06 **20.11.23**

Ct. No. 04

akd

F.M.A. 1041 of 2022
CAN 1 of 2022

Treasure Island Pre School & Ors.
Vs.
M/s. Crossworld Learning System (OPC) Pvt. Ltd. & Ors.

Mr. Rahul Karmakar,
Mr. Nirmalya Dutta.
... for the appellants.
Mr. Kishore Mukherjee.
... for the respondent nos. 1 and 2.

In a suit for dissolution of partnership, an application for temporary injunction was taken out and moved for passing an ex parte ad interim order of injunction. By the impugned order the Trial Court declined to pass an ex parte ad interim order of injunction solely on the ground that the partnership is not registered.

It appears to us that the learned Judge in the Trial Court has misconstrued the provisions contained in Section 69 (1) and (2) of the Indian Partnership Act, 1932 that unless the firm is registered the suit of such nature cannot be instituted. The learned Judge omitted to notice the provisions contained in Sub-section (3) of Section 69 of the said Act, which creates an exception to an embargo created under Sub-Section (1) and (2), wherein the suit for enforcement of any right for dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm shall not be defeated by restrictions relating to institution of the suit.

It is a suit for dissolution of partnership firm at the behest of one partner against another partner and, therefore, cannot come under the mischief of Sub-section (1) and (2) of Section 69 of the said Act.

Be that as it may, at the time of admitting the instant appeal, we noticed that in complete defiance to the terms agreed for channel partnership agreement as well as the deed of partnership, the respondents have usurped all the powers as if it is a proprietor and took over the control and management of the school.

Since the dissolution of firm is one of the reliefs claimed in the suit, we do not find any impediment in giving access to the accounts for the limited purposes of ascertaining the liabilities and responsibilities or the profits if thereby any. Even Clause 9 of the agreement for channel partner postulates that each of the partners have a right to access the accounts maintained for the partnership firm and even a photocopy if asked for shall be given to any of the partners.

It is communicated to us by the learned Counsel for the respondents that the business is running in loss and a conscious decision has been taken to discontinue the said business on and from the month of December, 2023.

Be that as it may, we do not find any impediment in passing a direction upon the respondents to give an access to the accounts of the partnership firm to the appellants and to observe the mandate as indicated in Clause 9 of the said agreement.

Since the application for temporary injunction filed before the Trial Court is at the nebulous stage, but the respondents have entered appearance before us, we, therefore, permit the respondents to file affidavit-in-opposition to the application for temporary injunction within two weeks from date; reply thereto, if any, be filed within a week thereafter.

The Trial Court shall make endeavour to dispose of the application for temporary injunction within fortnight from the date of expiration for exchange of affidavits.

With the above observations, the appeal and connected application are disposed of.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)