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

*Decided on: 28<sup>th</sup> February, 2018*

+ CM(M) 804/2016

M/S NEW ERA INDUSTRIES

..... Petitioner

Through: Ms. Stuti Gupta & Mr. Faheem  
Nisar Shah, Advs.

Versus

SONIA PAUL

..... Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER (ORAL)**

1. The petitioner is the plaintiff of the suit (suit no. 730/2014) which was instituted in 2007 against the respondent (defendant) for recovery of Rs. 1,16,032/- with interest, it statedly being the amount due for the goods sold. The petitioner (plaintiff) would describe itself as a partnership firm duly registered, Mr. Anil Khanna being a partner fully conversant with the facts and, therefore, competent to sue on behalf of the firm, the suit having been filed under his signatures. The copy of the written statement submitted by the defendant would show that besides other defences raised, the claim of the plaintiff about its status as a registered partnership firm and that of Mr. Anil Khanna as partner, entitled to sue, were contested.

2. The Trial Judge framed issues on 03.10.2009, one of the issues being for addressing the question as to whether the plaintiff is a registered partnership and whether the person who has signed and filed the plaint is a partner. The burden of proof was wrongly placed by order dated 03.10.2009 on the defendant. But, by subsequent order, suitable correction was made, the burden of proof being brought on the plaintiff.

3. Mr. Anil Khanna, the partner under whose signatures the suit was presented died in April, 2009 and, consequently the partnership underwent a change, a new partnership having been brought into existence on 01.05.2009, it being the consistent case of the plaintiff that the firm is duly registered.

4. On the application of the plaintiff, Mr. H.S. Sodhi was brought in as the authorized representative (AR), *inter alia*, on the strength of special power of attorney (SPA) executed by Mr. Aman Khanna, another partner of the firm, this having the approval by various orders of the trial court.

5. It appears the case lingered on, *inter alia*, because the defendant had indicated willingness to settle amicably. Since such efforts did not bear fruit, the case proceeded further. It further appears that the plaintiff had concluded evidence on 26.09.2014 by tendering the evidence of Mr. H.S. Sodhi, AR. Thereafter the case had entered the stage of defendant's evidence but she would not lead any and, thus, the opportunity stood closed on 05.02.2015 taking the case to the stage of final arguments.

6. Later, three applications were moved; one, under Order 7 Rule 14 of the Code of Civil Procedure, 1908 (CPC); second, under Order 16 Rule 1 CPC; and, the third, under Section 151 CPC. By the first application under Order 7 Rule 14 CPC, the plaintiff wanted to bring on record, a series of documents in the nature of partnership deeds executed in 1989, 1996, 1999, 2006, 2009 and 2010, besides the notarized copy of SPA executed in 2015 and copies of forms issued by Registrar of Firms affirming the firm to be duly registered. The second application under Order 16 Rule 1 CPC prayed for summons to be issued to the concerned official of the Registrar of firms to prove the factum of the plaintiff firm being registered. The third application under Section 151 CPC sought recall of Mr. H.S. Sodhi (PW-1) to affirm the aforesaid facts concerning his due authorization by the SPA on 14.07.2015. All the said three applications were dismissed by Civil Judge by order dated 07.05.2016 with costs of Rs. 3,000/- which is impugned by the petition at hand.

7. In spite of being duly served, the respondent would not appear in these proceedings before this Court. It has been pointed out from the copies of the proceedings before the trial Court that the respondent (defendant) has not been vigilant or diligent in appearing to assist the trial court as well.

8. Be that as it may, having heard the learned counsel for the petitioner/plaintiff, this Court is of the opinion that the Civil Judge has taken a hyper-technical view in throwing out the additional material which was sought to be presented through the application under Order

7 Rule 14 CPC, the other two applications having been dismissed in the consequence, without any thought being given to the justification.

9. Though it does appear that the plaintiff itself has not been very diligent in the matter in that these documents, given the knowledge that the questions raised were also about the registration of the firm and the authorization of the person under whose signatures the plaint was presented, should have been submitted earlier, it appears that more or less a similar effort was made previously by another application under Section 151 CPC which was dismissed by order dated 21.08.2015, when it escaped the attention of the Civil Judge that the copies of the documents then tendered were not restricted to partnership dated 29.08.2012 as was the impression expressed.

10. The trial of a civil suit is a quest for truth. If the plaintiff is in a position to show by official records that it has been a firm duly registered under the Partnership Act, it should have been granted, in all fairness, an opportunity to bring home the said fact by requisite evidence. Allowing the applications (which have been dismissed by the impugned order) would have clinched the issue rather than prolong it further. Given the background, however, that the plaintiff could also have taken the requisite steps in this respect at the initial stages, the permission deserves to be granted only subject to terms.

11. Thus, the above-mentioned applications are allowed on costs as imposed by the trial Court which shall be paid, rather than to the defendant, into the funds of concerned District Legal Services Authority. Ordered accordingly.

12. Needless to add, as a consequence of the above order, the documents presented with the application under Order 7 Rule 14 shall be taken on record and summons shall be issued in terms of the prayer made in the application under Order 16 Rule 1 CPC, liberty also being given to the plaintiff to present and examine further Mr. H.S. Sodhi (PW-1) though such examination would be restricted to the proof of the registration of the firm and the authorization of the witness under the SPA.

13. The petition and the applications stand disposed of in above terms.

**R.K.GAUBA, J.**

**FEBRUARY 28, 2018**

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