

\$~ R-205.

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

+ **Date of Decision: 17.09.2015**

% **RSA 242/2015**

ARUN BANSAL

..... Appellant

Through: Mr. Rajat Aneja & Mr. Vijay Kasana,
Advocates.

versus

ANIL KUMAR PURI & ANR

..... Respondents

Through: Mr. Virender Tarun, Advocate along
with respondent No.1 in person.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. I have heard learned counsel for the parties.
2. While framing the substantial question of law to be considered in the present second appeal, this Court on 14.07.2015, *inter alia*, recorded the relevant factual background and observed as follows:

“5. I have heard learned counsel on the aspect of substantial question of law arising in the present case.

6. The first respondent/ plaintiff filed civil suit to seek permanent injunction to restrain defendant no.1, i.e. DSIIDC from allowing the change in the constitution of the firm M/s

India Chem. The suit had been filed on the premise that the plaintiff and defendant No.2 – the appellant herein are partners of M/s India Chem and that both partners are carrying on the business of the firm smoothly.

7. *The plaint avers that on 19.06.2006, disputes arose between the plaintiff and the defendant No.2. The plaintiff was pressurised by defendant No.2 to sign some papers, including the dissolution deed. The plaintiff stated that when he asked for settlement of accounts, defendant No.2 assured that before registration of the dissolution deed, all payments due to the plaintiff would be made. The plaintiff also stated that he accepted this version of defendant No.2. He received a communication dated 18.05.2007 from the DSIIDC asking the plaintiff to submit his No Objection Certificate for change of constitution of the firm M/s India Chem, as applied for by defendant No.2. The plaintiff filed his objection on 08.06.2007 regarding change of constitution of the firm. The plaintiff, inter alia, claimed that he was still a partner of M/s India Chem. In the written statement filed by the defendant No.2/ appellant, the appellant, inter alia, pleaded that the partnership between the plaintiff and defendant No.2 had been dissolved by dissolution deed dated 19.06.2006. It was also pleaded that the said dissolution deed had taken effect as the account of the plaintiff had been settled by issuance of cheques aggregating to Rs.6 Lakhs, which had been received and the amount appropriated by the plaintiff. Defendant No.2 also claimed that the plaintiff had acknowledged that he had no further dues outstanding, or claimable from the firm.*

8. *At the stage of admission/ denial of documents, the plaintiff admitted execution of the dissolution deed and the execution of the No Dues Certificate. He also admitted the signatures on his affidavit containing his no objection to the DSIIDC for change of constitution of the firm dated 03.07.2006 and the receipt acknowledging payment of Rs.6 Lakhs.*

9. *Since the plaintiff had claimed his status as a partner, the Trial Court framed an issue: whether the plaintiff had the right*

to sue as on 05.07.2008 in his capacity/ status as a partner of the firm of M/s India Chem. By taking into account the fact that the plaintiff had admitted the execution of the dissolution deed dated 19.06.2006, the Trial Court held that the claim of the plaintiff that he was still a partner of M/s India Chem, stood belied. Consequently, the suit was dismissed.

10. In the first appeal, the said judgment has been reversed and set aside. The First Appellate Court has taken the view that it was obligatory for the Trial Court to decide all the issues which had been framed by permitting the parties to lead their respective evidence at trial.

11. The submission of Mr. Aneja is that the First Appellate Court has fallen into error in not appreciating that the plaintiff has not disputed the factum of execution of the dissolution deed dated 19.06.2006. He submits that a suit for accounts and share of profits of a dissolved partnership firm should be filed within a period of three years from the date of dissolution under Article 5 of the Schedule to the Limitation Act. The respondent plaintiff was aware and conscious of the dissolution deed when it was so executed. The suit had been initially filed only on 16.06.2008 for seeking injunction simplicitor, and that too, directed against the DSIIDC. The application to seek amendment of the plaint so as to incorporate the relief of rendition of accounts was moved only on 23.11.2012. Thus, even if the amendments were to be granted for the purpose of relief of rendition of accounts, the issue of limitation with regard to the said relief, would have to be determined by treating the date of filing of the suit as 23.11.2012. The said relief was barred by limitation as on that date.

12. In view of the aforesaid, the following substantial questions of law arise for consideration in the present second appeal:

- (i) Whether the learned lower Appellate Court committed a grave jurisdictional error in holding that a preliminary issue premised on a pure legal aspect cannot be decided*

if the matter is fixed for evidence of the plaintiff, even though, the said evidence has not even commenced?

