* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **RFA No. 601/2017**

% **11th July, 2017**

SH. ISHWAR NATH KHANNA ..... Appellant
Through: Mr. Anupam Srivastava, Advocate.

versus

SH. PARMESHWAR NATH KHANNA & ORS. ..... Respondents

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The present appeal is a classic case of flogging a dead horse. It is also a case of much ado about nothing. This is so observed by this Court because even if the imaginary disputes which are sought to be resolved through this litigation being the suit for dissolution of partnership and rendition of accounts filed by the appellant, there would be recovery of probably at best may be of rupees one lakh or two in view of the fact that the rendition of accounts is for a cinema business of Khanna Talkies for three years prior to the year 1989 when the subject suit for dissolution of partnership and rendition of accounts was filed. Also, even this amount of rupees one lakh or two is completely a fond dream

because there are no accounts maintained in any book existing and no record whatsoever exists for rendition of accounts of the amounts received of sale of cinema tickets with respect to the partnership business of Khanna Talkies. It also bears note that the partnership is only of the cinema business and partnership admittedly does not have any immovable properties whatsoever inasmuch the cinema premises was owned by the four brothers jointly (parties to the suit) and who had let out the property to the partnership business for the cinema business.

2. The facts of the case are that the appellant/plaintiff filed the subject suit for dissolution of partnership and rendition of accounts on 18.5.1989. Appellant/plaintiff pleaded that the partnership was entered into on 31.5.1983 by executing a partnership deed and the business of the partnership was to exhibit movies at the cinema hall known as Khanna Talkies situated at Pahar Ganj, Delhi. Four partners and who were the four parties to the suit are four real brothers. The profit sharing ratio in the partnership business of all the four brothers/partners was equal. The basis of filing of the suit was the alleged dishonesty of the remaining three partners in not rendering the partnership accounts of the business of exhibiting of films by the partnership concerned.

3. The suit was contested by the three defendants who are the three brothers of the appellant/plaintiff. Each of the brothers denied that they were guilty of mismanagement of the business. In fact each of the brothers claimed that they were not maintaining accounts and they were not responsible for rendering of the accounts and that it is the appellant/plaintiff in fact who is guilty of misuse of the partnership assets as also misappropriating monies from the partnership firm.

4. The main defence was that the subject suit for dissolution of partnership and rendition of accounts was not maintainable inasmuch as the appellant/plaintiff himself signed the dissolution deed dated 1.6.1987 (Ex.PW1/D3) and which dissolution deed thus shows that the partnership which had come into existence in terms of the partnership deed had come to an end w.e.f 1.6.1987 and all the accounts to the firm rendered till 1.6.1987. In terms of the dissolution deed dated 1.6.1987, one partner/brother Sh. Parmeshwar Nath Khanna/respondent no.1 had retired from partnership firm. This dissolution deed which is admittedly signed by all the four brothers/partners including the appellant/plaintiff reads as under:-

"DISSOLUTION – DEED

THIS DEED OF DISSOLUTION executed this First day of June 1987 Between Sh. Ishwar Nath Khanna, Sh. Parmeshwar Nath Khanna, Sh. Prem Nath Khanna and Sh. Kailash Nath Khanna, all sons of Late SH. Shambhu Nath Khanna and residents of 8, Rajpur Road, Delhi, hereinafter called the parties of the First, Second, Third and Fourth Part which expression mean to include their Heirs, Representatives, and Assignee respectively.

AND WHEREAS THE ABOVE SAID PARTIES HAVE BEEN DOING THE BUSINESS of Exhibition and Distribution of Films under the name and style of Khanna – Talkies, at Paharganj, Delhi vide deed of partnership dated ____.

