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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 13th February, 2020.
+ **CM(M) 112/2019 & CM APPL. 3393/2019**
ALKA GUPTA Petitioner

Through: Mr. Anuj Kapoor, Advocate.
(M:8130324433)

versus

NARENDRA KUMAR GUPTA Respondent

Through: Mr. Dharendra Singh, Mr. Siddharth
Verma, Ms. Isha and Mr. Sushant
Solanki, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The petition arises out of a suit for rendition of accounts in respect of a partnership firm – M/s Takshila Institute. The Plaintiff and the Defendant were partners in the said partnership firm with 50 - 50 shares. So far, there is no dispute. The Plaintiff – Ms. Alka Gupta sought rendition of accounts by way of a suit filed before this Court on the Original Side, which was thereafter transferred due to increase in pecuniary jurisdiction. The reliefs sought in the suit are as under:

“ A. Pass a preliminary decree with costs directing the defendant to render true and complete account of all the money received and expenditure done by him in course of the business carried out under the partnership agreement dated 05.04.2000 between him and the plaintiff, from the date of commencement of the Partnership Agreement till its dissolution by necessary implication on 31.07.2004 and of the moneys earned by him by using the goodwill of ‘Takshila Institute’ at all places, including ‘Taxila Institute’ at Rohini, Delhi, from the date of dissolution of

partnership till today; and

B. A final decree with costs, in favour of the plaintiff and against the defendant for her share of the profits of the said partnership business upon rendition of accounts by the defendant; and

C. A further decree for the sum of Rs. 25.28 lakh, or a higher amount in relation to the share of the plaintiff, as described and detailed in Annexure-A to the plaint; and

D. All sums found due upon the defendant may be ordered to be recovered from him with punitive interest at the rate of 36% per annum, from the date of their become due till the realization thereof; and in the alternative with interest @ 18% per annum, or at any other rate of interest which the Hon'ble Court may consider just and proper; and

E. Any other/further relief in favour of the plaintiff, which the Hon'ble Court may think fit and proper under the circumstances, may also be granted in her favour.”

2. The suit was initially dismissed by the Trial Court on various grounds, and was then carried in appeal to the Division Bench. Finally, the said order culminated in the judgment of the Supreme Court reported as ***Alka Gupta v. Versus Narender Kumar Gupta (2010) 10 SCC 141***. The Supreme Court had set aside the dismissal orders and had remanded the suit to be decided in accordance with law. The operative portion of the Supreme Court's order reads as under:

“37. We therefore allow this appeal, set aside the order of the Division Bench of the High Court dated 7-9-2009 affirming the order dated 13-3-2009 of the learned Single Judge and restore the suit to the file of the High Court with a direction to decide the same in accordance with law, after giving due opportunity to the parties to lead evidence.”

3. Post the remand, the Plaintiff is stated to have led the evidence of two witnesses. Thereafter, an application came to be moved for passing of the preliminary decree. The relief sought in the application for preliminary decree was under Order XII Rule 6 CPC read with Order XX Rule 15 CPC, seeking a direction to the Defendant to render the complete accounts of the firm. This application brought the trial to the halt, and has resulted in the impugned order. Thereafter, the Plaintiff also moved two further applications – one under Order XIV Rule 5 CPC for amending the onus in one of the issues, as also an application for further deferment of the evidence on behalf of the Plaintiff. The Trial Court decided these applications vide the impugned orders dated 18th August, 2018 and 3rd December, 2018. The Trial Court came to the conclusion that the question as to whether the accounts were settled by virtue of the agreement dated 29th June 2004 requires trial and would not be capable of being adjudicated under Order XII Rule 6 CPC. Accordingly, the Trial Court dismissed the said application. The observations of the Trial Court are as under:

“22. In these circumstances, to my mind, the question as to whether the entire share of the plaintiff has already been given to the plaintiff or not in the abovesaid partnership firm by virtue of the Bayana Agreement dated 29.06.2004 and by virtue of abovesaid two subsequent suits is a question which cannot be decided without evidence and trial. To my mind, neither order XII Rule 6 of the CPC nor Order XX Rule 15 of the CPC can come to the aid of the plaintiff on this aspect of the matter.

23. Furthermore, it has to be seen that the present suit was instituted in the year 2007 before the

Hon'ble High Court of Delhi. The issues in the present suit were framed on 17.01.2008. Two witnesses have already been examined by the plaintiff including herself and when the matter was fixed for remaining plaintiff's Evidence, the plaintiff preferred to file on record the present application. To my mind, the present application is not maintainable at all.

24. In the light of the abovesaid discussion, the abovesaid application of the plaintiff under Order XII Rule 6 of the CPC as well as under Order XX Rule 15 of the CPC is hereby dismissed."

4. In the application under Order XIV Rule 5, the Trial Court primarily recorded all the issues which were framed, and held that the issues were framed way back in 2008 but the application was moved only in 2018 and thus, the court observed that the application deserved to be dismissed with exemplary costs, however it took a lenient view. Insofar as the application for deferment of evidence is concerned the same was simply dismissed by the Trial Court as being lacking in merits. Ld. counsel for the Plaintiff submits that the preliminary decree ought to have been passed in the suit at this stage itself, because the Plaintiff can lead further evidence only after the complete accounts of the firm are rendered by the Defendant. It is further submitted that the onus of issue no. 7 has been wrongly cast upon the Plaintiff, when it is the Defendant's case that there has been a settlement in the matter. Insofar as the deferment of the evidence is concerned, ld. counsel for the Plaintiff submits that once the accounts are rendered by the Defendant then the Plaintiff ought to be allowed to lead evidence to support the reliefs that have been sought in the suit.

5. On behalf of the Defendant it is submitted that the Plaintiff is merely

delaying the adjudication of the suit itself and keeping the Defendant entangled in litigation. There was a complete settlement between the parties on 6th June, 2004, when the valuation was done, and the amounts which were to be paid have been paid to the Plaintiff. Ld. counsel for the Defendant submits that the entire conduct of the Plaintiff in this case would show that the intention is to merely protract the trial, and not take the matter to final adjudication.

6. The Court has perused the issues which have been framed, as also some of the orders passed by the Trial Court and the pleadings. Firstly, Issue No.7 is in respect of the valuation having already taken place and the amount having been paid to the Plaintiff. Though there is no doubt that the application seeking change of onus is extremely belated, the pleadings clearly show that on this issue, the onus ought to have been on the Defendant. Accordingly, on issue no.7, the onus is shifted to the Defendant and the Plaintiff would have a right to lead rebuttal evidence in accordance with Order XVIII CPC after the Defendant has led evidence in this issue.

7. Insofar as the preliminary decree is concerned, the said preliminary decree would be considered by the Trial Court only after evidence having been led between the parties. If the Trial Court comes to the conclusion that accounts are liable to be rendered by the Defendant, the Court would direct the Defendant to render accounts and a report would be placed on record as per the directions of the Trial Court, after which the Plaintiff would have its rights in accordance with law to object to the accounts by means of an application or an objection petition. The preliminary decree cannot be passed at this stage. In any event, the order of the Supreme Court is also clear that the matter has to proceed for evidence and the suit is to be

adjudicated after trial. The impugned order dismissing the application under Order XII Rule 6 does not warrant interference. Costs of Rs.15,000/- are imposed upon the Plaintiff for being deposited with the Delhi (Middle Income Group) Legal Aid Society within a period of two weeks.

8. With these observations, the petition and all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 13, 2020

dj /RG

(Corrected and released on 27th February 2020.)