(ii) Whether the learned lower Appellate Court below erred in law while observing that without deciding the application under Order VI Rule 17 CPC for amendment of plaint, the dismissal of the suit while deciding a preliminary issue was not a correct approach?

(iii) Whether the suit for injunction simplicitor can be converted into a suit for rendition of accounts and damages in respect of a firm, that too, without making any averment with regard to dissolution of the partnership firm, coupled by the fact that the reliefs sought had become time barred?

13. *Admit.*

14. *Trial Court Record be requisitioned.*

15. *The parties are agreeable that the matter be taken up for consideration on priority.”*

3. The submission of Mr. Aneja is that the First Appellate Court erred in allowing the first appeal of the respondent/ plaintiff and remanding the case back to the Trial Court with a direction to decide the suit after taking evidence of the parties and adjudicating upon all the issues as framed on 19.10.2010 and 09.07.2014 (which have been wrongly typed in the impugned judgment as 19.01.2014 and 29.11.2014).

4. The issues framed on 19.10.2010 by the Trial Court read as follows:

“1. *Whether the present suit is not maintainable being barred by section 41 (h) and section 31 of Specific Relief Act? OPD*

2. *Whether the present suit is bad for non joinder of*

necessary parties? OPD

3. *Whether the plaintiff is entitled to a decree for permanent injunction as prayed? OPP*

4. *Relief.”*

5. The additional issue framed on 09.07.2014 reads as follows:

“5. Whether the plaintiff had right to sue on 05.07.2008 in his capacity/ status as partner of M/s India Chem? OPP”

6. Mr. Aneja has pointed out the amendments sought by the respondent/ plaintiff by moving an application under Order VI Rule 17 CPC on 23.11.2012. It is pointed out that the plaintiff sought to amend the title of the suit from *“sought for permanent injunction”* to *“suit for rendition of accounts and damages”*. The respondent/ plaintiff also sought to strike off the name of defendant No.1 from the memo of parties and to add the name of M/s India Chem as defendant No.1. Thus, the original defendant No.1 DSIIDC – against whom the original relief was sought, was sought to be dropped from the array of defendants. The reliefs sought to be substituted, in place of the relief originally claimed by the proposed amendment, were as follows:

“(a) to pass a preliminary decree for the rendition of accounts of firm M/s India Chem in view of the above mentioned facts and directed the defendant no.2 to give the balance share of the plaintiff to him alongwith interest @ 9% p.a.;

(b) to pass a preliminary decree and direct the defendant no.2 to pay the damages in respect of the property in dispute for the period for which the defendant no.2

unauthorisedly used;

(c) *to pass any other or further relief as may be deem fit and proper by this Hon'ble Court."*

7. Mr. Aneja submits that the First Appellate Court has completely overlooked the aforesaid aspects while passing the impugned judgment. He submits that even if the amendments, as sought by the plaintiff were to be granted – which may be taken as granted, the suit - as amended, was not maintainable as the relief of rendition of account was clearly barred by limitation. The submission is that the said relief directed against the appellant could have been claimed within three years from the date of dissolution. The dissolution of the firm had taken place on 19.06.2006. The dissolution of the firm had been accepted by the respondent/ plaintiff. The period of limitation for preferring the relief of rendition of accounts is three years from the date of dissolution in terms of Article 5 to the Schedule to the Limitation Act.

8. Similarly, the relief of a money decree against the appellant, *"to pay the damages in respect of the property in dispute for the period for which defendant No.2 unauthorisedly used"*, could have been sought only on the premise that the firm had not been dissolved validly. However, the dissolution of the firm itself was not even challenged by the respondent/ plaintiff. In fact, he admitted the said dissolution deed which acknowledged that the accounts of the due share of the retiring partner, i.e. the respondent/ plaintiff "have been settled" and the same shall be paid to him or credited to his account with the firm as mutually agreed, and the retiring partner has no right, claim, lien and entitlement whatsoever over the assets and good will of

the firm hence forth. Clause 7 of the dissolution deed also provided that *“the business premises shall remain with the remaining partner and the retiring partner has no right whatsoever of any kind therein”*.

