HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.A.No.4 of 2018 in/and C.R.P.No.404 of 2018

and

C.R.P.No.1416 of 2018

COMMON ORDER:

These two Revisions arise between the same parties out of the same suit and therefore they are being disposed of by this common order.

2. Petitioners are defendant Nos.3 to 5 and 8 in O.S.No.237 of 1994.

THE SUIT AND PRELIMINARY DECREE THEREIN

3. The said suit was filed in 1988 as O.S.No.1397/1988 before the V Addl.Judge, City Civil Court, Hyderabad by 1st respondent (plaintiff) against one Syed Azam (D1), respondent No.8 (D2), respondent no.9 (D3), 4th petitioner (D4), respondent no.10 (D5) and respondent no.11 (D6) contending that they are all partners in a firm known as M/s. Deccan Builders, but the defendants are not rendering a true and proper accounts of the firm and to pass a decree directing the defendants to render a true and proper accounts of the firm and to pay to the 1st respondent/plaintiff his share of the profits and also direct the defendants to pay costs.

4. It was later transferred to III Member Tribunal for Disciplinary Proceedings-cum-VIII Additional Chief Judge, City Civil Court, Hyderabad and renumbered as OS No.237 of 1994.

5. A preliminary decree was passed on 11-09-1996 by the III Member Tribunal for Disciplinary Proceedings-cum-VIII Additional Chief Judge, City Civil Court, Hyderabad directing the defendants to render a true and proper accounts of the said firm Deccan Builders and to pay the 1st respondent/plaintiff 20% share of profits along with costs.

THE DECISION IN CCCA NO.129 OF 1996

6. Challenging the same, D1, D3/ respondent no.9 and D4/4th petitioner filed C.C.C.A.No.129 of 1996 in the High Court.

7. Pending the said appeal D1 died and Respondent No.12 and petitioner Nos.1 to 3 were impleaded as his legal representatives.

8. Pending the said appeal, the 1st respondent/plaintiff also died and respondent Nos.2 to 6 were brought on record as his legal representatives.

9. On 30-09-2008, the said appeal was dismissed.

C.R.P.No.1416 of 2018

10. Thereafter Respondent No.s 2-6 filed I.A.No.87 of 2010 under Order XX Rule 15 and 16 C.P.C. for passing a final decree

determining the profit of the firm M/s.Deccan Builders and to allot 20% of the share out of the profits to them in terms of the preliminary decree. This application was filed on 28-11-2009.

11. Pending the said I.A., Respondent No.s 2-6 also filed I.A.No.670 of 2010 under Order XXXVIII Rule 5(1) and (3) C.P.C. to attach two flats bearing Nos.1001 and 1003 situated at House No.5-9-30/5, Paigah Plaza, Basheerbagh, Hyderabad pending disposal of the final decree petition.

12. Pending it's disposal in I.A.No.670 of 2010, on 20-09-2016 an interim order was passed holding that the J.Drs were trying to dispose of the said two flats with an intention to obstruct or delay the execution of the final decree that may be passed against them in I.A.No.87 of 2010, and they ought to be directed to furnish security for a sum of Rs.10,00,000/- or show cause why they should not furnish the security and if they do not furnish security or show cause within 48 hours, there shall be conditional attachment of the said properties. It is not in dispute that the attachment order was affected and the said attachment is continuing till date.

13. In the meantime, in the final decree petition I.A.No.87/2010, a memo containing a *tentative* statement of accounts of the said firm was filed on 20-11-2009 by the D.Hrs./respondent Nos.2 to 6 claiming as their share in the profits Rs.1,12,43,770/-.

14. It is important to note that during the pendency of the suit, an Advocate-Commissioner was appointed in 1988 to take inventory of account books, documents, files and papers pertaining to the firm M/s.Deccan Builders and other immoveable properties and the Advocate Commissioner had filed a report specifically stating that he could not find any account books of the firm in the premises of the firm, and that these account books were in the custody of the 10th respondent/5th defendant.

15. The 12th respondent filed a counter in I.A.No.87/2010 contending that she is one of the legal heirs of Syed Azam/1st defendant, that final decree cannot be passed against her and other legal heirs of the 1st defendant; that the plaintiff/D.Hr./1st respondent was only a nominee of the 10th respondent/5th defendant and the 5th defendant was alone incharge of all the accounts, that they are in his custody and he never showed it to 1st defendant during the life time of the 1st defendant. It was also contended that 1st defendant had filed criminal complaint also against 10th respondent/5th defendant, Respondent no.1/plaintiff and 8th respondent before a Magistrate, and the account books were not in custody of the Syed Azam/1st Defendant.

