

8/7
\$-9

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

+ **FAO(OS) 92/2017**

VIVEK DAWAR

..... Appellant

Through: Mr.G.K. Bharti with
Mr.V.Hari Pillai and
Mr.Rajesh Kumar, Advs.

versus

ARJUN KUMAR DAWAR & ANR

..... Respondent

Through: Mr.Ankur Chhibber with
Mr.Aditya Chhibber, Advs.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

02.05.2017

%

1. It is submitted that the suit record necessary for consideration of the appeal has been filed. We have accordingly, with the consent of both the parties, taken this appeal for consideration.
2. The appellant has assailed the order dated 13.02.2017 whereby the learned Single Judge has rejected I.A. No.12537/2016, filed by the appellant/plaintiff in CS(OS) No.2239/2013 under Order XIV Rule 5(1) of Civil Procedure Code for framing an additional issue.
3. It appears that the appellant herein filed a Suit for declaration/partition and rendition of accounts of the property of Late Sh.Surinder Kumar Dawar, claiming to be his younger son. The appellant sought partition of moveable and immoveable

property allegedly belonging to the deceased who had died intestate on 10.09.2013 leaving two elder sons, Sh.Vivek Dawar the appellant herein as the elder son, Sh.Arjun Kuamr Dawar the respondent No.1 as the younger son and a daughter Ms.Reena Marwah, the respondent No.3 herein as the only surviving legal heirs. Smt.Janak Dawar, wife of Late Sh.Surinder Kumar Dawar had pre-deceased him on 22.04.2001.

4. The copy of the plaint filed on record states in Para 6 that Late Sh.Surinder Kumar Dawar in 1960 disposed off his printing press business in Shimla and started a new printing press in Paharganj, which was being run by him as a sole proprietorship concern under the name and style of "Devarsons", "M/s Devarsons Stylish Printing Press" and/or "M/s Stylish Printing Press."

5. The respondent Nos.1 and 2 had filed a joint written statements dated 16.12.2013. Our attention is drawn to the plea taken in the written statement wherein with regard to one of the immovable properties of the deceased, i.e., properties bearing No.F-35/2, Okhla Industrial Area Phase-II, New Delhi and Bawana, Delhi, it is stated that it was purchased by Late Sh.Surinder Kumar Dawar in the name of the partnership concern "Devarsons Stylish Printing Press", though the respondents disputed the right, title or share of the appellant in any of the businesses set up by Late Sh.Surinder Kuamr Dawar.

6. It is noteworthy that the respondents have set up a registered Will dated 12.12.2008 (registered on 15.12.2008). We are further informed that Testamentary Case No.8/2015 has been filed seeking

probate of the purported Will dated 12.12.2008 wherein it is stated that the defendant No.1 was a partner with his father Late Sh.Surinder Kumar Dawar in the partnership firm, viz., M/s Devarsons Stylish Printing Press in the ratio of 40:60 i.e. 40% to Sh.Arjun Kumar Dawar and 60% to Late Sh.Surinder Kumar Dawar.

7. During the pendency of the suit, it appears that the respondents had filed I.A. No.2625/2016 under Order XI Rule 14, Code of Civil Procedure seeking a direction for production of the partnership deeds of four firms. This application was disposed of by the learned Single Judge by order dated 12.07.2016, which order has attained finality. In the said order the learned Single Judge has noted as follows:

"On 24.02.2016, the defendants were directed to respond to the application specifically stating whether any business was being carried out in the different names as mentioned by the plaintiff and if so, to file the copies of the Income Tax Returns filed in respect of those names. The defendants were also directed to specifically state whether any bank accounts were opened in different names mentioned in para 6 of the application and if so, file the details of the bank accounts for the last three years (2010-13). The defendants have since filed their reply and have, inter alia, affirmed that Late Shri Surinder Kumar Dawar was the partner in only one partnership firm i.e. M/s Devarsons Stylish Printing Press previously known as M/s Devarsons. The said partnership was constituted by a Partnership Deed dated 01.04.1978. It is stated that the said firm was duly registered with the Registrar of Firms vide Sl.No.1069/85 dated 10.04.1985 and had only one PAN No.AAAFD3696H. It is further affirmed that versions of the name of the partnership firm as mentioned by the plaintiff were "mere inadvertent mis-description of the

