



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 18th July, 2023**

+ C.R.P. 81/2023 & CM APPL. 15612/2023 & CM APPL. 15613/2023

ANKIT BANSAL Petitioner

Through: Mr. Vishal Ranjan and Mr. Sanjay Jha, Advocates

versus

S PARAMJEET SINGH KHURANA Respondent

Through: *Nemo*

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant revision petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter "CPC") has been filed on behalf of the petitioner/revisionist for challenging the validity, legality and correctness of the order dated 14th February, 2023 passed by learned District Judge (Commercial)-03, District Court, Saket, New Delhi in CS (COMM) No. 217 of 2020, by way of which the application of the petitioner filed under Order VII Rule 11 of the CPC has been dismissed along with cost.

2. The suit between the parties before the learned District Judge was filed by the respondent herein for recovery of a sum of Rs. 88,30,310/- along with pendente lite and future interest @ 24% p.a. and permanent and mandatory injunction against the petitioner herein. In the said suit, C.R.P. 81/2023

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the petitioner before this Court raised objections to its maintainability and thus, sought rejection of the plaint under Order VII Rule 11 of the CPC on the ground that the suit of the respondent herein was arising out of the partnership firm which was not registered with the Registrar of Firms and hence, attracts the provisions of Section 69 of the Indian Partnership Act, 1932 (hereinafter “Partnership Act”). On the other hand, the respondent herein objected to the application on the ground that the partnership deed between the parties was duly notarised.

3. The said application under Order VII Rule 11 of the CPC was dismissed by the learned District Judge vide order dated 14th February 2023 while also imposing a cost of Rs. 10,000/-. The petitioner is before this Court upon being aggrieved of the same.

4. The learned counsel appearing on behalf of the petitioner submitted that the impugned order has been passed without appreciating the provisions under the Partnership Act. It is submitted that a plain and simple reading of the plaint and its prayer revealed that the suit filed is for recovery of the amount, without settling the accounts that the respondent herein had invested in the partnership firm. The settled position of law is that till the debts and liabilities of the firm have been fully paid off, no partner can claim any property as his own nor can he claim that he has any specific share or interest in any property of the firm, however, the respondent, i.e., the plaintiff before the Court below, has preferred the suit without settling his accounts.

5. It is further submitted on behalf of the petitioner that the learned District Judge failed to consider that Section 69 of the Partnership Act



provides that no suit shall be instituted to enforce a right arising from a contract on a behalf of any person(s) suing as a partner in a firm against the firm or any person(s) being the partner, unless the firm is registered, however, in the case of the instant parties, there was no such registration of their partnership firm.

6. The learned counsel also submitted that it is a settled proposition of law that for deciding the application under Order VII Rule 11 of the CPC, the Court has to primarily look into the plaint only and by a plain and simple reading of the plaint filed by the respondent, it is evident that the respondent is seeking nothing but recovery of all the amount that he had invested in the partnership firm, along with interest, and nowhere the rendition of the accounts had been sought.

7. It is submitted that the impugned order is contrary to the legal position that has been settled by way provisions under the law as well as judicial pronouncements. It is also submitted that the impugned order suffers from errors that are apparent on the face of the record and hence, the impugned order dated 14th February 2023 is liable to be set aside.

8. Heard the learned counsel for the petitioner and perused the record.

9. The petitioner/revisionist has preferred the instant revision petition against the order of the learned District Judge in the suit initiated by the respondent and pending between the parties. By way of the said order the application of the petitioner herein, the defendant in the suit, filed under Order VII Rule 11 of the CPC, was dismissed with cost. The learned Judge while passing the impugned order, reiterated the provision under Section 69 of the Partnership Act and made the observations as

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reproduced hereunder:

*“7. Further, it has been held in judgment **Basant Lal Vs. Chiranji Lal AIR 1960 Pat 397** that “one partner of an unregistered firm can sue the other partner after dissolution for recovery of money in respect of accounts between them, it was held that such an action was maintainable after dissolution of the firm”.*

It was also held that “any right or power to realise the property of the dissolved firm mentioned in S. 69(3)(a) not only means a right against a third party, but it also includes a right' against the partners of dissolved firm as well.”

*It was also held in the judgment **AIR 1996 SC 2209** that “in case of unregistered firm arbitration clause can be involved for dissolution of firm and rendition of accounts”*

8. It is apparent that the present suit is primarily for rendition of accounts between partners after dissolution of firm. Therefore, the present suit falls within exception of clause 69(3)(a) of Section 69 of The Indian Partnership Act.

9. It is settled law that for deciding an application u/O 7 Rule 11 CPC, only the contents of the plaint and the documents relied upon by the plaintiff have to be seen and not the defence raised by the defendant.

On the meaningful reading of the plaint as a whole and the documents therewith, it cannot be said that the plaint is without cause of action or is barred by any law. The application is totally misconceived, same is dismissed with cost(s) of Rs: 10,000/- to be paid by defendant no. 1 to the plaintiff”

10. While adjudicating the application preferred by the petitioner, the learned District Judge considered the objections to the plaint raised *qua* Section 69 of the Partnership Act. It was noted that Section 69, which stipulates the effects of non-registration of a firm, provides for the



exception to the provision and consequences which may follow upon non-registration. Such exception, as provided for under the Partnership Act, under the relevant provision the instant matter, i.e., Section 69(3)(a), extends to cases where there is an enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm.

