

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.160 of 2015 (O&M)
Date of decision:23.12.2016

Vicky Sidana

... Petitioner

Vs.

Harbans Lal Sidana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Kunal Mulwani, Advocate
for the petitioner.

Mr. Aalok Jagga, Advocate
for the respondents.

AMIT RAWAL J.

It is a classic case where the parents have been compelled to approach the Court against the son who are at loggerhead in as many as in 10 litigation. The case in hand emanates for adjudication of the application moved under Order 39 Rules 1 and 2 of the Code of Civil Procedure (hereinafter referred to as “CPC”) in a suit seeking dissolution of the firm known and style as M/s Vicky Handloom WB-66, Bazar Peer Bodla, Jalandhar City and for rendition of accounts.

Mr. Kunal Mulwani, learned counsel appearing on behalf of the petitioner-defendant submits that he is adopted son of the respondent-plaintiffs and in the year 2002, the business in the name and style aforementioned was started in a shop which was taken on lease from Punjab Wakf Board. In this regard, partnership deed dated 11.09.2002 consisting of parties as partners was entered into, in essence, the respondent-plaintiffs to the extent of 10% share each and petitioner-defendants 80%. Thereafter,

Richa Sidana, wife of the petitioner to whom he was married to on being maltreated by the respondent-plaintiffs being parents was compelled to file a criminal complaint. In this process, the respondent-plaintiffs started interfering into peaceful use and occupation of the shop which ultimately led to the dissolution of the partnership deed dated 31.03.2012. The liabilities and assets of the parties were settled. The petitioner-defendant, who was owner in possession of the property aforementioned started running his own business as a Proprietor in the name of M/s Vicky Handlooms. However, on 14.05.2013, the present suit had been filed.

During the pendency of the suit, another application under Order 40 Rule 1 CPC for appointment of receiver to take the assets of the firm was moved but the same was dismissed, vide order dated 13.02.2014. However, the aforementioned application has erroneously been allowed, whereby, the petitioner-defendant has been restrained from preventing the plaintiffs from participating in the affairs of the firm.

He submits that once the partnership firm is dissolved and the petitioner-defendant is running his business under the name and style aforesaid, the respondent-plaintiffs have no business or any role to interfere into peaceful running of the business. It is nothing but pressure tactics by taking advantage of the old age. The suit, in fact, was not maintainable, in view of the provisions of Section 69 of the Indian Partnership Act, 1932 (hereinafter referred to as "1932 Act") as the firm is unregistered, therefore, interim relief could not have been granted.

He further submits that the basic ingredients, i.e., balance of inconvenience and irreparable loss have not been made out and therefore,

the application is liable to be dismissed.

In support of his contention, relies upon the ratio decidendi culled out by the Hon'ble Supreme Court in **M/s Krishana Motor Service vs. H.B.Vittla Kamnath 1996 AIR (SC) 2209** to contend that a partner of dissolved firm cannot file a suit to enforce any right arising out of the contract, in view of the probation as contained in sub-section 3 of Section 69 of 1932 Act. On similar lines, he relies upon **Mukesh Kumar Vs. M/s Continental Construction Limited 2010 (4) RCR(Civil) 639**.

He further pressed into service provisions of Section 41(b) of the Specific Relief Act to contend that where a suit ex facie is not maintainable, ad interim injunction cannot be granted. In support of his aforesaid contention, relies upon the ratio decidendi culled out by this Court in **Gram Panchayat village Paluwas vs. Maharana Partap Charitable Trust, Bhiwani and others 2011(2) Law Herald 1430**.

