

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

Civil Revision Petition No.265 of 2017

ORDER:

Aggrieved by the dismissal of their application for rejection of plaint, under Order VII Rule 11 CPC, the defendants have come up with the above revision petition.

2. The respondents filed a suit praying for dissolution of a partnership firm and for settlement of accounts and for allotment of 50% of the share to the plaintiffs. The suit was instituted way back in 2011. The evidence on the side of the plaintiffs was concluded. When the case was posted for evidence on the side of the defendants, the defendants took out an application under Order VII Rule 11 CPC, which came to be dismissed by the trial Court, forcing the defendants to come up with the above revision.

3. The main ground of attack to the order of the trial Court, as projected by Mr. M.V. Durga Prasad, learned senior counsel, is that the issue of limitation as obviously borne out by records, has been dealt with very lightly by the trial Court without the reference to either facts or the law. The suit was filed by the legal heirs of a partner who died admittedly on 26-04-1992. The suit was instituted in the year 2011. The trial Court held that the issue of notice after 18 years and the reply given by the defendants refusing to render accounts could have saved limitation in terms of Article 113 of the Schedule to the Limitation Act. Therefore, it is contended by the learned counsel on the basis of the judgment of a Division Bench of this Court in ***Peeran Sahib and another v. Pedda Jamaluddin Sahib and***

others¹, that the Court wrongly applied Article 113 instead of Article 5 of the Schedule to the Limitation Act, 1956.

4. I do not wish to delve into the question of limitation at this stage. It is true that the suit was filed after 19 years of the death of the partner. It is also true that the prayer in the suit was for dissolution and for settlement of accounts. But the fact remains that the petitioners/defendants woke up to this reality after 5 years after institution of the suit especially after the conclusion of the evidence on the side of the plaintiffs. Therefore, I am of the considered view that it would be better to allow the suit to go to its logical course and come to its logical end. Hence, on this short ground, this revision is dismissed. However, the trial Court shall have due regard to all the contentions regarding limitation, while disposing of the suit. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 20-01-2017

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¹ AIR 1958 AP 48