IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO. 44 OF 2015.

Mr. Ashok Ramchandra Naik,
Son of Ramchandra Naik,
55 years of age, married,
Indian National, residence
of H.No.169/48,
Sapna Park, Ponda Goa. … Appellant.

V/s

1. Mr. Sunil Padurang Kesarkar,
Son of Pandurang Kesarkar,
Major, Married,
Resident of H. No. (not known)
Bethorda, Ponda-Goa.

2. Mr. Navnath Tilu Shet Parkar,
Son of Tilu Shet Parkar,
Major, Married,
Resident of H. No. not known
Near Maruti Mandir,
Warkhandem, Ponda-Goa.

3. Mr. Gagan Chand Katoch,
Major, Married,
Resident of H. No. (not known)
Kurti, Ponda-Goa.

4. Mr. Kamalakar Dinanath Fatarpekar,
Major, Married,
Resident of H. No. (not known)
Near Nestle Factory, Tisk,
Usgao, Ponda, Goa. … Respondents

Shri J. Ramaiya and Shri I. Santimano Advocates for the appellant.
Shri G. Agni, Advocate for the respondents.

Coram:- <u>NUTAN D. SARDESSAI,J.</u>

Reserved on:-17th June, 2016.

Pronounced on:-1st July, 2016.

JUDGMENT

Heard learned Counsels appearing for the respective parties.

2. Admit.

3. Shri G. Agni, learned Advocate waives notice on behalf of the respondents.

4. The original applicant before the learned Principal District Judge, North Goa Panaji has filed an appeal challenging the order passed by the learned Judge under Section 9 of the Arbitration and Conciliation Act 1996("the Act" for short hereinafter) pursuant to which he declined to secure the appellant with the interim measures of relief under Section 9 of the Act which is akin to an order under Order XXXIX CPC.

5. Shri J. Ramaiya, learned Advocate on behalf of the appellant came to be heard who first contended that the learned Principal District Judge had exceeded his jurisdiction in holding that the Deed of Partnership was a camouflage. Such an

examination of the Deed was open to an arbitrator, if any, appointed in the proceedings but it was not available to the District Judge to examine the nuances of the Deed of Partnership. He adverted to the relevant provisions of the Partnership Act, submitted that there was no dissolution of the partnership till date and therefore, in the circumstances the appellant had to be secured with the interim measure of protection as contemplated under Section 9 of the Act.

6. Shri Agni, learned Advocate for the respondents opened his arguments by contending at the outset that the appellant had to show that the business of the partnership was in progress and that the partnership business was affected by the continuance of the business by the respondents. He too adverted to the Deed of Partnership which was silent on the business of the partnership and that there was no bar to the partners to carry on their business. He adverted to certain correspondence on record apart from the impugned order and submitted that no relief in equity lay in favour of the appellant and therefore the appeal was liable for dismissal. He placed reliance in Adhunik Steels Ltd. Vs. Orissa Manganese and Minerals Pvt. Ltd. [(2007) 0 AIR(SC) 2563.

i would consider their submissions in the light of the material on record, the relevant provisions of the Partnership Act, the judgment in Adhunik Steels (supra) and the order under challenge and decide the appeal appropriately.

7. In Adhunik Steels (supra), the Hon'ble Apex Court held that the grant of the interim prohibitory injunction or an interim mandatory injunction are governed by the well known rules and it is difficult to imagine that the legislature while enacting Section 9 of the Act intended to make a provision which was de hors the accepted principles that governed the grant of an interim injunction. It was not possible to keep out the concept of balance of convenience, prima facie case, irreparable injury and the concept of just and convenient while granting the interim measure of protection under Section 9 of the Act.

8. It was the case of the appellant in his application under Section 9 of the Act that he did not receive any raw materials from the partnership firm and/or Crompton & Greaves Company Ltd and made enquiry with the working partners of the firm and the officials of the Crompton & Greaves. He was given evasive answers to the effect that the Crompton & Greaves

company was undergoing losses and therefore it was not allocating any work to the said firm. It was also his case that he had approached the working partner and the other partners of the firm and requested them to make a collective representation to the Crompton & Greaves company for the allocation of the work but they did not agree to his suggestion and started avoiding him. Initially he was compelled to pay the monthly salary to all the workers for about 6 months and thereafter terminated their services. It was also his case in the application that in September 2012 he learnt that the respondent no.1 was running his business in the name and style of Multy Electro Mechanical Works and gathered from him that he was doing work similar to that of the firm and that other respondents were also engaged in similar business to that of the firm.

