**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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RSA No.185 of 1987 (O&M)
Date of decision: 28.02.2018

Surinder Mohan Nehra ...... **Appellant**

Versus

Sudesh Kumari ...... **Respondent**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Shailendra Jain, Sr. Advocate with
Mr. Satyendra Chauhan, Advocate
for the appellant.

Mr. Kanwarbir Singh Kang, Advocate
for the respondent.

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ANIL KSHETARPAL, J. (ORAL)

Detail arguments were heard and the order was pronounced. Now this Court proceeds to record reasons on 28.02.2018.

Defendant-appellant is in regular second appeal against the concurrent finding of fact arrived at by the Courts below decreeing the suit filed by the plaintiff-respondent for rendition of accounts of a partnership firm.

Plaintiff filed a suit claiming that she was a partner with the defendant in a coal depot and contract business in the name and style of M/s Surindera & Company, Patiala. She pleaded that the partnership deed was executed on 30.07.1962 between the parties according to which 3/4th share was to go to the plaintiff and 1/4th share was to go to the defendant. She pleaded that the defendant was called upon to render the accounts vide notice dated 24.02.1973 while dissolving the partnership firm, however, the accounts were not rendered.

The defendant contested the suit pleaded that there was no partnership deed executed between the parties ever and the defendant shifted to Chandigarh in the year 1965 and hence, the business came to an end and the partnership if any stood dissolved.

Both the Courts after appreciation of evidence available on the file decreeing the suit filed by the plaintiff after returning a finding that a partnership firm was constituted as is proved from writings dated 30.07.1962 and 28.10.1967.

Learned senior counsel for the appellant has vehemently argued that both these documents are unilateral writings of the defendant-appellant. Hence, these documents cannot be said to be a deed of partnership. The deed dated 30.07.1962 clearly records that the entire investment is being made by the plaintiff in both the businesses i.e. cool depot and contract work. The document records as under:-

> *"I shall keep and render accurate and full account of this partnership business oand out of profit I shall get 1/4th share only. I shall not be entitled raise or give loan or sell goods on credit and shall be liable for all losses caused by my negligence or default. This partnership can be dissolved by Smt. Sudesh Kumari Nehra at any time. I shall also start Bank Account and get her approval in writing every month by showing account to her. I shall not be entitled to undertake any other contract without the writing permission of Smt. Sudesh Kumari Nehra not shall I do my personal business during this period. Servants, if needed, shall be engaged by Smt. Sudesh Kumari Nehra, except labourers on daily wages."*

There is another writing executed by the plaintiff and the defendant on 28.10.1967. It would be appropriate to re-produce the entire writing dated 28.10.1967:-

> *"Whereas a Coal Depot was obtained in my name from the Civil Supplied Department, Punjab, by the efforts of Shri Rup Lal Nehra, the husband of Smt. Sudesh Kumari Nehra and my real brother and whereas I was then the student only and had no money or source so the amount of securities deposited and all the investment in the business was of Smt. Sudesh Kumari Nehra wife of Rup Lal Nehra which she gave me from her own pocket. The business is known as 'Surindera & Co.' and as all the money in the business has been invested by her so it was necessitated and desired by me to make it a partnership concern so that her name also be included in the said business and secondly she had to be satisfied so a partnership deed was executed by us on 30.7.1962 in which she agreed to give me 1/4th share in profit as I was the working partner and as I was only studying so she exempted me from the liabilities in loss if there will be any except which will be my negligence and fault. I also gave the intimation of this partnership to the District Food and Controller, Patiala, who approved of the same and that approval letter from District Food and Controller, Patiala is also given to her for her satisfaction. I have also purchased a Lambretta Scooter out of the partnership account with the consent of Smt. Sudesh Kumar which will remain the property of the partnership firm. I have given her today Rs.1500/- (One Thousand & Five Hundred) only out of the business account, the balance will remain with me as it is required for running payments and for coal wagons. I will pay the amount to her after receiving all the payments from the Government and other customers for which I am keeping upto date accounts. If I fail to pay or clear the accounts to Smt. Sudesh Kumari she can have my one fourth share in the property situated in Dharampura Bazar, Patiala, in lieu of the said amount and she will be entitled to retain or recover by sellling my above 1/4th share . I will be bound by the agreement which I have written with my free will without any pressure. I also under- not*

to sell, mortage or relinquish in any manner my 1/4th share of property till I clear my liabilities."

Argument of learned senior counsel for the appellant is that the writing dated 30.07.1962 was since unilateral, therefore, no partnership firm had come into existence. Partnership Act does not provide for a particular form for drafting partnership deed. The partnership can be created by the parties in any form. On joint reading of the aforesaid documents i.e. 30.07.1962 and 28.10.1967, it is apparent that the partnership firm had come into existence.

Second argument of learned counsel is that the reading of both the documents proved that the plaintiff was only an investor. In the considered opinion of this Court, once both the writings dated 30.07.1962 and 28.10.1967 talk of partnership concern, the partnership business, who would be of working partner and purchase of a scooter with the funds of the partnership firm, it cannot be said that partnership firm never came into existence.

Learned counsel has further submitted that in the agreement dated 28.10.1967, certain stipulations were laid down which cannot be part of the partnership agreement. In the considered opinion of this Court, the argument is also without any substance. The partnership is an agreement between the parties and unless some clause of the agreement is shown to be in violation of the law or public policy, the terms and conditions of the partnership deed are binding between the parties.

Next argument of learned counsel is that the plaintiff has not stepped into the witness-box and hence, adverse inference should be drawn against the plaintiff. In the present case, the plaintiff has already produced overwhelming evidence to prove the existence of the partnership firm. The suit is only for rendition of accounts. It is not the case of the defendant-appellant that the accounts have been rendered. Learned counsel for the defendant-appellant could not point out any prejudice caused to the defendant-appellant on account of non-appearance of the plaintiff in the evidence. Roop Lal, husband of the plaintiff has appeared in the evidence as PW-8. No doubt, normally the party to the suit should appear in the Court, however, it is not necessary that in all cases, the Court must draw adverse inference against the plaintiff. Drawing of adverse inference would always depend upon facts and circumstances of the case. If the Court finds that on account of non-appearance of the party to the suit any prejudice has been caused or some important facts which were exclusively in the knowledge of the party have not been proved, the Court would be justified in drawing adverse inference. In the present case, learned counsel for the appellant could not point out such reasons for drawing adverse inference.

Learned counsel for the appellant has further submitted that no doubt, the attestation of the deed dated 28.10.1967 by the marginal witness has been proved, however, evidence has only been led with regard to signatures of the attesting witnesses. He submits that unless and until the marginal witness knows the contents of the document which is executed in his presence, it cannot be said to be proved.

In the considered opinion of this Court, argument does not have any merit. First of all, a partnership deed is not required to be attested by the marginal/attesting witnesses. Secondly the signatures of the attesting witness are only obtained by the parties so as to add credence to the validity of the document. Both the Courts have found that the defendant-appellant had executed the documents dated 30.07.1962 and 28.10.1967. Learned counsel for the appellant has not addressed any argument that the finding of both the Courts below on this aspect are erroneous. Such being the position, there is no merit in the argument of learned counsel for the appellant.

In view of the aforesaid discussion, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

28.02.2018
Dinesh Bansal

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No