11. The partnership between the parties before this Court was admittedly proposed to be dissolved in month of August 2019. It was only after the said dissolution, that the respondent herein approached the Court below by way of filing the suit seeking recovery of the amount and rendition of accounts. The entire cause of action of the suit *per se* has arisen on the premise of the dissolution of the partnership firm. Hence, while dismissing the objections to the plaint, raised on behalf of the petitioner herein, the learned Judge applied the provisions of law under the Partnership Act to the facts and circumstances of the case. The learned Judge further applied the law settled by the Hon'ble Supreme Court by citing and discussing the precedents to issue in question to support his findings.

12. Therefore, given the preliminary stage of consideration of the maintainability of the plaint and consequent suit, the learned Judge was satisfied, with appreciation of the record before him, that there may be a cause of action that has arisen and has given rise to the filing of the suit before the Court. It is not to be seen at this stage whether the suit itself will be successful since the merits of the case itself need not be entered into at the stage of maintainability or rejection of plaint.



13. At this juncture, the scope of interference in revisional jurisdiction of this Court may also be required to be revisited. In the landmark judgment passed in ***D.L.F. Housing & Construction Co. (P) Ltd. vs. Sarup Singh, (1969) 3 SCC 807***, the Hon'ble Supreme Court while discussing the scope of revision under Section 115 of the CPC held as under:

“5. The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words “illegally” and “with material irregularity” as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify



interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal.”

14. The Hon’ble Supreme Court has explicitly settled that the Court exercising revisional powers shall not enter into the questions of facts or evidence or any errors thereto but shall limit itself to the question of errors of exercise of jurisdiction. Even the bare language of the provision itself stipulates the three grounds where a revisional court shall interfere which include matters where the Subordinate Court appears to have:

- (a) exercised a jurisdiction not vested in it by law, or*
- (b) has failed to exercise a jurisdiction so vested, or*
- (c) has acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.*

15. The Hon’ble Supreme Court, further, in ***Pothina Narasamma vs. Marupilla Ammaji***, (2006) 9 SCC 749, while referring to the judgment of ***Manindra Land and Building Corpn. Ltd. vs. Bhutnath Banerjee***, AIR 1964 SC 1336, held as under:

“6. Having heard the learned counsel for the parties we are satisfied that the impugned judgment of the High Court cannot be sustained. In Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee [(1964) 3 SCR 495 : AIR 1964 SC 1336] this Court has held: (AIR p. 1336)

“It is not open to the High Court in the exercise of its revisional jurisdiction under Section 115, to question



the findings of fact recorded by a subordinate court. Section 115 applies to cases involving questions of jurisdiction i.e. questions regarding the irregular exercise or non-exercise of jurisdiction or the illegal assumption of jurisdiction by a court and is not directed against conclusion of law or fact in which questions of jurisdiction are not involved.”

16. Further in the judgment passed in **Ambadas Khanduji Shinde v. Ashok Sadashiv Mamurkar, (2017) 14 SCC 132**, the Hon’ble Supreme Court, reiterating the scope of revisional powers, held as under:

“14. Apart from the factual aspect, order lacks merit on the ground of jurisdiction. The High Court cannot interfere with the concurrent factual findings while exercising jurisdiction under Section 115 of the Civil Procedure Code. It is settled law that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of the Civil Procedure Code, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. In the facts on hand, the courts below have passed reasoned orders well within the jurisdiction conferred upon them. We arrive at the conclusion that the High Court committed error in interfering with the judgment and decree of the trial court.”

17. Undisputedly, the scope of intervention under Section 115 of the CPC is fairly limited. The provision stipulates the three grounds where a High Court may interfere by calling for the record of any case decided by a subordinate Court, where an appeal against such a decision does not lie and, as reproduced above, the Hon’ble Supreme Court has also reiterated the view the scope of revisional powers bars an interference on the basis of errors of facts or law. It is only where there is an irregular exercise or non-exercise of jurisdiction or the illegal assumption of jurisdiction by a



court that the revisional court may intervene.

18. As discussed in the foregoing paragraphs, the learned Judge in the instant case considered the arguments and objections raised on behalf of the petitioner herein in his application under Order VII Rule 11 of the CPC and also appreciated the law laid down *qua* the objections so raised. There is nothing in the impugned order which suggests that there is any error of jurisdiction or other error which goes to the root of the matter and invites the intervention of this Court while exercising its revisional powers.

19. Therefore, keeping in view the facts, circumstances, the arguments advanced as well as contentions raised and also the scope of revisional powers settled by law and reiterated by the Hon'ble Supreme Court, this Court is not inclined to allow the instant petition. There is no error in the impugned order dated 14th February 2023 passed in CS (COMM) No. 217 of 2020 passed by the learned District Judge (Commercial)-03, District Court, Saket, New Delhi, that warrants interference by the exercise of the revisional powers under Section 115 of the CPC.

20. Accordingly, the instant petition is dismissed for being devoid of any merit.

21. Pending applications, if any, also stand dismissed.

22. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

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Click here to check corrigendum, if any

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