said suit from operating the bank accounts of the partnership firm and further to not hinder the ingress and egress of the plaintiff/Narinder Pal to the store

located at E-23, Connaught place. A criminal case was also instituted by Narinder Pal against Moninder Pal on 07.11.2007 u/s 403,420,464,467,468,471 and 506 of IPC alleging forgery and dishonestly acquiring the ancestral property belonging to their father Brat Pal.

7. During the pendency of the suit for permanent injunction, Narinder Pal expired on 22.11.2007. Further Sunita Arora also died on 05.08.2007. It is alleged by the plaintiff since Sunita Arora did not have any class-I heirs therefore her property should have devolved upon class-II heirs which included late Narinder Pal also but it is alleged that the same was illegally retained by the respondents.

8. It is the case of the plaintiff that on the death of Narinder Pal the partnership deed dated 04.12.2001 stood dissolved in view of the provisions of S. 42 on the Indian Partnership Act, 1932 and the plaintiff being the legal heirs of late Narinder Pal became entitled to rendition of account and accommodation with respect to the movable and immovable assets of the firm to the extent of the shareholding of late Narinder Pal.

9. It is the case of the plaintiff that the defendants have failed to render true and correct accounts and are dishonestly continuing to carry on the business of the firm under the name and style of “M/S Oriental Fruits Mart” to the exclusion of the plaintiffs in an illegal and unlawful

manner. This has lead to the filling of a suit for declaration, rendition of accounts and injunction by the plaintiff in September 2008.

10. The court vide order dated 04.09.2008 appointed a local commissioner to prepare the inventory of stocks and to sign the account books. The respondent/defendant filed an application dated 17.09.2008 seeking a stay of the aforesaid order of 04.12.2001 and the same was dismissed. The local commissioner in his report dated 03.10.2008 accused the respondents Nos.1, 3 & 4 of obstructing him in carrying out the inspection and signing the books of accounts. It was stated that they called the police and refused to cooperate. It is averred by the petitioner that the aforesaid act and conduct of the respondents constituted wilful disobedience of the orders of the court and hence contempt of the court. It is averred by the learned counsel for the petitioners that the local commissioner's report was not even objected to by the respondents/defendants.

11. It has been alleged that Moninder Pal along with his two sons Jitender Pal and Ravinder Pal are in control of the entire business and have cheated and defrauded all the other family members. It is alleged by the petitioner that in the written statement filed belatedly, the defence of the respondent Nos.1, 3 & 4 is based on forged and fabricated documents.

12. In defence it is stated, that Shiv Pal retired voluntarily relinquishing his share of 22% for a total compensation of Rs. 6 lakhs

vide retirement deed dated 31.03.2006 and the said document is allegedly signed by Shiv Pal and Late Narinder Pal. In furtherance thereof, the respondents/defendants placed an alleged reconstituted partnership deed dated 31.03.2006 before the trial court wherein Shiv Pal's 22% shareholding is shown to have been transferred in the name of Mohinder Pal.

13. The learned counsel for the petitioner has contested that it is highly improbable that Shiv Pal would surrender his 22% share which would include the goodwill, reputation of business, tenancy rights of the shop, stocks worth lakhs and the capital invested in one of the most famous businesses of Connaught Place, New Delhi for a meagre amount of Rs.6 lakhs. Further it is stated that Shiv Pal has filed a separate suit against Mohinder Pal with respect to the so-called retirement deed. In support of his contentions the learned counsel for the petitioners has drawn the attention of the court to the written statement filed by Shiv Pal before the trial court wherein he has categorically denied having signed and/or any knowledge of the existence of any such retirement deed dated 31.03.2006.

14. It is further averred by the learned counsel for the petitioner that along with the aforesaid documents a 'Partnership Deed' dated 01.04.2006 was also placed on record, whereby Jitender Pal and Ravinder Pal were taken on board as new partners. It is alleged that the aforesaid

document which is purported to have been signed by late Narinder Pal has been fraudulently manufactured and the said signatures have been forged. It is stated that the said new partners were admitted without having invested even a penny in the business. The learned counsel has further stated that the aforesaid admission of the new partners is suspicious as no other third generation member of such a large family including the petitioners were asked to join the business and this in itself puts a question mark on the authenticity of these documents.

