*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+   CM(M) 1271/2012

%   Reserved on: 5th May, 2015
Decided on: 29th June, 2015

R.K.INDUSTRIAL CORPORATION (CHEMICAL DIVISION)
..... Petitioner
Through: Mr. Harpreet Singh and Mr. Rajesh Gupta, Advocates.

versus

VANSON MEDICAL STORES & ORS. ..... Respondents
Through: Mr. Munish Tyagi, Advocate.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. M/s R.K. Industrial Corporation the petitioner herein is a partnership firm with Raj Kamal Gandhi, Achraj Lal Gandhi, Ravi Kiran Rai Gandhi and Sanjay Gandhi as its partners. Respondent No.1 M/s Vanson Medical Stores is also a partnership firm with partners Ravi Kiran Rai Gandhi, Raj Paul Gandhi and Bimal Rai Gandhi.

2. M/s R.K. Industrial Corporation through its partner Raj Kamal Gandhi filed a civil suit for recovery of Rs.4,99,999/- as principal along with interest and costs against the respondent i.e. M/s Vanson Medical Stores of which Ravi Kiran Rai Gandhi, Raj Paul Gandhi and Bimal Rai Gandhi were the partners. It was pleaded that the respondents had purchased 400 Kgs. of Chloraphenicol Powder I.P. from the petitioner under invoice No.000246 dated 14th January, 1994 on credit basis. However, despite repeated

requests, the respondents have failed to make the payment. In the suit, Respondent Nos. 1,3 and 4 herein filed common written statement raising various preliminary objections and denying the claim in the suit. They pleaded that the powder was brought to Delhi by respondent No.2 and this material had been given by the petitioner in lieu of share of payment of respondent No.2 in the petitioner firm and thus the sale proceeds of the powder were given to respondent No.2. Respondent No.2 Ravi Kiran Rai Gandhi filed a separate written statement raising additional pleas that he and his brother Sanjay Gandhi were also partners in M/s R.K. Industrial Corporation at the time of closing of the firm. The partners had agreed that Ravi Kiran Rai Gandhi and his brother Sanjay Gandhi should get Rs.3,88,003/- by sale of powder through other firm of Ravi Kiran Rai Gandhi. Since powder was not being sold easily, Ravi Kiran Rai Gandhi was asked to collect and keep the sale proceeds and adjust the same in the payment which was due to Raj Kiran Rai Gandhi.

3. After trial, the suit of M/s R.K. Industrial Corporation was allowed vide order dated 7th September, 1999 and a decree in favour of the petitioner/plaintiff for a sum of Rs.4,99,999/- with costs and future interest at the rate of 18% per annum from the date of filing of the suit till realization of the decretal amount was drawn by the District Judge, Solan, Himachal Pradesh. The District Judge, Solan vide its letter dated 30th April, 2001 issued precept to the District Judge, Tis Hazari Courts for execution of the decree dated 7th September, 1999 passed as noted above. The said execution application being Ex.No.70/2001 was pending before the Court of Shri Nepal Singh, ADJ which was transferred to other Court and renumbered as

Ex.No.306/2006. M/s R.K. Industrial Corporation in the suit and execution was throughout represented by Raj Kamal Gandhi and Ravi Kiran Rai Gandhi or Sanjay Gandhi at no point of time looked after the interest of M/s R.K. Industrial Corporation. The respondent i.e. Vanson Medical Stores, Ravi Kiran Rai Gandhi, Raj Paul Gandhi and Bimal Rai Gandhi the partners of M/s Vanson Medical Stores filed their objections on 26th July, 2004 inter alia objecting to the maintainability of the execution petition on the ground that respondent No.2 i.e. Ravi Kiran Rai Gandhi was one of the partners of M/s R.K. Industrial Corporation.

4. On 27th April, 2005 M/s R.K. Industrial Corporation through its partner Raj Kamal Gandhi filed an application under Order XXX Rule 9 CPC seeking leave of the Court to proceed with the execution against the judgment debtors and vide order dated 22nd February, 2007 the objections of the respondents were held to be without merit and dismissed. In the meantime, Ravi Kiran Rai Gandhi proposed a settlement and offered Rs.6 lakhs to Raj Kamal Gandhi and Aschraj Lal Gandhi towards satisfaction of the decree. Ravi Kiran Rai Gandhi handed over four cheques for a total sum of Rs.6 lakhs drawn on HDFC bank out of which two cheques worth Rs.4 lakhs were in the name of Raj Kamal Gandhi and remaining two cheques worth Rs.1 lakhs each in the name of Aschraj Lal Gandhi. The settlement did not finally materialize. However the petitioner i.e. M/s R.K. Industrial Corporation sought to utilize the said cheques towards part satisfaction of recoverable amount against the decree but on presentation the cheques were dishonoured. Thus Raj Kamal Gandhi instituted Criminal Complaint under Section 138 NI Act against respondent No.2 Ravi Kiran Rai Gandhi at

Shimla. Vide judgment dated 30th December, 2011 the criminal complaint under Section 138 NI Act was decided against Ravi Kiran Rai Gandhi by the Judicial Magistrate 1st Class at Shimla and Ravi Kiran Rai Gandhi was found guilty. The appeal against the said judgment of the learned Judicial Magistrate is pending before the learned Sessions Judge, Shimla.

