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

+ **O.M.P.(I) (COMM.) 402/2016**

PAMELA MANMOHAN SINGH Petitioner

Through Mr. Mahender Rana, Mr. Sourabh
Gupta, Mr. Puneet Yadav and Mr.
Sumit Bhabana, Advs.

versus

GURMIT SINGH & ORS. Respondents

Through Mr. M. M. Kalra and Ms. Sonali
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **09.07.2018**

IA No.8690/2018

1. Allowed, subject to just exceptions.

IA Nos.8688-89/2018

2. The applicants before me claim to be the legal heirs of, one, Sh. Balwant Singh. It is not in dispute that Sh. Balwant Singh has passed away.

3. The applicants by virtue of the captioned applications seek impleadment and stay of the arbitration proceedings. Impleadment is sought via IA No.8688/2018 while stay of the arbitration proceedings is sought via IA No.8689/2018.

4. The applicants are concerned with properties which are described as plot Nos.7/15, 7/18 and 7/28 and are situate in Kirti Nagar Industrial Area, New Delhi.

5. According to the applicants, these properties are not properties

of the partnership firm described as: M/s. Indian Refrigeration Industries (IRI).

6. To be noted, the applicants were party to a suit, being Suit No.2882/2013, which was instituted in the Court of Civil Judge (Judicial Division), Chandigarh.

7. In this suit, some of the applicants were arrayed as plaintiffs while others arrayed as defendants.

8. Admittedly, the suit has been disposed of by way of a final judgment and decree dated 2.9.2016.

9. The operative part of the judgment insofar as the aforementioned properties are concerned reads as follows:

“39. The perusal of file shows that 'Property B' was transferred in the name of late Sh. Balwant Singh as a lease hold property for lease period of 99 years vide lease deed Ex.DW4/A or Ex.D5. This lease deed Ex.DW4/A was duly proved by witness DW 4 namely Sevajit by bringing original record in court. 'Property C' is proved to be owned by M/s Indian Refrigeration Industry (IRI) vide sale deed Ex.DW5/1, duly proved by witness DW 5 Sevajit by bringing in court the original record from concerned quarter. Similarly 'Property D' is proved to be owned by M/s IRI vide sale deed Ex.DW4/B, duly proved by DW 4 witness Sevajit by bringing original record in court. . Further it has come in the evidence that 'Property B' which was earlier leasehold property in favour of lessee late Sh.Balwant Singh during his lifetime vide document Ex.DW4/A was later on used as property of partnership firm M/s Indian Refrigeration Industry. This fact is proved not only from the oral evidence of PW 1 but also from circumstantial evidence in documents Ex.DW4/B and DW5/1 i.e. sale deeds for 'Properties D & C' respectively as per which address of vendee M/s IRI is categorically mentioned as 'Property B' i.e. plot no. 7/15, Kirti Nagar, Industrial Area, New Delhi. Moreover, document Ex.D6 also shows that presently 'Properties B, C & D' i.e. 7/15, 7/17 and 7/28, Kirti Nagar, New Delhi are owned

by M/s Indian Refrigeration Industry (IRI) after when mutations were transferred in the name of firm and all the taxes are being paid by the firm. To corroborate this, PW 1 in his cross-examination at page no. 7 on 20.10.2015 has also categorically admitted that 'Properties B, C & D' belong to partnership firm M/s IRI as per document Ex.D6.

40. It has come during evidence that late Sh. Balwant Singh had 10% share in partnership firm (IRI) at the time when all the said properties i.e. 'Properties B, C & D' were thrown into pool of properties to partnership firm. It is pertinent to mention here that once a property is used as property of partnership firm then it vests in the firm as per provisions of Section 14 of Partnership Act, 1925. Notwithstanding the fact that late Sh. Balwant Singh had 10% share in the profits of partnership firm M/s Indian Refrigeration Industry during his lifetime, the property of firm shall not devolve upon legal heirs of late Sh. Balwant Singh.

41. Ld. counsel for the defendant no.3 has very rightly relied upon case laws titled as Addanki Narayanappa and another versus Bhaskara Krishnappa (dead) and another (thereafter his heirs and others) AIR 1966 SC 13 (V 54 C 251) Civil Appeal No.299 of 1961 (From AP AIR 1959 389 FB) 21.01.1966, in which it was observed by their Lordships as follows:-

*“The provisions of Ss. 14, 15, 29, 32, 37, 38 & 48 make it clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership **it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing to the partnership from the realisation of this, property, and upon dissolution of the partnership to a share in the money representing the value of the property.** No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner*

*can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remains after satisfying the liabilities set out in Cl. (a) and sub-cl. (i), (ii) and (iii) of Cl. (b) of s: 48. The whole concept of partnership is to embark upon a joint venture and for that, purpose to bring in as capital money or even property including immovable property. **Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership.** It is true that even during the subsistence of the partnership a partner may assign his share to another. In that case what the assignee would get would be only that which is permitted by S.29 (1), that is to say the right to receive the share of profits of the assignee and accept the account of profits agreed to by the partners".*

42. In view of aforesaid wonderful observations of Hon'ble Supreme Court of India, it is very clear that a partner who has once brought his property as a capital in the joint venture of a partnership firm, he would not be able to exercise his right upon such property anymore. Such partner would only be entitled to the share of profits as per partnership deed. Therefore, even if late Sh. Balwant Singh was having 10% share in the profits of firm M/s IRI during his lifetime when such firm had 'Properties B, C & D', legal heirs of late Sh. Balwant Singh, after the death of Sh. Balwant Singh, could have sought for only rendition of account or for recovery of unpaid

share of late Sh. Balwant Singh and that too within limitation period of three years from the date of death of Sh. Balwant Singh. As per aforesaid observations of Hon'ble Apex Court, legal heirs cannot lay their claim upon properties which was once thrown into pool of partnership firm. Accordingly, none of the parties to present case, being legal heirs of late Sh.Balwant Singh, are entitled to any share in 'Properties B, C & D' i.e. plots no. 7/15, 7/17 & 7/28, Kirti Nagar, Industrial Area, New Delhi as these properties are now properties of partnership firm M/s Indian Refrigeration Industry (IRI)."
(emphasis is mine)

10. Clearly, according to the learned Civil Judge, the aforementioned properties are properties of IRI.

11. Mr. Kalra, who appears for the applicants says that an appeal has been preferred against the aforementioned judgment and decree and that the same is pending adjudication.

12. Given this situation, according to me, at the moment, the applicants cannot intercede in the matter. As noted above, these are applications moved in a disposed of Section 9 petition, which was instituted by the non-applicants as far back as on 5.10.2016.

14. I am informed by Mr. Rana that arbitration proceedings have already commenced. I am further informed by Mr. Rana that the arbitration proceedings are at the stage of completion of pleadings.

15. To my mind, these applications, for the foregoing reasons, are unsustainable. The applicants can, if they succeed finally in the appeal, always intercede in the matter at the stage of execution of the award, if any, obtained by the non-applicants.

16. Consequently, the applications are disposed of in the
aforementioned terms.

RAJIV SHAKDHER, J

JULY 09, 2018

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