15. The learned counsel for the petitioner has further argued that before the trial court the respondents have relied on another partnership deed dated 9.08.2007 purported to have been made on the death of Sunita Arora, whereby her shares were transferred to the sons of the Mohinder Pal i.e. respondent no.3 and 4. It is stated that to the best of the knowledge of the petitioner, Sunita Arora had left no Will and the document filed as a Will of Sunita Arora is an unregistered, forged and ambiguous document.

16. The last document placed on record by the respondent/defendants is dated 26.11.2007 and is allegedly executed after the death of Narinder Pal wherein it is stipulated that the share of late Narinder Pal would also go to Mohinder Pal. It is stipulated therein that the existing partners have agreed to pay the outstanding capital and earned profits to the deceased's

legal heirs, but the same has not been evaluated till date, despite filing of the suit.

17. It is stated by the learned counsel for the petitioners that the defence put forward by the respondent Nos.1, 3 & 4, as per the document dated 07.08.2007 is that it is not a partnership at will is falsified because if a partnership business requires reconstruction and revaluation, it has to be a partnership at will.

18. The learned counsel for the petitioners has further challenged the validity of the aforesaid documents on the grounds that they same have been signed as witness by A.Arora who happens to be the wife of Mohinder Pal and the second witness is some servant of the shop. In furtherance of the aforesaid argument the learned counsel for the petitioner has drawn the attention of the court on the dates on which the alleged aforesaid documents are purported to be signed. It is stated that it's suspicious that not only all the documents are unregistered but also have been signed by the same two people in the capacity of witness but also appear to be signed on the same dates. It is averred by the learned counsel for the petitioners that by no stretch of imagination it can be said that the aforesaid forged and fabricated document carried the sanction of late Narinder Pal when he had himself instituted a civil and criminal case against Mohinder Pal.

19. The case of the petitioners is that the partnership deed dated 04.12.2001 is the last document that was executed between the partners and as per the certified record obtained from the Income Tax Department, it is the last partnership deed of the business that was on their record. It is the document which Narinder Pal had relied upon during his life time, when he had filed a suit for injunction as well as criminal complaint against respondent No.1 herein, in the same month when he had died i.e. few days before his death.

20. The learned counsel for the respondents on the other hand has challenged the *locus standi* of the petitioners on the ground that they are not the partners in the firm and therefore have no right to claim the appointment of the receiver. It is further stated that the entire claim of the petitioner is on the premise of being a legal heir of late Narinder Pal, an erstwhile partner, who ceased to be a partner on his death.

21. The learned counsel for the respondent by way of a clarification has stated that as per the partnership deed dated 09.08.2007, to which late Narinder Pal was a signatory, and which has not been challenged in any proceedings till date, provides that on the death of a partner the partnership was not to be dissolved but the remaining partners were entitled to continue the same. The legal heirs of the deceased partner, as per Clause 12, were entitled only to his share in the capital of the firm.

22. The learned counsel for the respondent has further stated that as per the aforesaid partnership deed no person could be inducted as a partner without the consent of the other partners. The respondents have never agreed to induction of the petitioner as a partner in the firm nor has the petitioner ever staked a claim to become a partner and no document in that regard has been filed by the petitioners.

23. The learned counsel for the respondent has averred that the petitioner is only entitled to the share of late Narinder in the capital of the partnership which has already been given to the petitioner, though it is denied by her. Even assuming the case of the petitioner to be correct for the sake of argument, the petitioner would be at best entitled to the share of late Narinder Pal in the capital of the firm and not induction as a partner in the partnership firm or a right to participate in the business of the firm.

24. The learned counsel for the respondent has contested that the principle laid down in Section 43 of the Partnership Act is subject to a contract to the contrary. The partnership deed dated 09.08.2007 entitles the respondents to continue with the partnership firm on the death of late Narinder Pal. Continuation of the partnership entitles the respondents to use the partnership assets for the partnership business and hence the arguments of the petitioners that the respondents have acted dishonestly and fraudulently are false and denied.