correct name of the partnership firm, namely, M/s Devarsons Stylish Printing Press and no such alleged firms were ever constituted with Late Shri Surinder Kumar Dawar as partner of such firms". The learned counsel appearing for the defendants states that in view of the above statement, it is clear that no separate firms of the description as referred to by the plaintiff existed. The reply also indicates that two bank accounts, one Indian Bank, D. B. Gupta Road, Paharganj, New Delhi-110055 and other in Oriental Bank of Commerce, Paharganj, New Delhi were opened in the name of the registered firm and no other bank account was opened in the names as mentioned by the plaintiff in the application.

In view of the above, the question of directing the defendants to produce various partnership deeds does not arise. However, it is seen that by an order dated 24.02.2016, the defendants were directed to place on record the bank accounts statement for the last three years (2010-2013). It would also be expedient if the defendant places on record the statement of affairs of the firm for the three years (2010-2013) preceding the demise of Late S. K. Dawar and also file the copy of the Income Tax Returns, if not already done. The defendants are directed to do so within a period of four weeks from today."

8. The above narration would show that the parties are at variance with regard to the nature of the firm. While the plaintiff has set up the plea that "Devarsons", "M/s Devarsons Stylish Printing Press" and/or "M/s Stylish Printing Press" is a sole proprietorship concern, the defendants state that though Devarsons Stylish Printing Press was initially a sole proprietorship concern, it was converted into a partnership concern by Late Sh. Surinder Kumar Dawar.

9. It cannot be denied that the parties are required by law to prove the plea which they have set up. The parties are also in

6

litigation into the testamentary case seeking probate of the Will dated 12.12.2008 allegedly left by Late.Sh.Surinder Kumar Dawar, as a consequence, the parties are in litigation of shares, if any, in the estate of Late Surinder Kumar Dawar of his three children.

10. In view of the above narration of facts, it cannot be denied that the issue with regard to the constitution of the firm "Devarsons Stylish Printing Press" actually arose for consideration in the suit. The issue is necessary for a just decision. The order dated 13.02.2017 rejecting the I.A. No.12537/2016 for framing the additional issue in this regard is, therefore, not sustainable.

11. Given the close relationship of the litigants, we asked if they would consider exploring the possibility of negotiation for settlement. During the course of the hearing, the appellant who is present in the Court as well as Mr.Ankur Chhibber, the learned counsel for the respondents have no objection exploring the negotiation for settlement. Without prejudice to the rights and contentions of the parties in the present appeal, they may be permitted to negotiate the settlement.

12. We are also of the view that there is a reasonable possibility of settlement of the dispute between the parties.

13. In view of the above, it is directed as follows:

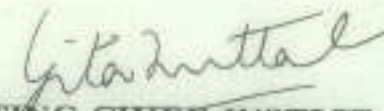
- (i) The order dated 13.02.2017 passed by the learned Single Judge in I.A. No.12537/2016 is hereby set aside and quashed.
- (ii) The following additional issue is also framed in the suit:

7

*"Whether "M/s Devarsons Stylish Printing Press"
was a partnership firm? If so, to what effect? OPD*

14. With the consent of the appellant as well as the respondents, it is directed that the parties shall appear before Ms.Veena Ralli, the Mediator, Delhi High Court Mediation Centre on 27.05.2017 at 12.00 noon when efforts of mediation would be made. It shall be open to the Mediator to join any person/relative including Mrs.Reena Marwah deemed necessary for effective mediation. The report of the Mediator shall be filed in CS(OS) No.2239/2013.

15. This appeal is allowed of in above terms.


ACTING CHIEF JUSTICE


ANU MALHOTRA, J

MAY 02, 2017/pmc