

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

+ **RFA No. 317/2018**

% **16th April, 2018**

ASHA GUPTA Appellant

Through: Mohd. Shariq and Mr. Wasim
Alam, Advocates.

versus

INDER SINGHAL & ORS. Respondents

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 14616/2018 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

RFA No. 317/2018 & CM No. 14615/2018 (stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant no.2 in the suit impugning the judgment of the trial court dated 6.1.2018 whereby the trial court has decreed the suit for recovery of Rs.18,10,000/- along

with interest at 9% per annum by applying Order XII Rule 6 CPC i.e judgment on admission.

2. The facts of the case are that the respondent no.1/plaintiff filed the subject suit against three defendants. Defendant no.1 is the partnership firm M/s Saimax Décor, and of which firm the appellant/defendant no.2 and Ms. Alka Maheshwari respondent no.3/defendant no.3, were partners.

3. As per the suit plaint, respondent no.1/plaintiff was approached for giving of loan to the partnership firm because partnership firm wanted to make a construction on its showroom at 805, Kotla Mubarakpur, Opposite Defence Colony, Delhi. Respondent no.1/plaintiff paid a total amount of Rs.26,10,000/-. Rs. 14,50,000/- was paid by RTGS on 14.12.2013 from the respondent no.1/plaintiff's account. A sum of Rs.6,00,000/-and Rs.5,60,000/- was paid by RTGS on 16.12.2013 from the account of the wife of the respondent no.1/plaintiff Smt. Alka Singhal. Since only a sum of Rs.8,00,000/- was repaid, therefore for recovery of the balance amount the subject suit was filed.

4. Appellant/defendant no. 2 and respondent no. 3/defendant no. 3, partners of the respondent no. 2/defendant no. 1 firm contested the suit by filing their written statements. In the written statement of the appellant/defendant no.2 it is not disputed that the loan was given by the respondent no.1/plaintiff to the partnership firm, however the suit was prayed to be dismissed because the case of the appellant/defendant no. 2 was that in terms of the understanding between the appellant/defendant no.2 and respondent no. 3/defendant no. 3 entered into, at the time of dissolution of the firm, the liability towards the respondent no.1/plaintiff had been taken over by the respondent no. 3/defendant no. 3.

5. It was also contended by the appellant/defendant no. 2 that she had already made payment to the respondent no. 3/defendant no. 3 in terms of the dissolution and therefore the liability is only of the respondent no.3/defendant no.3.

6. Trial court has decreed the suit by observing that it is undisputed that loan was indeed granted to the partnership firm/respondent no. 2/defendant no.1, of which the appellant/defendant no. 2 and respondent no. 3/defendant no. 3 were partners, and

therefore, every partner is liable for all the liabilities of the partnership firm.

7. In my opinion, no fault can be found in the impugned judgment of the trial court, inasmuch as, the liability of a partnership firm is the liability of all the partners. An *inter se* arrangement between partners to discharge liability of the third person does not bind the third person unless the third person is also a party to the *inter se* arrangement between the partners. In the present case it is not the case of appellant/defendant no.2 that the respondent no. 1/plaintiff was a party to this arrangement between the appellant/defendant no. 2 and the respondent no. 3/defendant no. 3. Therefore, even for the sake of arguments if we take that in terms of the *inter se* arrangement between the appellant/defendant no.2 and the respondent no.3/defendant no.3 till the loan amount to the respondent no.1/plaintiff had to be cleared by the respondent no. 3/defendant no. 3, the said arrangement will not bind the respondent no. 1/plaintiff.

8. I may note that the object of law is that since a partnership firm is not a legal entity all the partners are jointly and severally liable for dues of the partnership firm and the partners cannot

arrive at an *inter se* arrangement to restrict the liability of the partnership firm to only one partner *qua* a third person to the partnership firm. If *inter se* arrangements between partners are allowed to be fastened upon third persons then grave frauds will be perpetuated because partners can always agree that the entire liability of a firm will be the liability of an insolvent partner or a partner who has no assets, and which will have the effect that the third person claim/entitlement from all the partners of the partnership firm will be defeated. The relevant paras of the trial court for decreeing the suit read as under:-

“7. In case of Charanjit Lal Mehra and Ors. vs Smt. Kamal Saroj Mahajan and Anr., AIR 2005 SC 2765, the Hon'ble Supreme Court has held that order 12 Rule 6 CPC is enacted for the purpose and in order to expedite the trials and if there is any admission on behalf of the defendants or an admission can be inferred from the facts and circumstances of the case without any dispute of the matter, then in such a case, in order to expedite and dispose of the matter such admission can be acted upon.

8. Perusal of the record shows that defendant no. 3 in her written statement has admitted the fact that in the month of December 2013, for the purpose of sale/business activities of the above said kitchen products of Mettas Stainless Steel, the defendants wanted to construct a showroom at 805, Kotla Mubarakpur, Opp. Defence Colony, New Delhi-03 and for the that purpose the defendants alongwith the husband of defendant no. 3 approached and requested the plaintiff to help them financially for the purpose of construction of the said showroom at the said address and asked for a total amount of Rs. 26,10,000/- for a period of one year and that the plaintiff acceded to the above said request of the defendants and gave them an amount of Rs. 14,50,000/- by way of RTGS on 14.12.2013 from his account and Rs. 6,00,000/- and Rs.5,60,000/- by way of RTGS on 16.12.2013 from the account of his wife. Defendant no. 3 further admitted the fact of

repayment of part amount of Rs. 8 lakhs to the plaintiff out of total amount of Rs. 26,10,000/- till date.

Record also shows that defendant no. 2 has also not specifically denied the averments of the plaint and shifted his burden on the shoulder of defendant no. 3. She stated that alleged loan was taken by defendant no. 3 through her husband and the payment thereof have always been rooted through defendant no. 3 via her husband and at the time of dissolution of defendant no. 1 firm, the balance payable amount was already taken by defendant no. 2 for making it paid to the concerned party.

9. The relevant provisions of The Partnership Act 1932 are as under:-

Section 25. Liability of a partner for acts of the firm:-

Every partner is liable, jointly with all the other partners and also severally, for all the acts of the firm done while he is a partner.

Section 72. Mode of giving public notice-

A public notice under this Act is given-

(a).....

(b) in any other case, by publication in the Officials Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.

10. Plaintiff filed suit against defendants for recovery of Rs. 18,10,000/- Defendant no. 2 & 3 stated in their WS that their partnership has been dissolved on 16.02.2015 and is no more in existence thereafter. Perusal of the record shows that plaintiff gave the defendants an amount of Rs. 14,50,000/- by way of RTGS on 14.12.2013 from his account; and Rs. 6 lakhs and Rs.5,60,000/- by way of RTGS on 16.12.2013 from the account of his wife Smt. Alka Singhal, thus, defendants were given loan much before the dissolution of their partnership firm.” (underlining added)

9. In view of the aforesaid discussion there is no merit in the appeal. Dismissed.

APRIL 16, 2018/ib

VALMIKI J. MEHTA, J