IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.8361 of 2010

M/s. Mandakini Small Foundry, Cuttack .... ***Petitioner***

Mr. Devashis Panda, Advocate

-versus-

Orissa State Financial Corporation Cuttack and another .... ***Opposite Parties***

Mr. B. N. Mohanty, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
11.05.2022

Order No.

35. 1. This petition was originally filed by M/s. Mandakini Small Foundry, a Partnership Firm, represented by its Managing Partner, Sri Hrudananda Bhatta. In fact, earlier it was a sole proprietorship with Sri Bhatta being the sole Proprietor.

2. During the pendency of this present petition as stated in Misc. Case No.1196 of 2013, Sri Bhatta expired on 3rd January, 2012. IN the said application permission was sought to amend the cause title for the name of Sri Harihar Puhan, the surviving partner to "be inserted as the person representing the Petitioner Firm." This application was allowed on 7th December, 2018 by the following order:

> "Heard learned counsel for the parties.
>
> This is an application for amendment of the cause title and substitution of the name of the surviving partner of the petitioner firm, Sri Harihar Puhar, son of late Kanhu Charan Puhan as its representative.
>
> Considering the grounds taken as well on hearing the learned counsel, the prayer as sought for is allowed.
>
> The interlocutory application is disposed of accordingly.

Consolidated cause title of the writ petition be filed within three days.

Put up the writ petition on 4th January, 2019."

3. However, when the consolidated cause title was filed, the Petitioner was described as "M/s. Mandakini Small Foundry represented by its sole proprietor, Sri Harihar Puhan". There is obviously a difference between a Partnership Firm and a Proprietory concern. The application had asked for continuation of the Petitioner as a Partnership Firm to be represented by its surviving partner, Sri Harihar Puhan whereas the consolidated cause title projects it as a sole proprietory concern. It is a highly doubtful proposition in law that a Partnership Firm can morph into a sole proprietory concern automatically with the surviving partner as its sole proprietor.

4. Mr. Mohanty, learned counsel appearing for the OSFC brings to the notice of the Court another development that has taken place. According to him, Sri Manoj Kumar Bhatta, the son of late Sri Hrudananda Bhatta submitted an OTS proposal to the OSFC, which is under its consideration. Sri Manoj Bhatta is said to have deposited some amount towards such consideration of the OTS proposal.

5. In the circumstances, the Court considers it appropriate to permit a fresh petition to be filed if the situation so warrants accounting for all the above developments in accordance with law.

6. The petition is disposed of. The interim order passed earlier stands vacated.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda