* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>RFA No. 309/2006</u>**

% **27th July, 2017**

SH. PARMOD KUMAR GUPTA ..... Appellant

Through: Mr. S.D.Ansari and Mr. I. Ahmed, Advocates.

versus

SMT. RAM MURTI DEVI AND ORS. ..... Respondents

Through: Mr. Shyam D. Nandan and Mr. Siddharth Bambha, Advocates for R-1 and 2.
Ms. Savita Malhotra and Ms. Suman Malhotra, Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

<u>VALMIKI J. MEHTA, J (ORAL)</u>

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed against the impugned judgment of the trial court dated 27.9.2005. By the judgment dated 27.9.2005, two applications filed by the defendant no.2 in the suit; namely Sh. Ankit Gupta, respondent no.2 herein; were decided. The first application for setting aside of the compromise order dated

26.5.2000 recorded between the plaintiff and the defendant no.3 in the suit was dismissed, and the second application was the application filed by Sh. Ankit Gupta, treated as an application under Order VII Rule 11 CPC, whereby the suit plaint was rejected on account of the observation by the trial court that in the absence of the defendant no.3 in the suit (respondent no.3 herein) and who would be deleted from the array of the defendants because of the compromise order dated 26.5.2000, the suit hence cannot continue in the absence of a necessary party and hence the suit plaint has to be rejected.

2. The facts of the case are that the subject suit for dissolution of partnership and rendition of accounts was filed by the appellant/plaintiff. The partnership in question was formed under the partnership deed dated 8.3.1984. The partnership business was to be run under the name and style of M/s Krishna Oil and Flour Mills. The share of the appellant/plaintiff in the partnership firm was 50% in the profits and losses. Share of respondent no.1/defendant no.1 in the partnership firm was 20% in profits and 25% in losses. Share of respondent no.2/defendant no.2 was 5% in profits and share of respondent no.3/defendant no.3 in the profits and losses was 25%.

Defendant no. 2 in the suit was minor when the partnership deed was entered into and he was also a minor when the suit was filed. A minor can be admitted to the benefits of partnership in terms of Section 30 of the Partnership Act, 1932 and hence he had a share of 5% in the profits of the firm. In the suit the appellant/plaintiff prayed for the following reliefs:-

> "(a) A decree of dissolution of partnership business of M/s Krishna Oil and Flour Mills No.18, Rajasthan Udyog Nagar, Delhi, dissolving the said firm, be passed in favour of plaintiff and against the defendant;
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> (b) A decree of rendition of accounts to be passed in favour of the plaintiff and against the defendants, ordering defendants 1 to 3 to render the true, complete and correct accounts of M/s Krishna Oil and Flour Mills 18, Rajasthan Udyog Nagar, Delhi, from 1992 till date and the share of the plaintiff towards capital, profits, assets, goods, properties etc., of the said partnership, be ascertained and decree for the same be passed.
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> (c) A decree of permanent injunction, with costs be passed in favour of the plaintiff and against the defendants restraining the defendants from selling, disposing off or delivering any assets, properties, goods machinery, belonging etc., of the partnership firm to any one whomsoever."

3. In the suit, a joint written statement was filed by all the three defendants. As per the joint written statement, the suit was prayed to be dismissed and it was also pleaded that in fact it was the appellant/plaintiff who was guilty of mismanagement of the partnership firm's businesses and assets and in fact the appellant/plaintiff was guilty of misappropriation of the assets of the

partnership firm. It was also pleaded in the written statement that in fact it was the appellant/plaintiff who was to render the accounts and not the respondents/defendants.

4. Issues were not framed in the suit, and therefore no trial took place in the suit, and at this stage the appellant/plaintiff and the respondent no.3/defendant no.3 entered into a compromise whereby the appellant's/plaintiff's claim against the respondent no.3/defendant no.3 stood settled as the appellant/plaintiff received a sum of Rs.9,29,000/- from the respondent no.3/defendant no.3. In terms of the settlement benefit also accrued to respondent no.3/defendant no.3 inasmuch as the respondent no.3/defendant no.3 received back possession of the portion of the premises 18, Rajasthan Udyog Nagar, Delhi and possession of which was with the receiver in terms of the Court's order and which seal was therefore directed to be broken up. I may note that it is an undisputed fact emerging from record and the pleadings of the suit that four parties to the suit have been four partners to the partnership firm and have not claimed and that the property at 18, Rajasthan Udyog Nagar, Delhi is a property belonging to the partnership firm.

5. Respondent no.2/defendant no.2 who was a minor when the compromise was entered into on 26.5.2000 thereafter filed the two subject applications which have been disposed of by the trial court vide its impugned judgment dated 27.9.2005 whereby the trial court has rejected the suit plaint under Order VII Rule 11 CPC but has upheld the compromise as between the appellant/plaintiff and the respondent no.3/defendant no.3.

6. It is trite that in every suit for dissolution of partnership and rendition of accounts every partner is both a plaintiff and a defendant meaning thereby a partner is a plaintiff to the extent that he has to get rights in the partnership firm and the partner is a defendant to the extent that he is liable to render accounts of any of the assets etc of the partnership firm in the hands of such partner. Every partner therefore has a right and a liability and is therefore both a plaintiff and a defendant simultaneously in a suit for dissolution of partnership firm and rendition of accounts.

7. Therefore, to the extent that that the trial court holds that in a suit for dissolution of partnership and rendition of accounts such as the present every party to the suit is both the plaintiff and the

defendant, that is a correct proposition of law. Also, it is also correct that there can be a compromise between limited parties to a suit subject to the fact that compromise will only bind the parties to the compromise and will not prejudicially affect rights of any other party to the suit. Therefore, so far as the appellant/plaintiff and the respondent no.3/defendant no.3 are concerned, whatever are their disputes *inter se* as partners in the partnership firm of M/s Krishan Oil and Flour Mills the same will stand satisfied by the compromise order dated 26.5.2000 passed in the suit. The question which then arises is what next.

8.(i) It is seen that all the four parties to the suit admitted: (a) the existence of the partnership, (b) the fact that four parties to the suit were partners, and (c) what were the profit and loss sharing ratios of the partners as has been stated above. In such a scenario in a suit for dissolution of partnership and rendition of accounts, if already there has not taken place dissolution of the firm and complete division of assets and settlement of all issues in terms of Section 48 of the Partnership Act, then, as per Order XX Rule 15 CPC a preliminary decree has to be passed declaring the existence of partnership, who are the partners in the firm, what is the profit and loss sharing ratios and fixing the date of dissolution of partnership. After passing of the preliminary decree further proceedings have to be taken for passing of the final decree, and for which ordinarily a local commissioner is appointed to go into the accounts of partnership firm and also to decide who is the accounting party and what is the extent/amount which one or more of the accounting parties/partners have to render to the other partners of the firm.

(ii) In the present case, as already stated above, the suit was at the stage of pleadings and even issues were not framed. If there is a compromise between the appellant/plaintiff and the respondent no.3/defendant no.3, it would not mean that the respondent nos. 1 and 2/defendant nos.1 and 2 would not be entitled to continue to pursue their rights as against the appellant/plaintiff for rendition of accounts. I may note that as per the joint written statement filed by the three respondents/defendants in the suit, it is not stated that the respondent no.3/defendant no.3 has to render the accounts of the partnership firm. It is pleaded in the joint written statement that it is the appellant/plaintiff who has to render the accounts. Therefore, in view of this position the present respondent nos. 1 and 2 and who are defendant nos.1 and 2 in the suit will be entitled to continue their claim of rendition of accounts as against the appellant/plaintiff and ordinarily the respondent nos. 1 and 2/defendant nos.1 and 2 would have been entitled to seek their transposition as plaintiffs in the suit by virtue of Order XXIII Rule 1A CPC. Learned counsel for the respondent nos. 1 and 2 states that they are agreeable to this proposition, however, it is seen that in practical terms this transposition under Order XXIII Rule 1A CPC would not be possible because the respondent nos. 1 and 2/defendant nos.1 and 2 had filed a joint written statement with the respondent no.3/defendant no.3, and after the compromise between the appellant/plaintiff and respondent no.3/defendant no.3 technically there is no plaint as against the present appellant/plaintiff in the suit *qua* the respondent no.3/defendant no.3 and in view of the compromise order dated 26.5.2000 any dispute *inter se* the respondent no.3/defendant no.3 and the appellant/plaintiff as regards the partnership firm has been given a quietus.

(iii) On the other hand directing the filing of a fresh suit by the respondent nos. 1 and 2/defendant nos. 1 and 2 against the appellant/plaintiff will mean unnecessary additional litigation with the appellant/plaintiff, inasmuch as the appellant/plaintiff is still entitled to pursue his claims as against the respondent nos. 1 and 2/defendant nos. 1 and 2 because the issue of merits is still not decided as to whether the appellant/plaintiff has to render accounts to respondent nos. 1 and 2/defendant nos. 1 and 2 or the respondent nos. 1 and 2/defendant nos.1 and 2 have to render accounts to the appellant/plaintiff. It is therefore to be decided as to what is therefore the course of action to be adopted. In my opinion it will be as given hereunder.

9. So far as appellant/plaintiff is concerned, he is necessarily to be confined to his existing plaint. Respondent nos. 1 and 2/defendant nos.1 and 2 however in view of subsequent development of the compromise between the appellant/plaintiff and the respondent no.3/defendant no.3, and because of the respondent no.3/defendant no.3 having filed a joint written statement with the respondent nos. 1 and 2/defendant nos. 1 and 2 to contest the suit of the plaintiff, there will have to take place filing of fresh written statements by the respondent nos. 1 to 3/defendant nos.1 to 3 with one written statement

being filed by the respondent nos. 1 and 2/defendant nos.1 and 2 and a separate written statement being filed by the respondent no.3/defendant no.3. It will be open to all the respondent nos. 1 to 3/defendant nos.1 to 3 to claim rendition of accounts *inter se* the respondents/defendants and in addition to the respondent nos. 1 and 2/defendant nos.1 and 2 seeking rendition of accounts from the appellant/plaintiff and which stand already exists in the written statement filed by the respondent nos. 1 and 2/defendant nos.1 and 2.

10. As a matter of abundant caution this Court makes it clear that this Court has not commented, in any manner by passing the present judgment, as to who is the accounting partner or as to whether any one partner being any one party to the suit has or does not have any assets of the partnership firm, and it is observed that what would be the further orders on merits which would be passed would be by the court which will now hear the suit with respect to whether a preliminary decree has or has not to be passed, if to be passed on what terms and conditions etc etc.

11. The present appeal is therefore allowed to the extent that the impugned judgment is set aside whereby the plaint of the appellant/plaintiff has been rejected under Order VII Rule 11 CPC and

the suit will continue in terms of the directions which have been passed by this Court in the present judgment. It is also made clear that however a compromise between the appellant/plaintiff and the respondent no.3/defendant no.3 is final and so is the final order of the trial court dated 26.5.2000 recording the compromise as per its terms as between the appellant/plaintiff and the respondent no.3/defendant no.3. It is further observed and clarified as per the request made before this Court that all parties will be bound by the admissions already made in their existing pleadings, save apart as regards the compromise entered into between the appellant/plaintiff and the respondent no.3/defendant no.3 as recorded in the order dated 26.5.2000.

12. Counsels for the parties agree that the suit will now proceed before the competent court within the jurisdiction of the District & Sessions Judge, Central, Tis Hazari Courts, Delhi. Parties to appear before the District & Sessions Judge, Central, Tis Hazari Courts, Delhi on 31st August, 2017 and the District & Sessions Judge will mark the suit for disposal to a competent court in accordance with law and in accordance with the directions contained in the present judgment.

JULY 27, 2017 **VALMIKI J. MEHTA, J**

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