

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO.554 OF 2023
WITH
WRIT PETITION NO.12146 OF 2023**

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2023.10.11
11:05:30
+0530

PRA Realty Commercial Development
LLP, through Managing Director
Rustom Bharucha

... Applicant

V/s.

Astrix Realty, through partners
Harish Solanki & Naresh Solanki

... Respondent

Mr. S.S. Patwardhan i/by Ms. Mrinal Ashwin Shelar for
the applicant.

Mr. G.S. Godbole, Senior Advocate with Mr. Sumit
Kothari and Ms. Deepashikha Godbole for the
respondent.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 10, 2023

P.C.:

1. By the civil revision application under Section 115 of the Code of Civil Procedure, 1908, the applicant (judgment debtor) is challenging orders dated 1 September 2023 passed by the Executing Court rejecting application of the applicant to dismiss Execution Petition as not maintainable and in the writ petition the challenge is to the order rejecting review of order dated 3 December 2021 directing applicant to deposit part of the decretal amount.

2. Facts relevant for adjudication of the issue involved are: that on 7 April 2017 the Arbitrator passed an arbitral Award. The respondent filed Execution Petition before the District Court at Pune. According to the applicant, during pendency of the Execution Petition, two partners of the decree holder, one Mr. Bedi and Mr. Jasuja executed Deed of Assignment dated 20 August 2021 in favour of the applicant. By the said Deed of Assignment, both partners transferred their rights and share in the partnership firm in favour of the applicant. The result of such assignment, according to the applicant, is controlling stake in the partnership to the extent of 62.50%.

3. Based on such assignment the applicant filed an application before the Executing Court seeking dismissal of the Execution Petition.

4. The Executing Court rejected the application holding that in absence of agreement between partners entitling assignee to become partners in absence of consent of the existing partners, the assignee is not entitled to claim themselves to be partners of the firm.

5. Mr. Patwardhan, learned advocate for the applicant relying on Section 31 of the Partnership Act, 1932 and Clauses 15 and 16 of the Partnership Deed submitted that despite there being prohibition to assign share in the partnership under clause 15(b), clause 16(e) creates disqualification against the partner who commits breach of the provisions of the Partnership Deed. By executing Deed of Assignment without consent of existing

partners, the assignors committed breach of Partnership Deed. Clause 16(e) requires existing partner to issue three months' notice by the existing partners of dissolution of firm. The assignee, having failed to issue such notice to the existing partners, has waived his right to object conferment of status of partner on the assignee, with the result that the assignee becomes partner of the firm.

6. Per contra, Mr. Godbole, learned Senior Advocate invited my attention to Sections 2, 11, 29 and 31 of the Partnership Act, 1932 to contend that relationship of partnership arises from contract and not from status. The rights of partners are regulated by the provisions of the Act, and in particular Section 11 of the Act. The rights of transferee of partners' interest are regulated by Section 29 of the said Act. Introduction of partner is regulated by Section 31 which requires a contract between the parties to enable assignee to claim right as a partner and in absence of such agreement or contract and in absence of consent of existing partner, the assignee is not entitled to claim himself to be a partner of the firm.

7. Having heard learned advocates for the parties, short question that arises for consideration is whether the assignee of partner is entitled to claim status of a partner in absence of consent of existing partners or in absence of contract enabling such partner deemed conferment of status as partner. For adjudication of the said issue, it is necessary to take into consideration Sections 2, 11, 29 and 31 of the Partnership Act, which reads thus:

“2. Definitions - In this Act, unless there is anything repugnant in the subject or context -

- (a) an “act of a firm” means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm;
- (b) “business” includes every trade; occupation and profession;
- (c) “prescribed” means prescribed by rules made under this Act;
- (d) “third party” used in relation to a firm or to a partner therein means any person who is not a partner in the firm; and
- (e) expression used but not defined in this Act and defined in the Indian Contract Act, 1872, shall having the meanings assigned to them in that Act.

11. Determination of rights and duties of partners by contract between the partners.

(1) Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be expressed or may be implied by a course of dealing.

Such contract may be varied by consent of all the partners, and such consent may be express or may be implied by a course of dealing.

(2) Agreements in restraint of Trade.

Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

29. Rights of transferee of a partner's interest.

(1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or, by the creation by him of a charge on such interest, does not entitle the transferee,

during the continuance of the firm, to interfere in the conduct of the business or to require accounts or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners, to receive the share of the assets of the firm to which the transferring partner is entitled and for the purpose of ascertaining that share, to an account as from the date of the dissolution

31. Introduction of a partner - (1) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

(2) Subject to the provisions of section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.”

