

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.62 of 2015

M/s Niranjan Sarkar, Contractor, Registered Partnership Firm through Partner Rajesh Sarkar, S/o Late Shri Niranjan Sarkar, Durga Bhawan, Tikrapara, Bilaspur (C.G.)

----- Applicant
(Decree Holder)

Versus

South Eastern Coalfields Limited, Through its Chairman-cum-Managing Director, Seepat Road, Bilaspur (C.G.)

----- Non-applicant
(Judgment Debtor)

For Applicant: Mr. V.R. Rao, Senior Advocate with Mr. Ashok Mishra, Advocate.
For Non-applicant: Mr. H.B. Agrawal, Senior Advocate with Mrs. Meera Jaiswal, Advocate.

Hon'ble Mr. Justice Sanjay K. Agrawal

Order On Board

07/10/2016

1. A dispute arose between the applicant / decree holder - M/s. Niranjan Sarkar, Contractors, a partnership firm registered under the provisions of the Indian Partnership Act, 1932, and the non-applicant / judgment debtor - South Eastern Coalfields Limited, a Government company, pursuant to the award of contract to applicant M/s. Niranjan Sarkar, Contractors, a partnership firm registered in accordance with the provisions of the Indian Partnership Act, 1932, relating to construction of 750 Miners Quarters at Kurasia Colliery, Chirimiri. The matter was

referred to the Arbitrator for adjudication as per the arbitration agreement and ultimately, the Arbitrator passed arbitration award on 2-12-2006 to the tune of Rs.1,12,71,024/-, feeling aggrieved against which the judgment debtor – South Eastern Coalfields Limited (for short 'the SECL') preferred an application under Section 34 of the Arbitration and Conciliation Act, 1996 before the District Judge, Bilaspur for setting aside the award and the learned District Judge by order dated 3-12-2008 rejected the application for setting aside the award. Against the order passed by the learned District Judge, the SECL preferred Arbitration Appeal No.2/2009 which was also dismissed by a Division Bench of this Court on 21-6-2011. In the meanwhile, the entire decretal amount was deposited by the SECL before the executing court. On 5-7-2011, the applicant decree holder made an application for withdrawal of the decretal amount in which the SECL filed formal reply stating that the amount be disbursed to the competent person after satisfaction of the Court. By order dated 15-12-2011, an order was passed by the executing court directing that the amount be paid to M/s. Niranjan Sarkar, Contractors, by an account payee cheque and accordingly, the amount was paid to applicant M/s. Niranjan Sarkar, Contractors, through account payee cheque. Thereafter, it appears that an appeal was filed by the SECL against the order dated 15-12-2011 by which the executing court has directed that the amount be paid to M/s. Niranjan

Sarkar, the applicant herein, through account payee cheque. The appeal was held to be not maintainable and, therefore, the SECL preferred a writ petition under Article 227 of the Constitution of India before this Court bearing W.P. (Art. 227) No.245/2013 which was disposed of without notice to the applicant herein by order dated 6-5-2013 holding that the amount should be disbursed to proper person after due enquiry. The executing court made an enquiry and held by the impugned order dated 10-3-2015 that the amount be paid to the partnership firm M/s. Niranjana Sarkar, Contractors, as existed on 3-8-1989 consisting of Smt. Roopa Sarkar, Ashish Sarkar, Deepak Sarkar and Smt. Nanda Rani Sarkar, against which this revision has been preferred.

2. Mr. V.R. Rao, learned Senior Advocate appearing for the applicant / decree holder, would submit that though the partnership originally existed on the date of award of the contract, but the same was subsequently reconstituted on 1-4-2006 and also on 1-4-2009 on the death of Niranjana Sarkar which took place on 28-1-2009, and by virtue of the provisions contained in Section 17(a) of the Indian Partnership Act, 1932, after a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change. He would further submit that there is no dispute among the old / existing partners with regard to the amount which has already

been paid to the applicant firm and no dispute has ever been raised before any court of law till this date with regard to the decretal amount already deposited. Therefore, the order passed by the executing court is unnecessary and uncalled for and deserves to be set aside.

