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

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Decided on: 25.02.2020

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CM(M) 1387/2017

NADEEM MAJID OOMERBHOY

..... Petitioner

Through: Mr. Sudhir Nandrajog, Senior
Advocate with Mr. Vikram Mehta,
Ms. Rishika Raha and Ms. Pallavi
Mohan, Advs.

versus

**KIRORI MAL KASHIRAM MARKETING & AGENCIES PVT.
LTD**

..... Respondent

Through: Mr. S.K. Bansal and Mr. Ajay
Amitabh Suman, Advs.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 44319/2017 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed-off.

CM(M) 1387/2017

3. This petition impugns the order dated 04.09.2017 passed by the learned Trial Court in Suit No. 17872/2016, declining the petitioner's request to be impleaded as a plaintiff in the suit. The petitioner is the legal heir of Mr. Majid Ahmed Oomerbhoy, one of the partners of M/s Ahmed Oomerbhoy. The partnership being at will was dissolved by mutual wish of

the parties. In a suit being Suit No. 4913/2000 pending before the High Court of Bombay at Mumbai, a Receiver had been appointed by order dated 06.12.2000. However, in default of the Receiver acting as per expectations of the persons holding or claiming an interest in the shares of the partners, the present petitioner sought appropriate directions from the Bombay High Court. By order dated 15.03.2013, the Bombay High Court had permitted the petitioner to pursue the interest of the partnership firm. It has reasoned as under:-

“1. Defendant No. 1 in the suit desired to file and prosecute two suits in Delhi. Since the Court Receiver has been appointed, the Court Receiver was to prosecute the suits on behalf of defendant No.1. Defendant No.1 was to put the Receiver in funds. Defendant No.1 has not put the Receiver any funds. Counsel on behalf of defendant No.1 states that defendant No.1 has no funds. This aspect has been stated to the Court Receiver in the letter of the attorney of defendant No.1 dated 25th February, 2013. Defendant No.1 has sought to be impleaded as the plaintiff in those suits. Defendant No.1 does not desire to prosecute the suit for want of funds. The plaintiff in this suit may take such steps as he desires in that suit.

2. The plaintiff shall have to pay the fees of the prosecution of the suit by himself henceforth. It is clarified that the Court Receiver shall not prosecute that suit. The reimbursement, if at all, to both the parties shall be considered whilst taking accounts.”

4. The impugned order was passed in a Suit No. 17872/2016 filed by the firm which is in the process of dissolution. Since no interest holder in the firm has come forward to pursue the interest of the firm, the petitioner seeks to protect the said interest, in terms of the aforesaid order of the Bombay High Court. The endeavour is opposed by the learned counsel for the

respondent on the ground that the petitioner is neither the partner nor a necessary party and at best he can prosecute the suit under Order XXX Rule 4 CPC, which reads as under:-

“4. Rights of suit on death of partner.—(1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (9 of 1872) where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise effect any right which the legal representative of the deceased may have—

(a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors.”

5. However, the present petitioner has been permitted by the Bombay High Court to pursue the interest of the partnership firm in lieu of the Court Receiver. The petitioner seeks to protect the interest of the partners in the dissolved firm. The Court is of the view that insofar as the interest of all the parties are sought to be protected, especially in lieu of the Court Receiver, who was to be in default of safeguarding the interest of all the parties, the petitioner would be a necessary party to be impleaded as a plaintiff. Denying the petitioner an opportunity to pursue the case on behalf of all partners would render them remediless and would cause irreparable injury to their interests. In the circumstances, the impugned order is set aside. The petitioner is impleaded as plaintiff no. 2 in the suit. Amended Memo of Parties be filed before the learned Trial Court.

6. The learned counsels for the parties submit that the case is now listed before the Trial Court on 11.03.2020. They say that the parties shall appear before the learned Trial Court on the said date and shall assist it prompt in disposal of the suit.

7. The petition stands allowed and disposed-off in the above terms.

NAJMI WAZIRI, J

FEBRUARY 25, 2020

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