

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.1164 of 2018

ORDER:

Heard both sides.

2. This Revision is filed challenging the order dt.20.11.2017 in I.A.No.205 of 2012 in O.S.No.694 of 2010 of the III Additional Chief Judge, City Civil Court, Hyderabad.

3. Petitioner herein is the 6th defendant in the suit.

4. The said suit was filed by the 1st respondent against the petitioner and others to declare that a firm by name M/s Pannalal Ramlal Kimtee & Sons(2nd respondent/1st defendant) formed under a Deed of Partnership dt.14.11.1975 was dissolved with effect from 30.09.2010 and for further direction to the defendants to render true, proper and correct accounts of the firm and to distribute the assets and liabilities of the firm as per the shares of the partners and allocate 1/12th share of the 1st respondent.

5. It is asserted in the plaint by the 1st respondent that she is a partner in the said Firm(2nd respondent/1st defendant) along with defendants 2 to 9 and also the mother of the 1st respondent and others and that certain properties had been purchased by the 2nd respondent-Firm. It is alleged that 3rd respondent, who is managing the affairs of the 2nd respondent-Firm, is not rendering accounts in spite of being requested by the 1st respondent to do so in the last week of June, 2010 and so the 1st respondent/plaintiff

dissolved the Firm with effect from 30.09.2010 by issuing notice dt.21.07.2010.

6. Written statement was filed opposing the suit claim.

7. It is not in dispute that an interim injunction pending suit had been granted on 11.06.2012 in I.A.No.4371 of 2010 by the Court below which was challenged before this Court in CMA.No.917 of 2012 and the said order was also confirmed on 25.02.2013.

8. A Review petition was filed in Rev.CMA.MP.No.961 of 2013 to review the order dt.25.02.2013 in CMA.No.917 of 2012, which was disposed of on 06.09.2013 observing that neither the trial Court nor the High Court has expressed any view on the aspects involved and application I.A.No.205 of 2012 filed under Order VII Rule 11 CPC (*out of which this Revision arises*) shall be decided on its own merits uninfluenced by the observations made by the trial Court or by the High Court in the CMA.

9. I.A.No.205 of 2012 had been filed by the petitioner to reject the plaint on the ground that the 1st respondent/plaintiff had no *locus standi* to file the suit. In the said I.A., it was alleged that the business of the Firm was closed down in 1992 itself by settling all the accounts of the Firm, that the 1st respondent was not a partner of the Firm and so no accounts or account statement of that year or the years prior to that were ever sent to

her or any profit was ever paid to her. Reliance is also placed on Section 69(2) of the Partnership Act, 1932.

10. Counter affidavit was filed by the 1st respondent opposing the said application and denying that she was not a partner of the 2nd respondent-Firm. She also denied that due to resemblance of her name to the name of Madhubala, who is an original partner, she is trying to project herself as a partner in the 2nd respondent-Firm. It is also alleged that the petitioner may be directed to produce the actual Madhubala, who was admittedly the partner of the 2nd respondent-Firm. She also denied that the business of the firm was closed down in 1992 itself and that the accounts were settled. It was also pointed out that even according to the petitioner the Firm was a registered Firm and that Section 69 has no application.

11. By order dt.20.11.2017 the Court below dismissed the said application. It held that the contention of the petitioner that the 1st respondent was not a partner of the Firm cannot be accepted because other defendants admitted that the 1st respondent was a partner and the alleged Retirement Deed dt.20.12.1990(Ex.R8) remained unproved at the stage of *prima facie* enquiry before the trial Court. It is also observed that the suit is of the year 2010, and if 1st respondent did not proceed with the suit, law will take its own course. Observations were also made in the said order referring to I.A.No.4371 of 2010 and CMA.No.917 of 2012.

12. Challenging the same, this Revision is filed.

13. It is the contention of the petitioner that in spite of a specific observation in the order dt.06.09.2013 in Rev.CMA.MP.No.961 of 2013 in CMA.No.917 of 2012 by the Division Bench of this Court that I.A.No.205 of 2012 has to be decided independently on its own merit without referring to the order passed under Order XXXIX Rules 1 & 2 CPC in I.A.No.4371 of 2010, the Court below has not done so and this is impermissible in law.

14. To some extent this may be so, but the Court below had also recorded that except the petitioner, other defendants admitted that the 1st respondent was a partner. The pleading in I.A.No.205 of 2012 itself shows that the 2nd respondent-Firm was a registered Firm. Therefore, *prima facie*, Section 69 would have no application to the facts of the case.

15. Whether the petitioner is the original partner of the 2nd respondent-Firm or she is an imposter bearing the same name, is a matter to be gone into at the trial, and cannot be decided in the application for rejection of the plaint.

16. I therefore see no reason to interfere with the order passed by the Court below.

17. Accordingly, this Civil Revision Petition fails and it is dismissed. Since the suit is of the year 2010, the trial Court shall decide the suit as expeditiously as possible, preferably

within a period of one month from the date of receipt of a copy of this order. No order as to costs.

18. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

14th June, 2019.

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