8. In addition to the provisions of the Partnership Act, 1932, it is necessary to consider relevant clauses of the Partnership Deed, which reads thus:

“11. ADMISSION OF NEW PARTNER/PARTNERS:

It is mutually decided by and between partners of the firm that partner/partners can be admitted in the firm for the benefit of the firm with the written consent of all existing partners in the firm on the basis of the terms & conditions mutually agreed between existing partners and incoming partner/s.

15. PARTNER’S RESPONSIBILITY:

All the partners shall take active part in the conduct and activities of the business of the firm as specifically agreed to and shall carry on the business to the greatest advantage of the Firm and shall be just and fair to each other and render True accounts and full information of all the dealings and things affecting the said Business. However the partners may carry on any other business as can be conveniently carried on.

Apart from the specific work allocated to each working partner, nothing shall preclude any partners in attending to any activities of the partnership business that may arise for the smooth running of the day-to-day business of the firm.

However, nothing herein contained shall preclude any of the said partners from withdrawing any amount from the partnership firm against the amount standing to the capital and/or currents account or loan account of his share of profit for the relevant accounting year in such manner as may be decided by the partners by mutual consent.

Any sale agreement for the sale of Stock In Trade will be signed by the two partners, one partner will be from the party of the first part to Third part and second partner will be from party of the Forth Part, through their authorized representative.

Each and every partner shall be faithful to each other and shall work in the best interest of the firm.

The partners may admit any new partner/s upon such terms and conditions as may be mutually agreed upon.

No partner shall act in a manner, which shall harm the reputation of the firm.

No partners are authorised to sell or transfer his/her shares without specific consent of the other partners.

No partner shall without the written consent of the other partners:

- a) Employ any of the money, goods or effect of the partnership or pledge the credit thereof or give any security of premises for the payment of the money on account of the partnership except in ordinary course of business and on account or for the benefit of partnership.
- b) Assign, mortgage, create a charge, sell or transfer his share in the partnership or any part thereof or make any other person a partner with him/her or enter into a sub-partnership with any other person/s without written consent.
- c) Compromise or compound or accept upon payment thereof in full, release or discharge any debt due to the partnership.
- d) Stand surety for any person or knowingly do any act whereby the partnership property may be endangered and
- e) Except in the course of the partnership business dispose off, pledge, sale, mortgage, or otherwise transfer the partnership assets.

16. DISQUALIFICATION:

If any partner shall:

- a) Commits breach of any of the provisions of this indenture

Or

- b) Become physically or mentally unfit to attend to business

Or

- c) Commits any criminal offence

Or

- d) Commits any act of bankruptcy

Or

e) Do or suffer any act, which would be around for the dissolution of the partnership by the court. Then any of the partner/s may, within three calendar months of becoming aware thereof by notice in writing dissolve the firm. Nothing in this Indenture shall however, prevent a partner from engaging in or undertaking any other trade or business, not directly competing with the business of the partnership.”

9. On conjoint reading of Sections 2, 11, 29 and 31 and clause 11 of the Partnership Deed, in my opinion, it is evident that under the terms of contract between the partners, assignment of share in partnership or part thereof is expressly prohibited without written consent of the existing partners. Clause 16(2) enables existing partner to dissolve partnership firm on partners’ committing breach of the provisions of the Partnership Act, 1932. However, the Partnership Deed does not provide for a consequence of failure on the part of existing partner to dissolve partnership firm. On reading of the provisions of the Partnership Deed, in my opinion, it does not lead to the conclusion that the assignee is entitled to claim status of partner in the said partnership in absence of express or implied contract to that effect.

10. Sections 29 and 31 of the Partnership Act, 1932 which regulate right of transfer of partners’ interest restricted such transferee from interfering in the books of business or requiring accounts or inspection of books of a firm. However, such transferee is entitled to receive share of profit of transferee partner. Therefore, in my opinion, considering express prohibition in the Partnership Deed and Section 29 of the Partnership Act, 1932

coupled with absence of consent as required under the Partnership Deed, the applicant cannot claim himself as a partner of the partnership firm.

11. Therefore, in my opinion, there is no legal infirmity in the impugned order rejecting objection for dismissal of the Execution Petition. There is no error of jurisdiction calling for interference under Section 115 of the Code of Civil Procedure, 1908.

12. In Civil Revision Application No.12146 of 2023 the challenge is to the order rejecting application for review of the order directing judgment debtor to pay Rs.7,44,37,500/- towards part of decretal amount. On perusal of order dated 3 December 2021 it appears that the judgment debtor has admitted the liability. On perusal of the reply dated 17 September 2021, and in particular paragraph 7 it appears that the judgment debtor has accepted the said liability. Therefore, no interference in the impugned order is called for.

13. The civil revision application and the writ petition accordingly stand dismissed. No costs.

(AMIT BORKAR, J.)