25. Relying on the judgment rendered by this court in Mohinder Nath vs. Narender Nath 1998 (45) DRJ 296 it is argued by the learned counsel for the respondent that a receiver can be appointed only if the partnership property is in the danger of being wasted. No such averments have been made by the appellant nor has any ground has been made out for the appointment of a receiver. For the appointment of a receiver some imminent danger or emergency or loss of property demanding immediate action must be shown. The element of danger is an important consideration which is absent in the present case. It is further stated that an order appointing a receiver cannot be made where it has the effect of depriving the defendant of de-facto possession since such action will cause irreparable wrong. Further it is stated that it is not in every case where an erstwhile partner approaches Court that a receiver is to be appointed and it is necessary to allege and prove some imminent peril to the property.

26. Further the learned counsel for the respondent has averred that Late Narinder Pal was having only 26% share in the partnership. The appellant cannot have a share greater than that. The respondents, who had 74% share in the partnership even as per the case of the appellant, cannot be restrained by a minority shareholder from carrying out business.

27. The learned counsel for the respondent has stated that the respondents have regularly maintained accounts, got the same audited and filed tax returns, copies of which had been filed before this Hon'ble Court. No irregularity in the same has been pointed out by the appellant. In case the appellant is able to succeed in the suit filed by her, she can be given her adequate share by way of ad interim order in the suit which arrangement can continue till the conclusion of the trial.

28. It is the case of the respondent that the petitioner has no experience of running a business, admittedly being a housewife. She has no interest to run the business and is only interested in disrupting a running business as a threat to extract an extra share in the family assets without having any concern for the running business of the partnership.

29. It is further stated that as an interim measure, the learned trial court has directed payment of a monthly amount to the petitioner which is being complied with. Thus, the financial needs of the petitioner, if any, are being adequately taken care of pending trial in the suit. This arrangement can be continued till the final adjudication of the dispute thereafter which the accounts can be adjusted as per the directions issued to the parties.

30. This contention has been contested by Ms.Marwah. It has been contended that no stone has been left unturned by the father and the two sons to usurp the entire share and good will of the firm. It is in this

context, the sister's share is alleged to have been purchased similarly as that of Shiv Pal. So far as the payment of Rs.20,000/- which has been ordered by the trial court, it is alleged that the petitioner/appellant had to literally beg for this amount from the respondent. This is despite the fact that it is within the knowledge of the respondents that the petitioner is undergoing the treatment of dreaded disease of cancer.

31. I have heard both the parties and have perused the documents placed on record. It is pertinent here to note that the learned trial court while disposing the applications under Order 39 Rules 1 & 2 vide order dated 11.11.2009 recorded that, the respondent Nos.1, 3 & 4 will not create any third party interest with respect to the suit property i.e. E-23, Connaught Place and would neither get the tenancy right transferred exclusively in their names. Further in the impugned order dated 09.06.2010 while disposing of the two applications (Order 40 Rule 1 CPC for appointment of receiver and Section 151 CPC for monetary relief to the petitioners) of the petitioners the Hon'ble Court directed the partners of the reconstituted firm to pay alleged admitted capital amount of Rs.3, 63,057/- in the court to the petitioners, which has not been accepted by them. The learned court held that if the amount would not be deposited, it would be assumed that the alleged reconstituted firm is using the capital and then it would be a fit case of appointment of receiver and once the receiver is appointed, the court would be in a position to ascertain the

actual income of the business and the amount to which the petitioners would be entitled monthly from the business.

32. I am of the considered view that the trial court has failed to appreciate that Mohinder Pal in connivance with his sons is using exclusively the good will of the firm which has been built over the period of more than 75 years by the family members jointly and the invaluable tenancy rights of the business, detrimental to the interest of other family members and depriving the petitioners of their legitimate legal rights.

33. It appears that the trial court fell into an error by not appreciating the law laid down under Section 37 of the Indian Partnership Act, 1932, wherein it has been categorically stated that where any member of a firm dies then the surviving or continuing partners of the business carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner, then in the absence of a contract to the contrary the outgoing partner or his legal representatives/heirs are entitled to such share of the profits made since he ceased to be a partner as attributable to the use of his share of the property of the firm along with an interest of 6% per annum.