16. This counter was adopted by petitioners herein.

17. After considering the contentions of both sides, a common order was passed on 02-08-2017 in IA.No.670/2010 and in IA No.87/2010 to the petitioners as well as respondent Nos.8 to 12 to render a true

and proper accounts of the firm. It was observed that if they do not file and submit any true and proper accounts within one month, final decree would be passed as per the calculation memo submitted by Respondent No.s 2-6/Legal Representatives of deceased plaintiff on 20-11-2019. In IA.No.670/2010, attachment orders passed earlier were directed to continue pending disposal of final decree petition.

18. This portion of the order dt.2-8-2017 in I.A.No.87 of 2010 insofar as it affects the petitioners, is assailed in C.R.P.No.1416 of 2018 by petitioners/defendant Nos.3 to 5 and 8.

19. They then filed IA.SR No.23731 of 2017 0n 14-9-2017 under Sec.148 of CPC to enlarge the time for complying with the order dt.2.8.2017 in IA No.87/2010 by one month contending that that they did not receive the calculation memo dt.20-11-2019 and it was served on them only on 11-09-2017, that too on 'whatsapp' sent to their counsel; that the claim made in the calculation memo by the D.Hrs is exorbitant, imaginary and without any basis; that the firm had taken up the project of construction of the subject complex way back in 1980s and had completed the same in 1982-83; that the complex consists of 48 tenements; petitioners are in the process of verifying the necessary record relating to the project and sale transactions entered into concerning each of the flats sold; they are taking steps to obtain certified copies of the sale deeds and market value certificates in respect of the tenements from the concerned Sub-Registrar; and they would be in a position to furnish true and proper accounts of the firm only after obtaining and verifying these records. They therefore sought enlargement of time of one month granted on 02-08-2017 in I.A.No.87 of 2010 by the Court below invoking Section 148 C.P.C. On 14-9-2017, time was extended till 16.10.2017.

C.R.P.No.404 of 2018

20. The petitioners/J.Dr Nos.2 to 5 and 8 also filed on 10.11.2017, I.A.No.5782 of 2017 under Or.8 R.1A(3) CPC for grant leave to them to file certain sale deeds and market value certificates issued by a Sub-Registrar and they were mixed up with other records and the market value certificates were obtained recently, that delay in filing them is not willful and they would assist the court to decide the *lis* involved in the matter.

21. This application was opposed by the 5th respondent/4th plaintiff representing respondent Nos.3, 5 and 6. He contended that the said application is not maintainable in law or on facts and the petitioners had deliberately not complied with the order dt.02-08-2017 in I.A.No.87 of 2010, which clearly held that the petitioners and other J.Drs. should render a true and proper accounts of the firm within one month time and had directed that otherwise, the calculation memo filed by the D.Hrs./respondent Nos.2 to 6 shall be considered and final decree would be passed as per the calculation memo filed by them; that the time of one month granted by the Court below had already

expired; and since the petitioners failed to take steps, it became final and not binding on them

22. On 02-01-2018, the Court below dismissed IA No.5782/2017 in IA 87/2010 stating that though petitioners had been directed to render true and proper accounts of the firm within one month; they had not submitted the accounts or sought for enlargement of time; and I.A.No.5782 of 2017 filed to receive documents i.e. certified copies of sale deeds and market value certificates, is not maintainable. It also took note of the fact that calculation memo had been filed by petitioners way back in November, 2009 and petitioners had never raised any objection during pendency of I.A.No.87 of 2010 and had not made any efforts to present the concerned sale deeds and market value certificates and so extension of time cannot be granted.

23. Challenging the same, C.R.P.No.404 of 2018 is filed.

Proceedings in this court

24. This Court, initially on 29-01-2018 granted stay of all further proceedings in I.A.No.87 of 2010 in O.S.No.237 of 1994, which was extended from time to time.

25. I.A.No.4 of 2018 is filed to vacate the said order.

CONTENTIONS OF PARTIES

26. Learned counsel for petitioners contended that the evidence on record, in particular, the Advocate Commissioner's report given in

1988 itself revealed that the records/account books of the firm M/s.Deccan Builders were with 10th respondent/5th defendant; that D.Hrs. ought to pursue the 10th respondent alone for filing the accounts; that petitioners are trying to find out the details of the sale transactions conducted by the said firm with an intention to assist the Court in determining whether the amount mentioned in the calculation memo dt.20-11-2009 by the D.Hrs./respondent Nos.2 to 6 is correct or not; the Court below cannot refuse to extend the time for filing the sale deeds, market value certificates of the apartments sold in the subject complex by the Firm or refuse to receive them by stating that the calculation memo submitted by respondent Nos.2 to 6/D.Hrs. would bind the Court and also the petitioners, if petitioners did not render true and proper accounts within one month.

