

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.108 OF 2021

Miyalal Matin Shaikh & Anr. .. Applicants
Versus
Shabbir A. Hamid Shaikh (since deceased)
through LR's .. Respondents
...
Mr.Ashok B. Tajane for the Applicants.
Mr.Ajit Alange for the Respondent.

...
CORAM: BHARATI DANGRE, J.
DATED : 12th OCTOBER, 2021

P.C:-

1. The applicants (original defendants) to the R.C.S. No.195 of 2019 are aggrieved by the impugned order dated 16/02/2021, passed by the 5th Joint Civil Judge, Senior Division, Solapur below Exh.22, by which the application filed by them under Order 7 Rule 11 of the Code of Civil Procedure (C.P.C.) for rejection of the suit is dismissed.
2. In support of the application, I have heard learned counsel Mr.Tajane. He is opposed by the learned counsel Mr.Alange for the respondents (original plaintiff).
3. On 08/02/2000, a Partnership Deed was executed, which came to be registered under the Registration Act between the original plaintiff No.1-Shabbir Hamid Shaikh and his wife

Smt.Noorjahan Shabbir Shaikh, on one part and one Miyalal Matin Shaikh and his mother Smt.Shaberabi Matin Shaikh on the second part. The Partnership Deed was executed for undertaking a business venture in the name 'Chirag Multipurpose Hall', Solapur for giving the said hall for purposes of performance of marriage, religious ceremonies and social functions etc. on rent basis. The business of the partnership commenced from 08/02/2000 and the partnership was in the nature of 'At Will'. The share of the partners in form of the capital was set out in the Partnership Deed and Shabbir Shaikh and his wife were inducted as partners, who would share profit and loss to the extent of 40% & 20% i.e. 60% whereas the partners on the other party, shared the profit and loss to the extent of 40% and 20% each. In clause No.10 of the Partnership Deed, several other conditions, to be adhered to by the partners inter se were set out. This include condition No.10.2, which permitted any partner to retire from the partnership voluntarily and it was also specified that by the retirement or death of one of the partners, the partnership shall not come to an end, but the remaining partners shall continue the business amongst themselves by consent of all the partners. It was permissible to induct a new partner to continue the business of the partnership, with consent of the continuing partners.

The above said Partnership Deed was executed in presence of the two witnesses and duly registered.

4. The partner in the said firm, Shabbir Shaikh, suffered from cancer and on 12/04/2014, he expired. After his death,

the entire business of partnership came in the hands of the other two partners, being the present applicants and it is the claim of Smt.Noorjahan Shaikh, who was also a partner in the business, that the business was not carried by them in accordance with the terms of the Partnership Deed and particularly, when the heirs of the deceased were minor and she herself was in grief, she could not attend to the partnership business. Smt.Noorjahan alleged that since the date when her husband suffered from cancer i.e. from the year 2003, account of the partnership, which were to be rendered at the end of the financial year, were not prepared and even she was denied her share of profit. All the transaction carried out by the partnership firm were carried out unilaterally, without she being taken in confidence and the business of the partnership was carried out as if it was an individual business.

5. Since the accounts of the partnership were not rendered by defendant Nos.1 and 2 from the year 2003 and an attempt was made by the remaining partners to run the business of the partnership firm as the business of proprietary concern, the notice was sent to the other partners by Smt.Noorjahan through her counsel for rendition of accounts and simultaneously, a notice was published in the daily newspaper about dissolution of the partnership. The notice given was responded to by the partners on the second part, but no accounts were submitted. This constrained Smt.Noorjahan Shaikh to file a suit in the Court of Civil Judge, Senior Division, seeking rendition of accounts of partnership by defendant Nos.1 and 2 from the year 2003 and also to make the payment

of the shares of herself as well as her husband to the extent of 40% and 20% respectively and since the partnership was at will, a declaration is sought to the effect that the partnership has come to an end w.e.f. 05/05/2017, when the notice was issued in the newspaper. A relief was also sought, seeking declaration that defendant Nos. 1 and 2 are running the partnership illegally from 05/05/2017 and till the accounts are rendered, the profits of the partnership firm shall be made over to the plaintiffs. Since Shabbir Hamid Shaikh was dead, the suit was filed through his legal heirs being plaintiff Nos. 1A to 1G. The suit was instituted on 27/02/2019 and on 06/03/2019, summons were issued to the defendants for filing the written statement and settlement of issues.

6. On 29/06/2019, the defendants moved an application under Order 7 Rule 11 of the CPC vide Exh.22, seeking disposal of the suit on the ground that the original plaintiff had expired on 12/04/2014 and, therefore, as per Section 42 of the Partnership Act, the business of the partnership has come to an end and since the suit was not filed within a period of three years from the said event, it is beyond limitation and on the said ground, the plaint itself was liable to be rejected. Another ground which was sought to be pleaded for rejection of plaint was lack of cause of action to file the said suit.

The plaintiffs filed their say to the said application vide Exh.29 and denied the plea for rejection of plaint. The said application came to be rejected by the order, which is impugned in the present application.

