

THE HON' BLE SRI JUSTICE C. V. NAGARJUNA REDDY
AND
THE HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

C.M.A.No.337 of 2017

Date : 15-03-2018

Between:

Golla Subrahmanyam and others .. Appellants

And

Golla Venkata Ramanaiah and others .. Respondents

COUNSEL FOR APPELLANTS: Mr. M. Sudheer Kumar

COUNSEL FOR RESPONDENT NOS.1 & 2 : Mr. Anup Koushik

COUNSEL FOR RESPONDENT No.3: --



THE COURT MADE THE FOLLOWING:

JUDGMENT: (*per* Hon'ble Sri Justice C.V. Nagarjuna Reddy)

This Civil Miscellaneous Appeal arises out of order dated 3-2-2017 in I.A.No.960 of 2015 in O.S.No.151 of 2015 on the file of the learned VII Additional District Judge, Ongole.

The facts, to the extent necessary for disposal of this appeal are that respondent No.2 is a partnership firm, which originally comprised respondent No.1, respondent No.7 and one Subba Rao. The partnership is at Will. When one of the partners i.e., Subba Rao, died, respondent No.1 made his efforts for reconstitution of the firm. Evidently, appellant Nos.1 and 7 – two of the remaining three partners, and appellant Nos.2 to 6 – the legal heirs of the deceased partner Subba Rao, did not cooperate in the reconstitution of the partnership firm. Therefore, respondent No.1 has filed O.S.No.151/2015 in his individual name and also in the name of the partnership firm-respondent No.2, inter alia for specific performance of the partnership agreement by directing the appellants to come forward to constitute the partnership firm and in the event of failure on their part to do so, to get the same done through the Court. Respondent Nos.1 and 2 have also sought for the relief of mandatory injunction directing respondent No.3 herein, who is defendant No.8 in the suit, to continue to supply oil to the retail outlet of the plaintiffs' firm.

Initially, in I.A.No.960/2015, ad interim mandatory injunction was granted against respondent No.3, by virtue of which the petroleum products were being supplied by it to respondent No.2-partnership firm. The said application came to be disposed of by the order under appeal after severe contest. The appellants have raised various objections to the maintainability of the suit as well as the I.A. The relevant among these objections are that respondent No.1 is not entitled to represent the partnership firm under the partnership agreement as appellant No.1 is nominated as the managing partner who alone is authorized to carry on the business on behalf of the partnership firm. Another objection was that respondent No.2-firm having already got dissolved, it ceased to exist and therefore no business could be carried on in its name. The Court below, having taken note of the facts that the suit itself was filed for reconstitution of the partnership firm; that the petroleum products are being supplied by respondent No.3 for over 25 years and that the balance of convenience and irreparable injury lie in favour of the respondents, granted the interim relief.

At the hearing, Mr. M. Sudheer Kumar, learned Counsel for the appellants, argued with strong conviction that the order of the lower Court is not sustainable at all because it has not adverted to any of the objections raised by his clients and that the Court below has completely sailed with respondent Nos.1 and 2, and failed to deal with the objections raised by the appellants.

Mr. Anup Koushik, learned Counsel for the respondent Nos.1 and 2, sought to support the order of the lower Court.

We do not intend to render conclusive findings on merits at this stage because the suit is pending before the lower Court and any such findings may prejudice the interests of the either parties. Since the learned Counsel for the appellants has pointed out that the lower Court has not adverted to the main objection i.e., once the partnership firm is dissolved, the business cannot be carried on in the name of the firm, we would like to render a prima facie finding on this aspect.

Under Section 42 of the Indian Partnership Act, 1932 one of the contingencies on which a partnership firm gets dissolved is by the death of a partner. However, this provision starts with the words “subject to the contract between the partners”. Clause 9 of the partnership agreement in question reads under :

“In the event of incapacity, retirement, insolvency of death of any partner, the continuing or surviving partners as the case may be, shall reconstitute the partnership and continue to carry on the business of the firm”.

In our prima facie opinion, the word “shall” preceding the words “reconstitute the partnership” in Clause 9 as reproduced above, indicate that the surviving partners are under the obligation to reconstitute the firm. If the appellants act contrary to the intention of the parties under the partnership agreement, the remaining partners cannot be deprived of the opportunity of running the partnership business till the suit is decided. The Court below has taken into

consideration the fact that for the last 25 years the Petrol Pump is being run under the partnership and respondent No.3 has been making the supplies. Even if the respondents succeed in the suit, the interests of the appellants will not be prejudiced as they will be entitled to insist on the respondents to account for the business and if the partnership makes any profit, they are also entitled to receive their respective shares. On the contrary, if the supplies are not made and the business is not run during the pendency of the suit, in the event of the respondents succeeding in the suit, the loss suffered by them and other partners cannot be compensated. We are therefore of the opinion that the lower Court has rightly allowed the I.A. to enable the respondents to run the Petrol Pump till the disposal of the suit.

For the aforementioned reasons, the Civil Miscellaneous Appeal is dismissed, however, with the observation that the findings rendered in this order shall not influence the Court below while disposing of the suit. The lower Court is directed to dispose of the suit within four months from the date of receipt of this order.

As a sequel to the dismissal of the Civil Miscellaneous Appeal, CMAMP No.567 of 2017 filed for interim relief is dismissed as infructuous.

C.V. NAGARJUNA REDDY, J

ABHINAND KUMAR SHAVILI, J

Date : 15-3-2018
AM