AND WHEREAS the differences among the Partners have arisen due to the various reasons as to the conduct of the business and parties have agreed to dissolve the firm on the terms and conditions agreed to as under:-

NOW THIS DEED WITNESSTH AS UNDER:-

1. That the aforesaid Partnership is hereby dissolved with effect from 31.5.87
2. **That the final Statements of accounts as on the date of dissolution has been prepared and agreed to by all the parties and have been signed by all the parties in token of their acceptance.**
3. That it has been mutually decided among the parties that party of the Second Part Sh. Parmeshwar Nath Khanna has retired from the business with effect from 1st June 1987 and the running business of M/s Khanna Talkies has been taken over by the other three Partners.
4. That all the assets and liabilities of the firm will be taken over by the continuing parties. All the Debtors as on the date of Dissolution will be realized by the continuing partners and liabilities will be paid. The retired partner will not be responsible for the same.
5. That it has been mutually agreed among the partners that retiring partner will receive or pay to the firm any balance standing to his capital account as on the date of Dissolution in terms of the Award of Lala Vishwa Nath Khanna dated ____and accept that will not receive any share of Goodwill or pay any creditor.
6. That all the books of accounts and relevant record, is lying with the continuing parties and they will be responsible to produce the same before any Govt. Authorities as and when demanded.
7. That the Goodwill of the firm will remain with the existing partners and the retiring partner shall have no right or interest in the same any more.
8. That all the Income Tax liabilities of the firm will be met and borne by the continuing partners and the retiring partner has nothing to do with that. However Personal Income Tax and Wealth Tax liabilities of the retiring partner shall be borne by the firm Khanna Talkies, in terms of the Award of Lala Vishwa Nath Khanna dated____.

9. That each party to this deed shall sign and execute such documents and Agreements etc for the effectual execution of this deed.

10. That the parties of the First, Second Part, Third and Fourth Part shall not include the partners only but also their Legal Heirs, Legal Representatives Successors and other Effects.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SIGNED THIS DEED ON THE DAY, month and year mentioned above."

(emphasis added)

5. The second defence which was raised was that all the disputes between the parties being brothers including for various other properties and businesses of the family stood settled in terms of the Family Settlement dated 15.6.1986 (Ex.PW1/D1) and which was signed by the appellant/plaintiff. All the properties and businesses were mutually divided in terms of the Family Settlement dated 15.6.1986 and drawn into separate lots and separate lots were given to all the family members including the four brothers.

6. After pleadings were complete, the trial court framed the following issues:-

"Issues

1. Whether the parties are not partners as per partnership deed dated 09.06.1983?
2. Whether defendant no. 1 had retired as a partner? If so, when and to what effect?
3. On what date the partnership between the parties carried on under the partnership deed dated 09.06.1983 is to be dissolved?
4. What are the shares of the parties on the date of such dissolution of the partnership?
5. What directions are to be given on dissolution of partnership?

6. Whether the parties had entered into mutual agreement dated 15.06.1986 and had divided the business and properties of the partnership amongst themselves? If so, to what effect.
7. Relief."

7. Evidence led by the parties is referred to in para 81 of the impugned judgment and which reads as under:-

> "81. Plaintiff examined himself as PW1 on his affidavit Ex.PW1/A and he relied upon documents Ex. PW1/1 to Ex.PW1/7 as under:-
> Ex.PW1/1 - True copy of the partnership deed dated 31.05.1983.
> Ex. PW1/2 - Office copy of the legal notice.
> Ex. PW1/3 to 5 - Postal receipts.
> Ex. PW1/6 & 7 - Returned A.D. cards
> Defendant no. 1 examined himself as DW-1 on his affidavit as Ex.DW1/A.
> Defendant no. 2 examined himself as DW-2 on his affidavit as Ex.DW2/A.
> Defendant no. 3 examined himself as DW3 on his affidavit as Ex.DW3/A."