7. I have perused the impugned order, which in great detail has dealt with the submission of the defendants for rejection of the plaint on the ground of lack of cause of action and being barred by law of limitation. The learned Judge has made reference to the several decision cited on behalf of the defendants, including the decision of the Apex Court in case of **T.Arivandanam Vs. T.V.Satyapal & Ors.¹, S.P.Mishra etc. Vs. Mohammad Laikuddin Sheikh & Ors.² and Parcel Carriers (India) Pvt. Ltd. Vs. Union of India etc.³** as well as several decisions of the High Courts which were placed before him.

Picking up the legal crux flowing from the above decisions, the learned Judge proceeded to examine the plaint filed by the plaintiffs, to ascertain whether a cause of action has arisen for the plaintiffs and has recorded that from the plaint, it is apparent that a partnership was entered into between the partners, in accordance with provisions of the Partnership Act, 1932 on 09/03/2000 and the business of the partnership was of making available Chirag Multipurpose Hall for marriages, religious and social purpose. The plaint with reference to the Partnership Deed is exhaustively dealt with by the learned Judge and he recorded that father of plaintiff No.1-Shabbir Shaikh died, all work of the partnership firm was taken over by the defendants and without taking the plaintiff No.2 into confidence, all transactions were carried out unilaterally. When the notice was issued by plaintiff No.2 seeking accounts, the defendants did not render the accounts. On the contrary, they denied the existence of the partnership firm and a false assurance was given that by appointing an

1 AIR 1977 SC 2421

2 2020 SSR Civil 89 SC

3 2010 (3) MLJ 993

Arbitrator all the accounts will be settled. The cause of action that was pleaded in the plaint was specifically averted to by the learned Judge and on the entire reading of the plaint, he reached a conclusion that there is no lack of cause of action.

8. Similarly, he did not find merit in the contention that the suit was barred by the law of limitation.

Pertinent to note that the partnership which was formed between the plaintiffs and the defendants, was the partnership at will and clause 10.2 specifically contains a recital to the effect, that mere death of one of the partners, the partnership will not come to an end and the remaining partners are entitled to continue the business of the partnership and it is open for them to induct a new partner, with the consent of the existing partners.

9. Reliance placed upon Section 42 of the Partnership Act while praying for rejection of the plaint on the ground of being barred by limitation, makes it imperative to refer Section 42 of the Act, which reads thus :-

“42. Subject to the agreement between the partners :

- a. If the firm is formed for specific period then due to expiry of that period;
- b. If the firm is formed for fulfilling one or more activity, then after its fulfilment;
- c. Due to death of partner' and
- d. If partner is adjudicated as bankrupt, the firm would be dissolved.”

Section 42 of the Act set out mode of dissolving the partnership and various contingencies are stipulated. The said section, however, begins with the words “subject to the agreement between the partners”, meaning thereby that it is open for the partners of a partnership firm to decide otherwise i.e. it can set out any mode of dissolution of the partnership other than which is contemplated in clauses (a) to (d) of Section 42. The Partnership Deed which is inked by all the partners, in form of clause No.10.2, did not permit the partnership to be dissolved on death of one of the partners or his retirement, but it permitted the remaining partners to continue with the partnership business amongst themselves or even by inducting a new partner. In the wake of the aforesaid clause, on the death of one of the partners i.e. Shabbir Shaikh, who held 40% stake in the partnership, the partnership between the remaining partners still continued and did not automatically dissolved.

In the light of this position emanating from clause 10.2, the ground raised by the defendants for seeking rejection of the plaint on the ground that the suit is barred by limitation, since it has not been filed within a period of three years, when the partner Shabbir Shaikh expired on 12/04/2014 and by virtue of Section 42, the partnership itself ceased to exist, is not available to the defendants to be projected as a ground for rejection of the plaint and dismissal of the suit, since the clause in the Partnership Deed in question permitted the partnership to continue, even if one of the partners expired. The partnership, therefore, continued even after the death of Shabbir Shaikh and as has been averred by the plaintiffs, the

defendants continued with the partnership business, but since they failed to render the accounts of the partnership or make over the share of the plaintiffs in the partnership, which prompted her to institute the suit seeking accounts from defendant Nos.1 and 2. Further, since the partnership was at will, by publishing a notice in the daily newspaper, plaintiff No.2 has put an end to the partnership i.e. dissolved it and sought a declaration to the effect that the partnership stands dissolved from the date of issuance of notice, being 05/05/2017. As far as the cause of action, which is pleaded to be lacking in the application seeking rejection of the plaint, it can only be observed that cause of action is a bundle of facts which has to be discerned from the reading of the entire plaint and is not to be searched in a few lines of the plaint. On meaningful reading of the entire plaint, the plaintiffs have pleaded a specific cause of action for seeking a relief in the backdrop of the pleadings, which they had set out in the plaint and it is always open for defendant Nos.1 and 2 to traverse the said pleadings on its merits.

The settled position of law is to the effect that the rejection of plaint has to be resorted to only in situation contemplated under Order 7 Rule 11 of the C.P.C. and only when it can be noted that the suit is vexatious and merit-less and there is no possibility for the plaintiff to successful at all. The same being, not the case with the suit filed by the plaintiffs against the present applicants, who are impleaded as defendants, the rejection of the application filed for rejection of the plaint and dismissal of the suit, has been rightly rejected by the learned Judge in the impugned order . I find no legal

infirmity in the impugned order and it is upheld.
Consequently, the Civil Revision Application is dismissed.

(SMT. BHARATI DANGRE, J.)