

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL SUIT NO. 283 OF 2019

Nareshchander S. Oberoi .. Plaintiff
v/s.
Surinder Pal Triloknath Seth & Ors. .. Defendants

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Mr. Vishal Thadhani a/w. Ms. Sneha Gambhir for the Plaintiff.
None for the Defendants.

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CORAM : KAMAL KHATA, J.

DATED : 23RD JUNE 2023.

P.C. :

1. The plaintiff has filed this commercial suit for declaration that the defendant nos.1, 2 and 3 have retired from the firm namely, M/s. National Engineering and Instruments Company (for short "NEIC") with effect from 1st January 1972, 31st January 1985 and 1st July 1987 respectively and the plaintiff alone is the sole proprietary of NEIC. The suit also seeks a mandatory order of injunction directing the defendant no.4 which owns the building where the suit premises is located to delete the name of defendant no.1 from all its records and to make necessary changes in all its records such that the records would reflect the sole name of the Plaintiff as sole Holder of all the shares of the premises.

2. The Plaintiff's case is that in the year 1967 he entered into

partnership with Defendant No. 1 constituting a Firm in the name of M/s National Engineering and Equipment Company which was registered on 31st May 1967 with registration no. B-46381. In or around 1968 Defendant Nos 2 & 3 who were minors were inducted into the partnership. On 21st March 1968 by an Agreement with M/s Hindustan Electric and Mill Store Company NEIC purchased Shop No. 19, Commerce House Nagindas Master Road, Fort, Mumbai 400001 ("suit premises") whereby the ownership rights stood transferred to NEIC's partners Plaintiff and Defendant NO.1. A share certificate bearing No. 97 for 5 shares bearing distinctive nos. 481 to 485 each for Rs 50/- reflecting the names of Plaintiff and Defendant No. 1 came to be issued.

3. By a Supplementary Partnership - cum - Retirement Deed dated 1st January 1972 the 1st Defendant retired from partnership and Defendant No. 2 who became a major became a partner. All accounts were made up and amounts due to the Defendant No. 1 by way of his capital contribution were paid and recorded in the Retirement Deed of 1st January 1972 (Exhibit "C"). Thus his rights in the assets of the firm including the suit premises came to be extinguished from 1st January 1972. On account of inadvertence the name of Defendant No. 1 was not deleted in the records of Defendant No.4.

4. By virtue of an Agreement dated 13th November 1974 the firm was reconstituted as Defendant No. 3 attained majority with 3 partners. Business was carried on till 1985. On 7th February 1985, the second defendant executed a deed of retirement whereby, the defendant no.2 would stand to retire from 31st January 1985 and in consideration thereof, was paid an amount of Rs.38,344.39/- in full and final settlement of his claims, rights, title and interest in the said partnership firm and its assets. The defendant no.2 had released the relinquishment his share in the goodwill, stock in trade, material, book debts, movable and immovable properties of the said firm. The Agreement dated 7th February 1985 recorded that the partnership firm consisted of two partners viz. defendant nos.3 and the plaintiff. (Exhibit E).

5. On 24th July 1987, the defendant no.3 decided to retire from the partnership with effect from 1st July 1987. The Deed of Dissolution evinced that, the 3rd Defendant relinquished all the right, title and interest in the suit premises, as well as the plaintiff taking over the trade and business along with stock in trade assets and credits, debts liabilities of the firm. The dissolution of the said firm with effect from 1st July 1987 is duly recorded by Registrar of the firm who have issued a certificate to that effect. (Exhibit H.)

6. It is stated that on account of inadvertence, the name of the 1st defendant remained to be deleted from the records of the suit premises. It is stated that the plaintiff has been in continuous, uninterrupted, exclusive use, occupation and possession of the suit premises and has been carrying on business therein without any obstruction or interference from any of the defendants since 1st July 1987, the plaintiff alone has been paying maintenance charges to the defendant no.4.

7. It is stated that on account of increase of the share capital, the defendant no.4 issued a new share certificate to all its shareholders who paid differential amounts for the additional 45% equity shares. It is stated that the plaintiff paid Rs.2,250/- for the additional equity shares to defendant no.4 for which receipt no.5214 dated 21st April 2003 was issued. However, Plaintiff received a new share certificate no.533 with Registration Folio No.150 for 45 equity shares of Rs.50/- each, bearing distinctive nos.2571 and 2615 (both inclusive) in the name of the plaintiff as well as as well as retired partner i.e. defendant no.1. In spite of the retirement of defendant no.1 he had not informed the defendant no.4 about the removal of the name from the share certificate on account of the dissolution of the partnership. Despite repeated

requests, defendant no.4 has refused to transfer the suit premises in the sole name of the plaintiff by deleting the name of the Defendant no.1 from the Share Certificate and all its records and consequently, plaintiff has filed suit for said declaration.

8. Pursuant to an order dated 3rd March 2023, the suit was transferred as undefended suit. Learned counsel submits that an affidavit in support of the claim dated 14th April 2023, the affidavit of evidence of Mr. Nareshchander S. Oberoi as well as the original documents relied upon by them are filed in Court.

9. I have perused the original documents including the deed of dissolution dated 27th April, 1987 and the original certificate issued by Registrar of firms which evince the dissolution of partnership. I am of the view that this suit deserves to be decreed. The original documents tendered are taken on file, I pass the following order:

ORDER

- (a) It is hereby declared that the defendant no.1, defendant no.2 and defendant no.3 have respectfully retired from the Firm of NEIC with effect from 1st January 1972, 31st January 1985 and 1st July 1987. It is further declared that the plaintiff is the sole proprietor of NEIC with all its assets

including the suit premises and is consequently the sole owner of the premises particularly described in schedule 'M' of the plaint and is entitled to the shares being issued in the sole name of Plaintiff.

- (b) The defendant no.4 is directed to delete the name of Defendant no.1 from all its records including the share certificate no.97, bearing distinctive numbers from 481 to 485 (both inclusive) and share certificate no. 533 bearing distinctive numbers from 2571 to 1615 (both inclusive) and make necessary changes in all its records as well as share certificates reflecting the sole name of the plaintiff as the sole holder.
- (c) The decree to be drawn up and sealed expeditiously.
- (d) Plaintiff is at liberty to move in execution without awaiting the sealing of the decree.
- (e) Refund of Court fees as per High Court rules.
- (f) No order as to costs.

10. Suit is disposed of in above terms.

11. Parties to act on authenticated copy of this order.

(KAMAL KHATA, J.)