27. Learned counsel for petitioners further contended that it was the duty of the Court below to conduct enquiry into the correctness of the figures mentioned in the calculation memo filed by D.Hrs./respondent Nos.2 to 6 and it cannot blindly accept the same on the pretext that petitioners and respondent No.10/5th defendant and other J.Drs. did not file true and proper accounts of the Firm within the one month stipulated by it.

28. Learned counsel for respondent Nos.2 to 6, however, refuted the above contentions and supported the orders passed by the Court below

in I.A.Nos.87 of 2010 and 5782 of 2017, which are impugned in the Revisions.

29. According to him, the suit O.S.No.237 of 1994 has been pending for almost 14 years without final decree being passed and the respondents are deliberately delaying the passing of final decree giving untenable reasons and the Court below did not commit any error of jurisdiction in passing the impugned orders. He also stated in the suit a Written statement was filed by defendant no.5/10th respondent that the records were in custody of 1st defendant.

<u>CONSIDERATION BY THE COURT</u>

30. I have noted the contentions of both sides.

31. From the contentions of the parties it is clear that the suit O.S.No.237 of 1994 for rendition of accounts filed by 1st respondent was decreed on 11-09-1996 and the judgment therein was also confirmed on 30-09-2008 in C.C.C.A.No.129 of 1996 by this Court, but no final decree has been passed by the Court below till date.

32. The application for passing of final decree had been filed in November, 2009 by 1st respondent's legal representatives (Respondent no.s2-6) and the same has been numbered as I.A.No.87 of 2010. It is not in dispute that on 20-11-2009, a calculation memo had been filed by respondent Nos.2 to 6 containing a *tentative* statement claiming that they are entitled to Rs.1,12,43,770/- towards plaintiff's share of

20% profits. The figures quoted in the said calculation memo are not supported by any documents. In the absence of any material in support of the figures mentioned therein such as area, market value of the land, cost of construction etc., the Court below cannot take a view that if the petitioners and other J.Drs. did not render true and proper accounts within one month from 02-08-2017 (when it passed the order in I.A.No.87 of 2010), it would blindly accept the figures mentioned in the calculation memo of the D.Hrs./respondent Nos.2 to 6.

33. Also when the Advocate-Commissioner's report of 1988 itself reveals that the account books of the firm are with 10th respondent/5th defendant, the Court below should have proceeded against 10th respondent instead of insisting that petitioners, should render true and proper accounts and leave the 10th respondent/5th defendant.

34. Moreover, when petitioners filed I.A.No.5782 of 2017 on 14-09-2017 shortly after passing of the order dt.02-08-2017 in I.A.No.87 of 2010 seeking enlargement of time by one more month to file certain sale deeds and market value certificates disputing the details contained in the calculation memo dt.20-11-2009 filed by the D.Hrs/respondent No.2 to 6, the Court below cannot refuse to grant time to them or refuse to receive the said documents and penalize them. It ought to have taken note that petitioner Nos.1 to 3 are legal representatives of the deceased 1st defendant, who had died pending

C.C.C.A.No.129 of 1996, and they had no knowledge about the accounts of the firm and it would be a travesty of justice to penalize them for not rendering true and proper accounts of the firm when admittedly they were not partners therein while leaving respondent No.10/5th defendant, who had custody of the account books of the firm, scot-free.

35. Accordingly, both the Revisions are allowed; order dt.02-08-2017 in I.A.No.87 of 2010 in O.S.No.237 of 1994 of the Chief Judge, City Civil Court, Hyderabad insofar as the said Court held that if the petitioners fail to submit true and proper accounts within one month from the said date, final decree will be passed as per the calculation memo submitted by D.Hrs/respondent Nos.2 to 6, is set aside; order dt.02-01-2018 in I.A.No.5782 of 2017 in I.A.No.87 of 2010 in O.S.No.237 of 1994 is also set aside; and the said I.A. is allowed and petitioners are granted one month time from the date of receipt of copy of this order to file certified copies of sale deeds/market value certificates and any other material in support of their contentions that the figures mentioned in the calculation memo dt.20-11-2009 filed by respondent Nos.2 to 6/D.Hrs. are not correct. After the petitioners file the said documents, the Court below shall call upon respondent Nos.2 to 6/D.Hrs. to prove by oral or documentary evidence the figures relating to area, land cost, construction cost etc. mentioned in their tentative calculation memo dt.20-11-2009 and only on respondent Nos.2 to 6 adducing proof in

support of the said figures, it shall proceed further in the matter after weighing the same with the sale deeds/market valuation certificates filed by petitioners.

36. In view of this no orders are necessary in I.A.No.4 of 2018 in O.S.No.404 of 2018 and the same is closed. No costs.

37. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19-02-2019
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