34. The share of the petitioner/appellant in the business is not a disputed fact. It is also true and correct that the respondents have been enjoying the fruits of the business to the exclusion of the petitioners for over more than six years since the death of Narinder Pal and the factum

of which has not been considered by the trial court while rendering its findings. The trial court has therefore erroneously taken into consideration only the so called capital investment and directed the payment of the same to the legal heir namely petitioner-appellant as if she does not get any share in the good name of the firm. It is not disputed by any of the parties that the business is being run under the name and style of 'Oriental Fruit and Marts Store' for the last more than 75 years and this period is sufficiently long for the firm to generate tremendous goodwill. It has been contended by the learned counsel for the petitioners that the Oriental Fruit and Marts Store is selling exotic fruits, vegetables and chocolates and its clientele consist of number of embassies and high end consumers. Thus it is making considerable profits.

35. Since this aspect was not taken note of by the trial court, the deposit of Rs.3,63,057/- or so made by the respondents could not be deemed to disentitle the appellant-plaintiff from any share in the profit of the firm. She is legally entitled to the ad interim order for payments and deposit during the pendency of the suit by the respondent is of no consequence.

36. The overall conduct of the respondents is suspicious and casts a doubt on their designs and the fabrication of the alleged documents placed on record before the trial court by them. The local commissioner in his report has accused the respondents of obstruction and causing

hindrance in carrying out the inspection. Till date the account books i.e. ledgers and cash books have not been submitted before the court. Further the cases filed by late Narinder Pal against Mohinder Pal and Shiv Pal's denial with respect to the alleged retirement deed, makes the defence of the respondent a farfetched story.

37. Vide order dated 11.03.2011 this court has directed the respondents no.1, 3 and 4 to pay Rs 20,000 per month to the appellants/petitioners. It is shown that from the date of this order, the respondents have been deliberately defaulting in the payment of the said amount timely. When no payments were received for the month of Nov, Dec 2011 and January and February 2012, the appellants were compelled to issue a legal notice dated 03.02.2012. After the receipt of the said notice the arrears were cleared, and on 27.04.2012 that is next date of hearing the court once again passed an order directing the respondents to make the payment for the month of March on that day itself and for the month of April, 2012 by 07.05.2012. Despite the directions of the court the cheques were belatedly issued and dishonoured. The appellants in the application under S.151 CPC before this court have prayed for striking off the defence of the respondents on the aforesaid grounds. On notice of the said application the arrears were cleared till February 2013.

38. The learned counsel for the respondents relying on the judgment rendered by this court in Mohinder Nath and Ors (supra) have contested

that instant case does not meet the conditions required to be fulfilled in order to make it a fit case for the appointment of the receiver.

39. In my considered view, this contention of the respondent holds no water as the petitioner has been able to prime facie show a case of adverse and conflicting claims to the property. Further the learned counsel for the petitioners has stated that the petitioner-Saroj Arora is a widow with no other source of income and has been diagnosed with cancer. It was further stated that the dishonest conduct of the respondent leaves no room for doubt that they have no inclination to give the petitioners their rightful share.

40. The respondent did not cooperate with the local commissioner and further did not permit him to inspect the books of accounts, ledgers, cash book so as to prevent the correct picture from being reflected. The contention of the learned counsel for the respondent that accounts are being audited regularly and income tax returns being filed is no excuse.

41. The facts and figures of the accounts are not always reflective of the true and correct extent of the financial health. These figures and calculations can be easily manipulated. Therefore, I do not attach any credence to the same. Since the respondents herein, have themselves admitted the right of the petitioner/appellants to the extent of the shareholding of late Narinder Pal the arguments of the respondents as per

the finding rendered in *Mohinder Nath & Ors.* (supra), that the right of the petitioners must be reasonably clear and free from any doubt.

42. The respondent's plea that they had deposited the capital amount with the court and consequently there was no obligation to pay any amount or that they had become owners of 100% share in the firm, holds no water. This is because of the fact that even if it is assumed for the sake of arguments that the partnership stood dissolved even then the appellant is entitled not only to the capital investments and share in the profits, but also share in the goodwill and tenancy rights. As has been pointed out hereinabove, 'M/s Oriental Fruits and Marts' has attained reputation and goodwill for the past 75 years. The appellants could not be deprived of their share in the goodwill. This will have to be adjudicated by the trial court.

