

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11903 of 2015

=====

1. Ram Pravesh Kumar Sinha Son of Bhonu Prasad Sinha, Resident of Village - Motibigha, P.O. P.S. & District - Nawada.

.... Petitioner/s

Versus

1. Kailash Prasad Yadav Son of Late Dengan Prasad Yadav, resident of village - Balampur, P.S. - Akbarpur, District - Nawada at present Mohalla - Navin Nagar, Nawada, P.O. , P.S. & District - nawada (Plaintiff in the court below)

2. M/s Sri Ram Engineering Tractor at village - Gonawan Nar I. T. I. Town, P.O. P.S. & District - Nawada.

3. Managing Director HMT Tractor Pvt. Ltd., Tractor Division- Pinjore - 134101, District - Panchkula (Haryana) India Phone (01733) 263726.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Bhartee

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

3 12-01-2016 Hear Mr. Shailendra Kumar Bhartee, learned counsel appearing for the petitioner as well as Md. Waliur Rahman, learned counsel appearing on behalf of plaintiff-respondent No.1.

It appears that the plaintiff-respondent No.1 filed Title Suit No. 59 of 2012 praying for dissolution of the partnership deed dated 20.04.2002 and for accounting. The petitioner appeared and filed the written statement and also filed separate application under Order 7 Rule 11 C.P.C. alleging that the plaint be rejected being barred under Section 69 of the Partnership Act. By the impugned order dated 03.07.2015, the learned Sub-Ordinate

Judge-Ist, Nawada rejected the said application filed by the petitioner under Order 7 Rule 11 C.P.C.

The learned counsel for the petitioner relied upon various decisions on the ground that to enforce a right arising from a contract, no suit shall be filed if the partnership firm is unregistered. The court below has wrongly rejected the application filed by the petitioner.

On the other hand, Mr. Waliur Rahma, learned counsel appearing on behalf of plaintiff-respondent No.1 relied upon the Supreme Court's decision in the case of ***Bhartesh Chandra Jain Versus Shoiab Ullah and Others*** reported in ***AIR 2004 (13) SCC 358***.

Perused the order passed by the court below. The decisions relied upon by the learned counsels need no reference in this matter at this stage because of the decisions relied upon by them relates to suit to enforce a right arising out of the contract. The Hon'ble Supreme Court in the case of ***Bhartesh Chandra Jain (supra)*** has held that the language of Clause- A of Sub-Section 3 of Section 69 of the Partnership Act shows that suits for dissolution of an unregistered firm or for account of a dissolved firm or for any right or power to release the property of a dissolved firm have been expressly exempted from the embargo

put on the filing of the suit by an unregistered firm or by any person of an unregistered firm. In my opinion, the submission or objection raised by the petitioner herein is covered by this decision of the Supreme Court, therefore, the order passed by the court below cannot be interfered with in supervisory jurisdiction. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

brajesh/-

U			
---	--	--	--