

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7560 of 2017
Reserved on 08.11.2017
Date of Decision : 02.02.2018

Malkeet Singh and another.

... Petitioners

VERSUS

Harnek Singh and another.

.... Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Ashwani Bakshi, Advocate for the petitioners.

B.S.WALIA, J.,

1. Revision petition under Article 227 of the Constitution of India has been filed praying for setting aside order dated 23.08.2017 i.e. Annexure P-5, passed by the learned Additional Civil Judge (Senior Division), Malout, dismissing the defendants-petitioners' application under Order 7 Rule 11 CPC for rejection of the plaint.
2. Brief facts of the case leading to the filing of the present revision petition are that plaintiff/respondent No.1 filed a suit against the petitioners/defendants No.2 and 3 as well as respondent No.2/defendant No.1 for recovery of Rs.87,35,185/- i.e. Rs.67,28,224.64/- as principle amount plus interest i.e. Rs.20,06,960.36/- @ 12% per annum along with future interest @ 12% per annum till realization of the amount on account

of price of agricultural produce sold by him to Commission Agent Defendant No.1/respondent No.2.

3. That on receipt of notice in the suit, the defendants/petitioners put in appearance before the learned trial Court and filed application dated 07.10.2016 under Order 7 Rule 11 CPC for rejection of the plaint on the ground that defendant No.1-firm was not registered, therefore, the suit was not maintainable in terms of Section 69 (1) of the Indian Partnership Act, 1932 (hereinafter referred to as 'the Act'). It was further averred in the application that the plaintiff-respondent himself being a partner in the firm was liable for his acts as also that all the 'J' Forms relied upon by plaintiff-respondent No.1 were falsely prepared by him.

4. That in the reply filed by plaintiff-respondent No.1 to the aforementioned application, stand was that the firm was registered, that the petitioners were in control of the same., that all partners of defendant No.1 were party to the suit, suit had been filed in his individual capacity, as such the suit was not barred under any law etc. A perusal of the plaint reveals the averments that the plaintiff is an agriculturist having agricultural land in his name, that defendant No.1 i.e. Respondent No.2 is a partnership firm carrying on work of Commission agent at New Grain Market, Malout and that the petitioners as well as respondent No.1 i.e. plaintiff are partners in the firm but the petitioners i.e. defendant Nos.2 and 3 are having complete control of the firm and that apart from having an account as a partner in the firm, plaintiff-respondent No.1 is having an agriculture account also in the firm in which the defendant Commission Agent Firm makes entries regarding sale of agricultural produce by plaintiff-respondent No.1 to it i.e.

defendant No.1 /Respondent No.2.

5. Another application i.e. u/s 8 of the Arbitration and Conciliation Act, 1996 was filed by the petitioners for referring the parties to the suit to arbitration in terms of Clause 15 in the partnership deed dated 01.04.2005. Plaintiff/respondent No.1 filed reply denying applicability of the arbitration clause on the ground that he had not filed the suit in his capacity as a partner but only as an account holder in the firm as a farmer. The application u/s 8 of the Arbitration & Conciliation Act, 1996 was also dismissed by the learned trial court.

6. The learned trial Court dismissed the application under Order 7 Rule 11 CPC also vide order dated 23.08.2017. The same has been challenged on the ground that the learned trial court failed to take into account that admittedly, plaintiff/respondent No.1 was a working partner of the firm in question and the suit filed by him for recovery of amount was also in relation to the business of the said firm. Therefore, the view taken by the learned trial Court that plaintiff-respondent No.1 had not sued the firm in the capacity of a partner was wholly erroneous and unsustainable and in the circumstances, the suit was barred under Section 69(1) of the Act. It is contended that in the circumstances, the application under Order 7 Rule 11 CPC ought to have been allowed.

7. The learned Additional Civil Judge (Sr. Division), Malout, dismissed the application under Order 7 Rule 11 CPC on the ground that as per Section 69 of the Act, no suit to enforce a right arising from a contract or conferred by the Act could be instituted in any Court by or on behalf of any person suing as partner in a firm against the firm or any person alleged to

be or to have been partner in the firm unless the firm was registered and the person suing was or had been mentioned in the register of firm as a partner in the firm, that the suit for recovery had not arisen out of contract between the parties i.e. the firm and its partners nor was for the enforcement of any right under the Partnership Act, besides, the plaintiff had alleged that the firm was registered and was having a permanent account number, accordingly, the same was a matter required to be decided after appreciating evidence to be led on record.

8. I have considered the submissions of learned counsel for the petitioners. Section 69(1) of the Act which has been pressed into service by the learned counsel for the petitioner to oppose the maintainability of the suit reads as under:

“No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.”