8. With respect to the main issues the court below in its lengthy judgment has repeatedly referred to the fact that the Family Settlement dated 15.6.1986 will bind the parties inasmuch as the appellant/plaintiff admittedly had signed this document and the appellant/plaintiff has received properties in terms of the lot given to the appellant/plaintiff under the family settlement. The court below also notes that appellant/plaintiff is, after taking benefit of the properties which fell to his lot, conveniently denying only the inconvenient portions of the family settlement. The relevant paras of

the impugned judgment which deal with this aspect and arrived at conclusions are paras 88 to 107 and which paras read as under:-

> "88. At one point during cross examination, the plaintiff PW-1 admitted that, in his plaint, he had averred that, the family agreement dated 15.06.1986, had not been signed by all members of the family. This was contradicted by his oral statement, referred above.
>
> 89. At this point, the witness further wavered and stated that, his mother had not signed the said agreement. The witness admittedly never filed any suit to seek any declaration against the said family settlement as being null and void.
>
> 90. The total effect of the testimony of the plaintiff himself as PW1 has destroyed/demolished the entire case brought by him to the court 26 years ago. This case was filed in the year 1989, knowingly by the plaintiff that, the entire property and the business of the joint family had already been dealt with in the earlier family settlement arrived at, in the year 1986 i.e. 3 years before filing of the suit.
>
> 91. The claim of defendant no. 3 that, the same settlement had even been acted upon, was also fully substantiated by the own admission made by the plaintiff himself, throughout his cross examination.
>
> 92. As rightly contended by defendant no. 3, in view of the said settlement, which had already been acted upon, the shares had already been divided, as per the proportion and even they had been handed over/given the proportionate profit, as worked out.
>
> 93. Share referred to as lot A, fell to the share of the plaintiff admittedly, and was including the business of M/s Khanna Talkies, apart from the other properties, mentioned therein. From the above admission, which was most material on the aspect as reproduced above, throughout, there ultimately seems no doubt that, partnership business had also formed a part of the family settlement, the shares had all been apportioned between the parties/members of the family in different percentage of shares in the business of M/s Khanna Talkies.
>
> 94. 50% share of the profit in the said business was given to the plaintiff. One portion of another property (not subject matter of this suit) i.e. 8A, Rajpur Road, Delhi, including the landlord rights qua tenancy of Mr. A.S. Goel, were all part of lot A, which admittedly had been given to the plaintiff.
>
> 95. Therefore when the settlement had already been acted upon, division of share had also done, there was no cause of action or grievance left for the plaintiff to have filed the suit for dissolution and rendition of accounts of the particular business in question, based on partnership deed dated 31.05.1983, which also formed part of the family settlement Ex. PW1/D1.
>
> 96. **In his cross examination dated 22.05.2007, the plaintiff/PW1 gives a clear admission that, he had signed the agreement dated 15.06.1986. His attention was drawn towards photocopy of the said agreement, which was already on record, and after going through the contents of the same, he identified his own signatures at point X**

on each page of the said documents, and whereby the agreement was exhibited as Ex. PW1/D1 without any objection.

97. **Furthermore, the plaintiff also fully clarified that, he had signed the said agreement after going through the contents of the same at the relevant point of time, and that he had also agreed with the terms of the said agreement.**

98. **At any point in his testimony, he did not raise any objection to the agreement, either signing of the agreement or the contents of the agreement at all.**

99. Plaintiff/PW1 further goes on to admit that, after the death of their father, disputes arose amongst brothers regarding the several businesses, and further he admitted that, one Sh. Vishwanath Khanna had been appointed as Arbitrator to settle the dispute amongst the brothers. Admittedly meetings had taken place before Sh. Vishwanath Khanna, and thereafter, a verbal agreement was arrived at amongst the parties. "Said verbal agreement was reduced into writing on 15.06.1986 which is already Ex. PW1/D1.

100. Witness tried to volunteer and tried to wriggle out of the earlier admission by volunteering that the said agreement had never been acted upon. But by his next volunteered reply, it becomes clear that, virtually in letter and spirit, the agreement had been actually fully acted upon.

101. Relevant portions of the admissions are being reproduced as under :-

> *"It is correct to suggest that as per said agreement Lot-A mentioned therein was given to me. It is correct to suggest that in the said lot 50% share in the profit of Khanna Talkies, and one portion of property in 8A Rajpur Road including land lord right of tenancy of Mr. A.S. Goel was part of Lot-A."*

102. This then would clearly show that, the plaintiff had already been given his share, as per the settlement which also included 50% share in the profit of Khanna Talkies, apart from the other properties mentioned above, as in Lot-A.