Per contra, Mr.Aalok Jagga, learned counsel appearing on behalf of the respondent-plaintiffs submits that the business is carried out in the premises taken on lease from Punjab Wakf Board, way back in the year 1967 when the petitioner was not even born. Though the petition under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, was filed but the same has been dismissed, though the appeal filed against thereof, is stated to be pending before the Deputy Commissioner. The adopted son had not been proved to be a dedicated and pious son as he had lodged an FIR No.88 of 2015 under the provisions of Section 452 of the Indian Penal Code. The only claim of the respondents as submitted by Mr. Jagga, on instructions of his clients, in case, is honoured

i.e., the outstanding dues of ₹13,58,905/- and ₹19,28,485/- standing in the account of the firm as on 31.03.2012. The defendant at the instance of his wife started exhibiting hostile attitude towards the respondent-plaintiffs and resisting them from participating in the firm and alleged dissolution is nothing but a sham and forged document. The plaintiffs requested for dissolution of the firm but having not acceded to, the aforementioned suit was filed. He further submits that as per the provisions of sub-section 3 of Section 69 of 1932 Act, the right to enforce and suit for dissolution, in the absence of registered firm, is maintainable.

In support of his aforementioned contention, relies upon the following judgments:-

- 1. *Shavak Burjorji Patell and Legal Representatives vs. Jamshid Kersi Dalal and others* 2012 (3) Civil J 395;**
- 2. *Mohinder Singh vs. Ram Nath* 1992(1) RRR 93;**
- 3. *Kantilal Jethalal Gandhi vs. Ghanshyam Ratilal Vyas* 1993 CivCC 52**
- 4. *Shri Karam Chand Chaudhary vs. M/s S.K. Traders and others* 1997(2) B.C. 595 and**
- 5. *Parkash Jain vs. Vijay Saxena* 2001(1) MPHT 203.**

The transfer of two plots and show-room situated at Peer Badla Bazar carried out in good faith had been challenged. He further submits that on 04.10.2016, this Court initiated the proceedings under Section 89 of the Code of Civil Procedure and the matter was referred to the Mediation and Conciliation Centre of this Court as old age parents never wanted to litigate and had been claiming the aforementioned amount qua their share as

outstanding in the balance sheet. As per the report of Mediator, the petitioner had not arrived at compromise. The order under challenge is perfectly legal and justified. He further submits that neither a copy of the dissolution deed has seen light of the day, nor has been placed on record. He, thus, urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Kunal Mulwani, for, if at all the contention of the petitioner-defendant qua dissolution of the firm has to be accepted, the basic requirement, i.e., dissolution deed dated 31.03.2012 and latest balance sheet as per the provisions of Section 12 of 1932 Act, are required to be placed on record but the aforesaid dissolution deed has not seen the light of day. Irresistible conclusion drawn is that the respondent-plaintiffs are partners of the firm and therefore, they cannot be restrained from participating in the affairs of the firm. Even this Court had also taken the steps to mediate between the parties as the respondent-plaintiffs wanted to dissolve the firm as per the outstanding amount shown in the balance sheet which is reflected in the order dated 04.10.2016, indicated above and in this aspect of the matter, but the mediation proceedings failed. It is strange that old age parents being dragged into litigation by adopted son.

It is a conceded position on record that the business was carried out before the petitioner-defendant was adopted and therefore, he cannot urge and even allowed to whisper that the entire property had been acquired or purchased out of his own funds. There appears to be apparent breach of trust.

There is no bar for dissolution of the firm, in view of the provisions of sub-section 3 of Section 69 of 1932 Act which read thus:-

“3. The provisions of sub-sections (1) and (2) shall apply also to a claim of set off or other proceeding to enforce a right arising from a contract, but shall not affect:-

a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909, (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920) to realise the property of an insolvent partner.”

On plain and simple language of the aforementioned provisions, it does not preclude any partner from enforcement of any right to sue for dissolution of a firm, thus, non-registration of firm is inconsequential, thus, the judgments cited on behalf of Mr. Mulwani, would not be applicable to the facts and circumstances of the present case. All these facts are in respect of enforcing right other than the registration of firm is essential or pre-requisite.

For the foregoing reasons, I do not intend to differ with the findings arrived at by the Courts below. No ground is made out for interference in the impugned order.

Accordingly, the revision petition stands dismissed.

It is made clear that anything observed herein-above shall not be construed as an expression of opinion on the merits of the pending matter.

(AMIT RAWAL)
JUDGE

December 23, 2016

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No