9. In short it was his case that the respondents who were duty bound in terms of law to abide by the terms of the partnership during its validity and subsistence to act in terms thereof, had started businesses independently which were in conflict with the terms of the partnership and therefore he sought the intervention of the Court by seeking the interim measure of protection of restraining the respondents from carrying on the said business in their individual name and style

which was similar to that of partnership firm. This application seeking the interim measure of protection was filed in 2012 when on his own showing the affairs of the partnership firm, were not found conducive in 2008 as per his information and he made enquiries with the respondents who informed only in September, 2012. Moreover Shri G. Agni, learned Advocate rightly submitted that he had not spelt out since when and what was the nature of the work done by the respondents. He had also to show from his application seeking such equitable relief as to the progress of the partnership business and how it was affected if the respondents continued to work independently in a business similar to that of the firm.

10. The Deed of Partnership no doubt contemplates as per clause 18 that no partners shall do any act, deed, or thing whereby the interests of the firm and/or the other partners were jeoparadised. However, nowhere in the application under Section 9 of the Act the first appellant spelt out what was the nature and the extent of the work undertaken by the respondents and since when they had undertaken the said work which was purportedly in conflict with that of partnership. On this aspect the appellant has been totally silent. The respondents on the contrary had set out that it was only recovering their

outstanding amount. Crompton Greaves Ltd started issuing further purchase orders in the individual concerns of the respondents and that no business of the partnership firm was transacted to the knowledge of the appellant. There was a bare denial by the appellant of this fact in his rejoinder but there was no rebuttal of the respondents' case specifically that the company Crompton Greaves started issuing purchase order on the individual concern of the respondents and that no business of the partnership was conducted from 30.9.1998 and within the knowledge of the appellant.

11. The respondents had otherwise carved a specific case in their defence that they were individually carrying on their respective businesses and they had no connection with the appellants or their alleged business and that they were in their respective business carrying on the manufacture and supply of Electric Motor Windings, Coil winding and wound stators, since specific periods which were even prior to the constitution of the partnership for the first time in April,2002. Shri G. Agni, learned Advocate for the respondents had otherwise invited attention to the notice issued by the partnership to the appellant seeking explanation whey he had stopped the production of stator winding w.e.f. 01.10.2002 without prior intimation which was

causing hardship and difficulty in the functioning of the partnership and moreover the firm was unable to meet the commitments given to the Compton Greaves Ltd. The Partnership Deed also called upon him to give a notice in case he wanted to retire.

12. The appellant had replied to the notice in which he had set out that the respondent' grounds for starting these units was suspect right from the beginning and the real intention was known to everyone however reason given was excessive paper works was absurd considering that all activities had been computerised. This aspect too was concealed by him in his application. One of the respondents through his unit had also written to the Crompton Greaves about the problems faced in their functioning on account of their supply of job work to their group. The learned Principal District Judge therefore on an examination of the material had clearly come to a finding that the appellant had suppressed material facts inasmuch as he had not disclosed anywhere about the main purpose of executing the Partnership Deed and the type of business carried on by the respondents at the relevant time.

13. Such a finding of the learned Principal District Judge

cannot all be faulted which had stemmed out from the material on record appreciated by him. The learned Principal District Judge for that matter had clearly observed that all the respondents were individually performing their business activities which were similar to that of the partnership but their suppression by the appellant of material facts in his application under Section 9 of the Act was unjustified. The finding of the learned Principal District Judge that the partnership firm nowhere restricted the individual partners from carrying out similar type of work individually which they were doing prior to the execution of the Deed also does not call for any interference.

14. Shri Ramaiya, learned Advocate for the appellant had set out that the general duty of the partner, duty being indemnified for the loss caused by fraud, duty of the partners vis-a-vis the conduct of the business of the firm, his responsibility to account for the business of same nature as competing with that of the firm to substantiate his case that the respondents had indulged in independent activities which were prejudicial to the interest of the firm and thereby entitling him to the relief of interim measure. However, it has been borne out from the material on record that each of the respondents were in the similar business much prior to the constitution of the

partnership firm and within the knowledge of the appellant which had been materially suppressed by him. His contention therefore, that there was no dissolution of the partnership till date would not salvage his case which has sunk on its own steam. The learned Principal District Judge had rightly held that no prima facie case was made out by the appellant and even otherwise assuming such a case was made out, the fact that he had indulged in suppression and approached the court with unclean hands would not entitle him to the equitable relief of an interim measure restraining them from carrying on the business of their individual firm. The impugned order does not justify any interference in appeal and in view thereof, i pass the following:-

ORDER

The appeal is hereby dismissed.

NUTAN D. SARDESSAI J.

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