5. Despite the fact that none except Raj Kamal Gandhi represented M/s R.K. Industrial Corporation, suddenly Ravi Kiran Rai Gandhi without the consent and concurrence of other partners of M/s R.K. Industrial Corporation withdrew the execution petition on the ground that steps for winding up of petitioner firm have been initiated and notice of appointment of arbitrator was also served on the partners. The application was neither supported by any documentary evidence nor any other material to show that the decree was fully and finally satisfied or settled. Vide the impugned order dated 25th August, 2012 the learned Trial Court not only permitted respondent No.2 to withdraw the execution petition but also recorded the satisfaction. Hence the present petition.

6. Learned counsel for the petitioner contends that all through the proceedings M/s R.K. Industrial Corporation was being represented through Raj Kamal Gandhi. Ravi Kiran Rai Gandhi had never represented M/s R.K. Industrial Corporation and his interest was also adverse to M/s R.K. Industrial Corporation being one of the partners of M/s Vanson Medical Stores and a defendant in the proceedings. Assailing the judgment it was stated that the person having contrary interest and never represented the petitioner in the proceedings cannot be permitted to play fraud by stating that the decree stands satisfied. Fraud vitiates every act and thus the execution

petition be restored and the impugned order disposing of the execution petition in view of the statement of Ravi Kiran Rai Gandhi that a settlement had been entered between the parties be set aside.

7. Learned counsel for the respondents on the other hand relying on Sections 22 and Section 19(1) of the Partnership Act (hereinafter referred to as 'the Act') contends that each and every partner of a partnership firm are jointly and severally liable to the firm and an act of anyone of the partners bind the partnership firm. Learned counsel for the respondents further submits that there was no resolution of all the partners to institute the suit proceedings by R.K. Industrial Corporation. The suit was decreed without deciding the maintainability of the suit. Arbitration proceedings are already pending. Compromise had been arrived at between the parties and acted upon. Thus, there is no illegality in the impugned order.

8. Heard learned counsel for the parties.

9. Sections 22 and 19 of the partnership Act provide as under:-

> *"Section 22. Mode of doing act to bind firm.- In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm-name, or in any other manner expressing or implying an intention to bind the firm.*
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> *"Section 19. Implied authority of partner as agent of the firm.- (1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.*

The authority of a partner to bind the firm conferred by this section is called his "implied authority".

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to -

(a) submit a dispute relating to the business of the firm to arbitration,

(b) open a banking account on behalf of the firm in his own name,

(c) compromise or relinquish any claim or portion of a claim by the firm,

(d) withdraw a suit or proceeding filed on behalf of the firm,

(e) admit any liability in a suit or proceeding against the firm,

(f) acquire immovable property on behalf of the firm,

(g) transfer immovable property belonging to the firm, or

(h) enter into partnership on behalf of the firm."

10. Exceptions (c) and (d) of Section 19(2) of the Act does not give an implied authority to a partner as agent of the firm to compromise or relinquish any claim or portion of a claim by the firm or withdraw a suit or proceedings filed on behalf of the firm. Ravi Kiran Rai Gandhi has not placed on record any authority by virtue of which he made the statement that the decree in favour of M/s R.K. Industrial Corporation stood satisfied. Statement with regard to satisfaction was also made by Sanjay Gandhi who has no concern with M/s Vanson Medical Stores. The Court ought to have looked into the fact that all the proceedings had been filed through Raj

Kamal Gandhi and the interest of Ravi Kiran Rai Gandhi was adverse to the interest of the petitioner R.K. Industrial Corporation.

11. This Court in similar facts in *Konark Care Vs. Triveni Infrastructure Development Company Ltd. 2013 SCC OnLine Del. 3068* held-

> *"13. As to the second issue, the facts emerging from the records are:-*
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> *(1) The appeal was supported by the affidavits of both Shri Sandeep Arora and Shri Ramesh Kumar Popli;*
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> *(2) The application for disposal of the appeal was signed by and supported by the affidavit of Shri Ramesh Kumar Popli only;*
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> *(3) Neither the supporting affidavit nor the signature of Shri Sandeep Arora appears upon or in relation to the application for disposal;*
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> *(4) The application seeking disposal of the appeal does not refer to any consent by all partners of the appellant firm; there is no supporting document in that regard.*
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> *(5) The only reference is found in Ramesh Kumar Popli's affidavit; he states that he is a partner of the appellant and was conversant with the facts. Even this affidavit nowhere states that he was authorized by the other partners to either swear the affidavit or move an application asking for withdrawal of the appeal.*
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> *14. The above facts are a matter of record and incontrovertible. On the basis of such application, the appeal was disposed of on 13.04.2010 It is not in dispute - as is evident from Annexure P-1 to the appeal - i.e the copy of the registration certificate that the appellant is a registered partnership firm. Section 19(2) of the Partnership Act in no uncertain terms mandates that the implied authority of a partner does not extend to withdrawing or compromising legal proceedings. It clearly states that in the absence of any usage or customs or trade to the contrary, the implied authority of a partner does not empower him to compromise or relinquish any claim or portion of the claim by the firm or to withdraw the suit or proceedings filed on behalf of firm. In other words, unless an expressed authority is given to the partner by all other partners, he cannot alone compromise a claim either in part or*

whole or withdraw the suit, (referChainraj Ramchand v. V.S Narayanaswamy, supra)."

12. Consequently, the impugned order is set aside. The learned Trial Court will proceed with the execution of the decree. Petition is disposed of.

(MUKTA GUPTA)
JUDGE

JUNE 29, 2015
'v mittal'