103. Further, the plaintiff goes on to admit that, the share of other brothers had already been apportioned, as per the said settlement, when he states as under :-

> *"It is correct to suggest that defendant no. 1 was given Lot-B. One property bearing No. C1/29, Safdarjung Development Area devolved upon defendant no. 1."*

104. Similarly, the plaintiff/PW1 also admitted about the share, which was given to defendant no. 3, as per said settlement, as he states as under :

> *"It is correct to suggest that defendant no. 3 had got the jewellery business of Mokhamal Gikalchand and 20% share in the business of Khanna Talkies and some portion of Rajpur Road was also given to him as per the said agreement."*

105. Similar was the statement regarding the share of defendant no. 2 as under:-

> *"It is correct to suggest that 30% share of Khanna Talkies was given to defendant no. 2 in the said agreement. It is correct to suggest that defendant no. 1 was excluded from the share of Khanna Talkies."*

106. These kind of admissions were more than sufficient to establish that, the partnership dated 31.05.1983 already stood dissolved w.e.f. 15.06.1986, and in fact all the properties/business belonging to joint family had been divided as per mutual family settlement dated 15.06.1986 and the share had already been equally divided, and apportioned. In other words, settlement was fully acted upon.

107. <u>One of the subject matters of the settlement was the business of Khanna Talkies, which is subject matter of the present suit. When already the subject matter stood dealt with in the family settlement, there was nothing left for dissolution of the firm. Properties and business already stood divided as per said settlement, which share of each member of the family divided in terms of settlement Ex. PW1/D1."</u>

(emphasis added)

9. The issue with respect to dissolution deed dated 1.6.1987 as also again by discussing of the family settlement has been held against the appellant/plaintiff in terms of paras 108 to 117 and 122 to 130 and 141 of the impugned judgment and which paras read as under:-

108. <u>Not only this, even attention of the plaintiff/PW1 was drawn towards photocopy of the dissolution deed dated 01.06.1987, and after seeing the same, the plaintiff/PW1 did not raise any objection, rather identified his signatures at point X of each page thereof, and the said document was also admitted in his evidence as Ex. PW1/D3, apparently and clearly with the consent of the plaintiff/PW1 inasmuch as, he did not even whisper any objection even though the document was a photocopy.</u>

109. <u>Since the plaintiff/PW1 himself admitted contents of the said document, and the execution thereof, there remain no further need for formally proving the said document.</u>

110. This then would bring us to the point that, the fact of this family settlement, and fact of dissolution of the partnership business based on the deed dated 31.05.1983 qua Khanna Talkies already stood admitted i.e. as per Ex. PW1/D1 and Ex. PW1/D3.

111. Further on the point of settlement, <u>PW1 replied in his cross examination as under :-</u>

<u>*"After 1986, I have received profit from Khanna Talkies and Ishwarnath Brothers. We all four of us are partners in M/s Ishwarnath Brothers. I had shared income with my brothers. I do not remember till when I had received income from the said firm. It is correct to suggest that cinema situated at Chandausi was sold by me. I had given the sale consideration to the other partners also. The*</u>

payment was made in cash. I do not remember how much payment was made to the other partners."

It is correct to suggest that a family agreement was executed on 15.06.1986. Vol. But the same was never acted upon. It is correct to suggest that the said family settlement lot 'A' was given to me. I had not demanded the said lot because the said settlement was never acted upon. My brother had not claimed any property from me, which was in my possession and devolved upon them in the said family settlement. The residential property situated at SDA Hauz Khas came into the share of defendant no. 1, Paremeshwar Nath. Vol. The said agreement was never acted upon. It is correct to suggest that I have filed a suit against Parmeshwar Nath for eviction of the said property. The said family agreement is not acceptable to me even if the share mentioned therein is given to me.

I had not received the share, which was mentioned in family agreement dated 15.06.86 of the property situated at 8A, Rajpur Road, Delhi as the said family agreement had never been acted upon. It is correct to suggest that I am residing at 8A, Rajpur Road, Delhi. The portion in which I am residing at present had not fallen in my share in family agreement dated 15.06.86. I had not claimed my share because the said family agreement was never acted upon.

112. Agreement Ex. PW1/D1 was entered between Sh. Ishwarnath Khanna, who was first party and Sh. Parmeshwarnath Khanna who was second party, Sh. Premnath Khanna who was third party Sh. Kailashnath Khanna who was fourth party, and they were shown as all sons of Sh. Shambhunath Khanna, Ms. Shiv Rani Khanna who was fifth party, Ms. Kusum Khanna who was sixth party, Smt. Sabina Khanna who was seventh party, Ms. Veena Khanna was eighth party and Ms. Renu Khanna who was ninth party.

113. At the outset, it was stated in the introductory para no. 1 that, the parties were members of the joint family, and owners of various family properties and business in various properties which were dissolved, and now all the parties to the agreement were desirious of dividing family properties and business amongst themselves.

114. The first property itself in the list of the said properties and business, which forms the subject matter of the said division and settlement was Khanna Talkies Building, and the second was Khanna Talkies. First was described as 'A' and the second as 'B'. As regards Khanna Talkies building, it was stated that the building had been rented to partnership firm of Khanna Talkies at monthly rent, and the building was originally owned by the parties No. 1 to 5 of this agreement along with Sh. Sambhunath Khanna who was stated to have died in the year 1983, and vide a letter of arrangement dated 01.06.1986, it was stated that it has been decided to divide its share in the rent equally amongst the remaining owners, and therefore, share in the rental stated to have been divided as stated therein.

115. Khanna Talkies was stated to be a partnership business, and was being conducted as per partnership deed dated 31.05.1983, and the parties No. 1 to 4 of the family settlement were stated to be owners of shares therein to the extent of 25% each.

116. Thereafter, certain other business and properties of the joint family were mentioned in other paras. In further paras of the recital, it was stated that, whereas the parties hereto have agreed to divide the above mentioned properties and businesses, and for this purpose five lots have been prepared with consent of all the parties concerned, and out of the said lots, Lot-A was comprising Khana Talkies i.e. building as well as business, and 50% share therein, one residential block at 8 Rajpur Road, Delhi along with landlord rights qua Sh. A.S. Goel, tenant in the said premises at that time. Other lots were similarly mentioning the division of the properties and businesses sequence-wise.

117. By the next recital, Lot-A to fall to share of plaintiff Sh. Ishwar Nath Khanna, and similarly Lot-B onwards to Lot-E were to fall to the share of other members of the joint family.

xxxxx xxxxx xxxxx

122. Khanna Talkies is mentioned therein at serial no.4 under the list of properties to be divided. At serial no.1 in Lot 1 in the Proposal-1, infact it was further stated in this annexure that, these lots have been prepared, keeping in mind that Lot 1 be awarded to Sh. Ishwar Nath and Sh. Prem Nath because, both were interested in selling Khanna Talkies, and infact other family members were stated to have already sold off other properties and business, and also to have retained the sale proceed thereof.

123. From the own wordings of the said annexures that, the properties had already been turned into family properties including business of Khanna Talkies.

124. In the cross examination in that other suit, the plaintiff who is also plaintiff therein, further stated that under the family settlement, he was to be given certain properties, which he had not been given.

125. **Infact, in further cross examination, he kept supporting the execution of the family settlement, and also apportionment different properties, and selling out of different properties by different members of the family, and in this context, he admitted that he had sold off Vijaylaxmi cinema, but he had not distributed the consideration received by him from the sale of said cinema, between other parties.**

126. **It seems that where ever the plaintiff was getting advantage, he was supporting the settlement, and where ever, some portion had not been suiting the plaintiff, he was out of deny the same.**

127. The suit had been mainly contested by defendant No.3, and whose main contention was that, already there had been partition of the joint family properties and businesses, arrived at in the year 1986 i.e on 15.06.1986, and as per settlement, apportioned shares had already been divided amongst all the co-owners in the joint Hindu family including share of the mother, and the four brothers, who were parties in the suit, and also the share of the father.

128. It was also further contended that, the said settlement had already been fully acted upon, inasmuch as the physical possession of the said shares also had been given to the respective parties. Further

stretching his arguments, defendant no.3 has contended that, when already a settlement has taken place, shares already divided, and acted upon, which also included partnership business, which is in question in the present suit, the partnership already stood dissolved automatically, and no further question arises for dissolution or rendition of the account, which also already has been apportioned.

129. Therefore, the main controversy for the time being in this suit is only as to whether there had been any such mutual family agreement dated 15.06.1986, and whether shares had been apportioned, as per said settlement, and the said settlement had been acted upon, and whether the said settlement included the partnership business in question in the present suit.

130. One need not to go far, that the own testimony of the plaintiff himself, who examined himself as PW1. He from his own mouth has made all the material admissions about the said settlement.

xxxxx xxxxx xxxxx

141. **Furthermore, not only this, but Ex.PW1/D3 would clearly clinch the point, if any further doubt remains, as it is the dissolution deed, executed on 01.06.1987 between Sh. Ishwar Nath Khanna, Sh. Parmeshwar Nath Khanna, Sh. Prem Nath Khanna, and Sh. Kailash Nath Khanna, and this stated the desire of the partners to dissolve the said business of Khanna Talkies, which is the business in question. It states in Clause 1 thereof that, the said partnership business of Khanna Talkies stands herein dissolved w.e.f 31.05.1987. Said dissolution deed was signed by all four partners and this document stood admitted by the plaintiff."**

(emphasis added)

10. I completely agree, and adopt the detailed discussion, reasoning and conclusions of the court below and which shows that there did not remain any issue of rendition of accounts of the partnership firm of Khanna Talkies in terms of the partnership deed dated 31.5.1983 and especially in view of para 2 of the dissolution deed dated 1.6.1987 (Ex. PW1/D3) which has been reproduced above..

11. Learned counsel for the appellant/plaintiff sought to argue that in view of para 3 of the dissolution deed dated 1.6.1987 this deed is not a dissolution deed because para 3 talks of retirement of one partner of the partnership firm namely respondent no.1 and other three partners continuing with the partnership firm, however, I have really failed to understand this argument because surely besides document titling itself clearly as a dissolution deed, in law once one of the partner to a partnership firm retires and the partnership business continues with the remaining partners then the partnership of remaining partners is a new partnership and the old partnership stands dissolved by coming into existence of the new partnership firm. The argument of the appellant/plaintiff that the dissolution deed dated 1.6.1987 is not a dissolution deed is therefore rejected.

12. Learned counsel for the appellant/plaintiff finally argued that the family settlement dated 15.6.1986 is neither stamped nor registered and therefore the said family settlement could not have been looked at. The argument urged on behalf of the appellant/plaintiff is misconceived for two reasons. Firstly, even if this Court ignores the family settlement, the suit still had to be dismissed in view of the dissolution deed dated 1.6.1987 (Ex.PW1/D3) and which has been reproduced above. The second

reason is that the courts are extremely reluctant to call a family settlement as a partition deed and courts have liberally interpreted the language contained in the family settlement for not being taken as a partition deed. It is only if the agreement in question is a partition deed then the agreement requires stamping and registration otherwise it is settled law that family settlement need not be stamped and registered vide ***Kale and Others Vs. Deputy Director of Consolidation and Others (1976) 3 SCC 119***. I may note that the issue with respect to the language of a family settlement to be taken as a family settlement although it may seem to suggest creation of an interest in terms of the document called the family settlement is settled by the judgment of the Supreme Court in the case of ***Roshan Singh vs. Zile Singh AIR 1988 SC 881*** and in which judgment though the agreement did not refer to the agreement as recording of a past transaction, yet the Supreme Court held the document to be family settlement. This Court also would loath to undo what was done in terms of the dissolution deed entered into around 30 years prior today i.e on 1.6.1987.

13. Dismissed.

JULY 11, 2017 **VALMIKI J. MEHTA, J**

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