IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.2370 of 2016 (O&M)
Date of decision : 01.04.2016

Karan Sood (NRI)

...Petitioner

Versus

M/s Kay Pee Industries and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Hittan Nehra, Advocate for the petitioner.

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AMIT RAWAL, J. (Oral)

The petitioner is aggrieved of the dismissal of the application filed under Order 1 Rule 10 in the suit seeking specific performance of the agreement to sell dated 12.03.2009 and allowing of the application for substitution of the plaintiff with the applicant in the application under Order 22 Rule 10 on the point that erstwhile partners had retired from the partnership w.e.f. 15.01.2014 and the new partners-applicant joined partnership.

Mr. Hittan Nehra, learned counsel appearing on behalf of petitioner submits that prior to entering into the agreement to sell dated 12.03.2009 alleged to have been entered by partnership firm namely M/s

Kay Pee Industries and others, one of the partner who is no longer partner had already entered into agreement to sell dated 30.09.2013 and, therefore, the valuable right has accrued in the property, therefore, it is essential and necessary to be impleaded as party in the aforementioned suit. He has also passed on the copy of agreement to sell in support of the aforementioned contention. He further submits that all the Income tax returns and other statutory requirement of the partnership deed has been affirmed and done by Vinayak Sood. Though, both the partners stated to have retired from the partnership deed, the new partners namely Rajan Gupta, Manik Aggarwal and Kunal Aggarwal had allegedly stepped into the shoes of the firm. Property belongs to the firm and, therefore, they have no right to become a party. The application of the aforementioned persons under Order 22 Rule 10 is not maintainable for the reasons as retirement of the partners is in dispute and thus urges for setting aside of the order.

I have heard learned counsel for the petitioner and appraised the paper book.

Though during the course of arguments, he submits that there is custom usage between the erstwhile partner namely Vinayak Sood and his father. Vinayak Sood had been paying all the taxes on the part of the firm, therefore, he was well within his right to enter into agreement to sell in respect of property belonging to the firm and, therefore the prohibition carved out in Sub-Section 2 of Section 19 of the Partnership Act is not applicable. I am afraid that aforementioned contention is not sustainable for the reason that no custom usage was pleaded or placed on record before the trial Court. For the sake of brevity, Section 19 (2) of the Partnership 1932 is extracted herein below:-

> *"19. Implied authority of partner as agent of the firm-*
>
> *(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to----*
>
> *(a) submit a dispute relating to the business of the firm to arbitration,*
>
> *(b) open a banking account on behalf of the firm in his own name,*
>
> *(c) compromise or relinquish any claim or portion of a claim by the firm,*
>
> *(d) withdraw a suit or proceeding filed on behalf of the firm,*
>
> *(e) admit any liability in a suit or proceeding against the firm,*
>
> *(f) acquire immovable property on behalf of the firm,*
>
> *(g) transfer immovable property belonging to the firm or*
>
> *(h) enter into partnership on behalf of the firm."*

I have also gone through the agreement to sell dated 30.09.2013 it is signed by one of the partner where property was in ownership of firm and their embargo of Sub Section 2 of Section 19 would be applicable as there is no consent of other partner. In case the petitioner is aggrieved, he is well within his right to seek specific performance of his agreement to sell thereafter seek clubbing but not in the manner and mode which has been adopted. Third party claiming separate interest cannot thrust upon as the plaintiff, who is dominus litus. Moreover, the allowing of the application under Order 22 Rule 10 at the behest of the aforementioned person Kunal Aggarwal, Rajan Gupta, is on the premise that erstwhile partners Vinayak Sood and his father retired from the partnership firm w.e.f. 15.01.2014, therefore, they are having subsisting right and thus aforementioned persons have the right to pursue the remedy seeking enforcement of the agreement to sell dated 12.03.2009.

Keeping in view the aforementioned facts and circumstances and observation hereinabove, impugned order is affirmed.

Revision petition stands dismissed.

01.04.2016 **(AMIT RAWAL)**
pawan **JUDGE**