A perusal of Section 69(1) of the Act reveals that a suit arising from a contract or conferred by the Partnership Act cannot be instituted in any Court by or on behalf of any person suing as partner in the firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the register of the firm as a partner in the firm. Learned counsel for the petitioners has also relied upon the provisions of Order 7 Rule 11 of the CPC to contend that a plaint is liable to be rejected where the suit appears from the statement in the plaint to be barred by any law. Learned counsel

by referring to the provisions of Section 69(1) of the Act contended that in the absence of any averment in the plaint that the firm was registered, the suit could not have been instituted since the same had been instituted by plaintiff-respondent No.1 in his capacity as a partner of the firm.

9. Admittedly, perusal of the plaint attached in CR No.7560 of 2017 reveals that the suit has been filed by the plaintiff as owner of agricultural land on account of sale of agricultural produce through defendant No.1 i.e. Respondent No.2 for which he had been given J-Forms by the defendant-petitioners as well as respondent No.2, therefore, the suit had been filed by him in his individual capacity and not as a partner of the firm.

10. Averments in the plaint reveals that the suit was filed by respondent No.1/plaintiff mentioning therein that he was a partner of the firm, that apart from his account as partner in the firm, he had an agricultural account in the firm, in which, the firm used to make entries regarding sale of crop by him and that he had been selling his agricultural produce through defendant No.1 i.e. respondent No.2 herein and that on 31.03.2013, a sum of Rs.35,58,314.92/- was due and payable to him. Respondent No.1/plaintiff also mentioned that despite the petitioners defendants as also defendant Commission Agent having agreed to make him payment for the paddy and wheat crop sold by him to the defendants Commission Agent Firm as and when he would demand the same, payment had not been made to him despite repeated requests, therefore he had filed the suit in question.

11. Once it is the categoric stand of respondent No.1/plaintiff in the plaint that the suit had been filed by him in his individual capacity for recovery of price of agriculture produce, no fault can be found in the impugned order

since the amount claimed by respondent No.1/plaintiff in the suit is not on account of any differences concerning the business of partnership between the partners but as an individual farmer for recovery of price of crops sold by him in his individual capacity to the defendant Commission Agent Firm. In the given position, Section 69(1) of the Partnership Act will not bar the suit in its present form. Reference in this connection is made to the decision of the Hon'ble High Court of Nagpur in case titled as ***Shriram Shaligram Shop versus Laxmibai and others 1949 SCC online MP 111 : AIR 1951 Nag 143*** wherein it was held that the words “suing as a partner in a firm” must be given their due meaning. Reliance was placed for aforesaid view upon the observations in '***Pritamsingh versus Jaswant Singh***', ***Misc.Second Appeal No.22 of 1944 decided on 12.4.1949***. Relevant extract of the same is reproduced as under :

“16. The only other case we need consider is a recent decision of Bose, C. J., and Mangalmurti, J., in 'Pritamsingh v. Jaswantsingh', Misc. Second Appeal No. 22 of 1944, decided on 12th April 1949. In that case the plaintiffs and the defendants were partners. The partnership was dissolved and the partners executed a document Exhibit A-1 which was called a deed of settlement. The suit was brought to enforce certain conditions in the deed of settlement and the plea taken was that the suit was barred under Section 69 (1) of the Indian Partnership Act. The learned Judges held that since the suit was based upon an independent cause of action, namely, the breach of the agreement, the suit was not barred. This is what the learned Judges observed:

"(14) The next question is whether the document is hit by Section 69 (1) of the Partnership Act. The material part of the section runs, 'no suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person 'suing as a partner in a firm' against the firm or any person alleged to be or to have been a partner in the firm.'" The crucial words here are 'suing ,is a partner in a firm.' The plaintiffs are not so suing. They are suing on Exhibit A-1 which constitutes an independent cause of action in itself. It does not matter that the parties to the document were at one time partners; nor would it matter if they were still partners; nor does it matter that the property concerned, including the money claims to equalise

the shares and the outstandings were once partnership property. Even if there had been no dissolution there would have been nothing to prevent the parties from agreeing to divide up part of the partnership property and exclude it henceforth from the scope of the partnership even if that partnership continued. In our opinion, an agreement of that kind would not be hit by Section 69 (1) because the plaintiffs in such a case would be suing on an independent cause of action and not as partners in a firm. The plaintiffs here rely not on the fact that either they or the defendant are partners (that is an accident so far this is concerned), but on the agreement."

12. In the light of the above, there is no merit in the revision petition.

Accordingly, the same is dismissed. However, nothing said in the order shall be construed as an expression on the merits of the case.

(B.S.WALIA)
JUDGE

02.02.2018

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Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No