43. It was contested by the respondents that an order appointing a receiver cannot be made where it has the effect of depriving a defendant of a 'de-facto' possession since that might cause irreparable wrong.

44. In the instant case the conduct of the respondents is suspicious and questionable and they have been in exclusive possession of the assets of the business and have dishonestly deprived the petitioners of their rights thereby causing the petitioners irreparable loss. It has been observed by the courts in the judgments relied by the parties that the power of the appointment of receiver is a discretionary power and the court must look

at the conduct of the party before passing any such order. In case there is a threat or danger to the property as it is being wasted or pilfered etc. receiver ought to be appointed. Though it is a fit case for appointment of a receiver, but I am purposely resisting the same on account of the fact that the respondents are running the business even if to the detriment of the appellant/plaintiff's interest but appointment of receiver would be an additional burden on all the parties so far as financial implications are concerned. Therefore in the hope that the respondents would mend their ways after the passing of this order, I feel that the interest of the appellant/petitioner can be sufficiently protected. I may also point out that during the course of hearing on the basis of assertions that the respondents were drawing a very meagre profit of Rs.25,000-30,000/- at best per month for each of the three brothers subject to their adjustment at the end of the financial year. A suggestion was given to the respondents to test their bona fides. The suggestion was that they should let the appellant/petitioner along with the other legal heirs of the deceased/partner along with the other legal heirs of the deceased/partner be permitted to run the show while as the respondents sitting at home would be assured of a sum of Rs.30,000/- per partner every month subject to the sharing of the profits at the end of the financial year. Instead of answering in affirmative or in the negative, the counsel for the respondents started giving lame excuses by showing that the

appellant/petitioner being a lady would not be able to get up early in the morning and go to the 'Mandi' for the procurement of vegetables and fruits and it will be very difficult for her to run the show. The learned counsel also started counting other hurdles which she may encounter being a lady instead of accepting or rejecting the offer. This clearly reflected the mala fides on the part of the respondent that as a matter of fact they want the show to be run by them to the detriment of the appellant/petitioner at all costs. This cannot be permitted to be done. Accordingly, though I would have liked to appoint a receiver, I have instead preferred to increase the payment of the ad- interim amount to the appellant/petitioner during the course of pendency of the suit subject to the final outcome of the suit.

45. I accordingly direct that from the date of application till the date of passing of this order, the appellant/plaintiff should be paid Rs.50,000/- per month and from the month April, 2015 onwards, the appellant shall be paid a sum of Rs.75,000/- per month. Since the amount of Rs.20,000/- per month has already been paid by the respondents to the appellant during all this period, therefore, from the date of application till the 31.03.2015, the appellant shall pay the balance amount of Rs.30,000/- per month. This amount shall be paid latest by 31.12.2015 in two instalments.

46. The appellant/petitioner shall give in writing the account number to the respondents for the purpose of depositing the aforesaid amount. The first instalment shall be payable within a period of two months from today and the second instalment within a period of six months from the date of first payment but not later than 31.12.2015. So far as the payment of Rs.75,000/- for April, 2015 onwards is concerned, the same shall be paid on or before 7th of each succeeding English calendar month and in the event of aforesaid not being paid or credited to the account of the appellant/petitioner before 7th of each succeeding English calendar month. The respondent shall be under an obligation to pay a sum of 85,000/- in case the payment is made up to 15th and after 15th a sum of Rs.1,00,000/- per month. This enhancement in the amount has been ordered by this court only to keep a check on the respondents so that payment is made latest by 7th of English calendar month. In case the respondents do not comply with the aforesaid order or dissipate or deal with property in question by any act or conduct which may be detrimental to the interest of the legal heirs of the other partners during the adjudication of the suit, the appellant/petitioner shall be free to file any application including the application for appointment of a receiver afresh as may be deemed fit.

47. With these observations, the order of the trial court stands modified to the extent the same is passed hereinabove. The trial court is hereby directed to deal with the matter expeditiously.

48. Expression of any opinion hereinabove shall not be deemed to be an expression on the merits of the case.

V.K. SHALI, J.

April 27, 2015/ad