9. Mr. Aneja submits that the respondent/ plaintiff has also admitted to have received Rs.6 Lakhs in two installments of Rs.4 Lakhs and Rs.2 Lakhs on 26.06.2006 and 27.06.2006, and he issued a No Dues Certificate in his own hand on 07.07.2006. These documents, including the said No Dues Certificate have been admitted by the respondent/ plaintiff in admission/ denial of documents before the Trial Court.

10. On the other hand, learned counsel for the respondent has supported the impugned judgment. He submits that the suit could not have been dismissed by the Trial Court on the ground of non-maintainability of the suit, as the respondent/ plaintiff had been sued as a partner of the firm.

11. Having heard learned counsels for the parties, perused the judgment of the Trial Court, the impugned judgment of the First Appellate Court and all other material brought on record, I am of the view that the First Appellate Court has fallen in patent illegality while passing the impugned judgment. The First Appellate Court appears to have passed the impugned judgment mechanically, without applying its mind to the facts and circumstances taken note of herein above.

12. The issues framed in the suit on 19.10.2010 pertained entirely to the original relief prayed for in the suit, which was directed primarily against the original defendant no.1 DSIIDC and the appellant. The relief originally sought by the respondent/plaintiff was to seek a permanent injunction

against the DSIIDC from allowing change in the constitution of the firm M/s. India Chem from a partnership to a proprietary firm of the appellant.

13. The First Appellate Court should have appreciated that by moving the application under Order 6 Rule 17 CPC, the respondent/plaintiff had sought to completely give up the said relief and to seek deletion of DSIIDC from the array of defendants. It appears that the respondent/plaintiff had taken the said step on account of the framing of additional issue on 09.07.2014, questioning the plaintiffs right to sue in his capacity/status as partner of M/s. India Chem - in the background that the plaintiff had admitted during admission/denial of documents, the execution of the dissolution deed and the no due certificate. He had also admitted his signatures on the affidavit containing his no objection to the DSIIDC for change of constitution of the firm dated 03.07.2006. Thus, the issues framed in the suit on 19.10.2010 and 09.07.2014 - post the moving of the application under Order 6 Rule 17 CPC did not survive, particularly when the appellant/defendant did not object to the said application being allowed. Even otherwise, the said issues did not require any evidence to be led in the face of the admissions made by the plaintiff during the admission/denial of documents. Pertinently, the dissolution deed was accepted by the plaintiff, and he did not seek to challenge the same either on the ground of fraud, misrepresentation or coercion. He did not challenge the dissolution deed either at the time of filing of the suit in 2008 (which was filed two years after the signing of the dissolution deed, and in the plaint, the plaintiff referred to and raised a grievance about the dissolution deed, and was thus aware of the dissolution deed), or at the time of filing the application to seek amendment of the plaint

on 23.11.2012. Since the firm stood dissolved without any challenge by the respondent/plaintiff within the statutory period of limitation, obviously, the plaintiff had no right to sue on behalf of the firm M/s. India Chem in his capacity as a partner when the suit was initially filed in 2008.

14. The First Appellate Court has also failed to appreciate that the suit, even after amendment – which the appellant/defendant did not oppose, and does not oppose, was barred by limitation. As noticed above, the relief of rendition of accounts against the firm and the appellant could have sought within three years of dissolution of the firm. However, the amendment to incorporate the said relief was moved only on 23.07.2012, i.e. well beyond the period of limitation which expired on 18.06.2009. The said amendment to incorporate a fresh relief tantamounted to the suit in respect of the relief when the application for amendment was filed. Such an amendment, when allowed, would not lead to incorporation of the fresh relief on the date of original filing of the suit.

15. The second relief sought to be introduced by amendment to claim damages from the appellant in respect of the property in dispute, i.e. the property allotted by DSIIDC, could not be maintained without successfully assailing the dissolution deed, since in terms of the dissolution deed, the properties of the firm vested in the appellant to the exclusion of the respondent/plaintiff. As the dissolution deed was not challenged, no cause of action could have arisen in favour of the respondent/plaintiff to seek a decree requiring the appellant to pay damages in respect of the said property as it could not be said that the appellant has unauthorisedly used the same for any length of time.

16. Consequently, the present appeal is allowed and the impugned judgment and the decree of the Trial Court is set aside. The suit of the plaintiff is dismissed for the aforesaid reasons, and the substantial questions of law framed above stand answered in favour of the appellant. The parties are left to bear their respective costs.

VIPIN SANGHI, J.

SEPTEMBER 17, 2015

B.S. Rohella/sr