3. Mr. H.B. Agrawal, learned Senior Advocate appearing for the non-applicant / judgment debtor, would submit that the worry of the SECL is only that the amount be disbursed only to proper person in whose favour the award has been passed.
4. I have heard learned counsel for the parties, considered their rival contentions, perused the order impugned and also gone through the record cautiously.
5. The short question that arises for consideration is whether the reconstitution of original firm would affect the mutual rights and duties of the partners in reconstituted firm.
6. In order to consider the plea raised at the Bar, it would be appropriate to notice Section 17(a) of the Indian Partnership Act, 1932 which provides for rights and duties of the partners and which states as under:-

“17. Rights and duties of partners.- Subject to contract between the partners-

(a) **after a change in the firm.-** where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;

(b) & (c)

7. A careful perusal of the above-stated provision would show that rights, duties and obligations of the partners will remain the same as before as far as they are applicable to the changed situation and subject, of course, to any contract between the partners. Thus, their rights and duties remain the same unless they are altered by agreement or unless they are incompatible with the changes which have occurred in the constitution, etc. of the firm.
8. It would be appropriate to note here that the dissolution and reconstitution of a partnership are two different legal concepts. Dissolution puts an end to the partnership, but reconstitution keeps it subsisting, though in another form. Further more reconstitution of a firm a partnership necessarily implies that the firm never became extinct. What it denotes is a structural alternation of the membership of the firm, by addition or reduction of members, and an incidental redistribution of the shares of the partners.
9. In a matter before the Madras High Court in **K.A. Dawood Sahib v. V.A. Sheik Mohideen Sahib and another**¹, two persons were working as partners on certain profit and loss sharing ratio and the arrangement was subsequently altered so as to allot a greater share to one and lesser to the other partner. This arrangement was in force when one partner died and his son came into the firm in his place. The other partner,

¹ AIR 1938 Mad 5

on the eve of the dissolution of the firm, questioned whether the son should also be entitled to a greater share. It was held as under:-

"The parties had merely agreed to carry on the partnership business, the plaintiff taking the place of his deceased father and nothing being said about the shares If there was no agreement between the parties and a new partnership was formed, the partnership would be governed by Section 13. But here we are dealing with a case where an established partnership business was continued on the same lines as before, after one of the partners had died and Section 17 has application there was no special contract between the parties when they decided to continue the old business, but a change had occurred in the constitution of the firm. In these circumstances the Act contemplates that the rights and duties of the partners in the reconstituted firm shall remain unchanged."

10. Keeping in view the legal position, if the facts of the present case are examined, it is pellucid that the applicant partnership firm as existed on the date of award of the contract was reconstituted firstly on 1-4-2006 and secondly on 1-4-2009 on the death of Niranjana Sarkar on 28-1-2009, and by virtue of the provisions contained in Section 17(a) of the Indian Partnership Act, 1932, after change in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm shall remain the same which were there immediately before the change in absence of special contract between the parties. Therefore, change in the constitution of the applicant firm would not make any difference to their mutual rights and duties particularly in view of the provisions contained in Section 17(a)

of the Indian Partnership Act, 1932 as well as the fact that there is no dispute among the erstwhile partners and present partners with regard to the decretal amount deposited by the SECL.

11. In the circumstances, the order of the executing court holding that the amount be paid to the partnership firm as existed on the date of award of the contract, is unnecessary, as the amount has already been awarded to the partnership firm M/s. Niranjana Sarkar, Contractors - a partnership firm duly reconstituted, and the amount has already been disbursed to the decree holder / applicant firm and the amount has already been paid upon the order of the executing court to M/s. Niranjana Sarkar, Contractors - applicant firm.

12. The impugned order is set aside and the revision is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge