

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

+ **RFA No. 753/2017**

% **5th September, 2017**

DESHRAJ GUPTA & ORS. Appellants

Through: Mr. G.K. Mishra, Advocate.

versus

SHIVRAJ GUPTA & ORS. Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by three defendants in the suit impugning the judgment of the trial court dated 27.7.2017 by which the trial court has passed a preliminary decree in a suit for dissolution of partnership and rendition of accounts and has ordered that 20% share of the deceased partner late Sh. Lala Hansraj Gupta will stand devolved upon his legal heirs and to whom accounts have to be rendered by the remaining partners of the partnership firm. The operative para 35 of the impugned judgment reads as under:-

“35. In view of the above, plaintiff no. 1; plaintiff no. 2; plaintiff no. 3; LRs of plaintiff no. 4 jointly; defendant no. 1 and defendant no. 4 are entitled to 1/6th of 20% share of late Lala Hansraj Gupta in the partnership business of M/s Mridul Enterprises as on 03.07.1985 i.e date of death of Lala Hansraj Gupta. It is also held that the said LRs will also be entitled to simple interest on the ascertained share amount of late Lala Hansraj Gupta in the partnership firm, M/s Mridul Enterprises @ 6% per annum from 03.07.1985 till its realization. Preliminary decree sheet be prepared accordingly.”

2. The facts of the case are that there was a partnership firm in the name of M/s Mridul Enterprises and which carried on business since or about 1.11.1977. Partnership was duly registered with the Registrar of Firms on 21.3.1978 under Registration No. 817/78. Partnership deed dated 1.11.1977 was entered into between the parties. There were three partners in the partnership firm, namely, Sh. Lala Hans Raj Gupta/first party (the deceased partner), Sh. Deshraj Gupta/second party and Sh. Uday Raj Gupta/third party. The profit sharing ratios of these three persons were in the ratio of 20%:60%:20%, respectively. Sh. Lala Hans Raj Gupta expired at Delhi on 3.7.1985. As per the plaintiffs/respondents Sh. Lala Hans Raj Gupta died intestate. The appellants/defendant nos. 1, 2 and 5 relied upon a Will dated 28.5.1985 of late Sh. Lala Hans Raj Gupta. However, it is noted that the probate case bearing no. 62/1985 filed by the appellants was dismissed by the High Court in terms of its

judgment dated 11.5.2009 (Ex.PW1/3), appeal there against by the Division Bench was dismissed vide judgment Ex.PW1/4 in FAO (OS) No.237/2009 and Supreme Court also dismissed the SLP No.28437/2010 vide its order Ex.PW1/5. Therefore, late Sh. Lala Hans Raj Gupta is taken to have died intestate.

3. It was an undisputed fact before the trial court that there was a partnership deed between late Sh. Lala Hans Raj Gupta, Sh. Deshraj Gupta and Sh. Uday Raj Gupta. Profit sharing ratios of the partners was as stated in para 6 of the partnership deed and is already stated in para 2 above. Once late Sh. Lala Hans Raj Gupta died intestate then his share will naturally devolve upon his legal heirs.

4. Trial court has accordingly and rightly passed a preliminary decree holding that the existing partners after the death of late Sh. Lala Hans Raj Gupta, one of the partners, will be the accounting parties, and they would account for the 20% share of late Sh. Lala Hans Raj Gupta in the partnership firm.

5. Learned counsel for the appellants argued that late Sh. Lala Hans Raj Gupta initially did not contribute any capital in the partnership firm and therefore late Sh. Lala Hans Raj Gupta is not

entitled to 20% share in the profit as also the assets ,and therefore his legal heirs have no rights to the 20% share in the assets of the partnership firm, however, this argument is misconceived because it is admitted during the course of arguments that subsequently an amount of Rs.30,000/- was shown as capital contributed by late Sh. Lala Hans Raj Gupta in the balance sheet of the partnership firm on 3.7.1985. In any case, in my opinion, this argument is also absolutely frivolous to say the least because the concept of profit sharing ratio is a technical and legal concept and the effect of there being a profit and loss sharing ratio is that once the firm is dissolved then to the extent of percentage of profit sharing ratio a partner or his legal heirs would be entitled to that portion of the net assets being the net assets available after the dissolution process is complete in terms of the provision of Section 48 of the Partnership Act, 1932 and which section provides the mode of settlement of accounts between the partners.

6. There is no error in the impugned judgment. Dismissed.

SEPTEMBER 05, 2017

AK

VALMIKI J. MEHTA, J