



2024:DHC:7975-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **FAO(OS) 145/2024 & C.M.Nos.60234-60236/2024****JITENDER GUPTA**

.....Appellant

Through: Mr.Chinmoy Pradip Sharma,
Sr.Advocate with Mr.Mohit Paul,
Mr.Tejveer Singh Bhatia,
Mr.Krishnajyoti Deka, Mr.Irfan
Hasiab, Ms.Rangoli Seth, Ms.Eka
Kumari Singh and Mr.Faizal Hasan,
Advocates.

versus

RITU GUPTA & ORS.

.....Respondents

Through: Mr.Kanwal Choudhary with Mr.Akhil
Gupta and Mr.Manoj Kumar,
Advocates for R-1 to 3.

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Date of Decision: 14th October, 2024**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****MANMOHAN, CJ : (ORAL)**

1. Present appeal has been filed challenging the order dated 26th April, 2024 passed by the learned Single Judge in CS(OS) 563/2021. The Respondent No.1 (Plaintiff therein) has filed the underlying suit seeking *inter alia* directions for declaration and partition qua the properties mentioned at Schedule A & B of the Plaint.

2. The Respondent No.6/firm comprised two partners, namely, the Appellant – Mr. Jitender Gupta and Late Mr. Rajender Gupta, whose legal



heirs are parties in the original suit and arrayed as Respondents to the present appeal. The learned Single Judge *vide* the impugned order has dismissed the preliminary objection raised by the Appellant herein that the underlying suit was not maintainable as it falls within the ambit of a commercial suit under Section 2(1)(c)(xv) of the Commercial Courts Act, 2015. The learned Single Judge has reasoned that the partnership firm stood automatically dissolved upon the death of one of the partners i.e., Mr. Rajender Gupta and therefore, the dispute would not be one arising out of a partnership agreement and not fall under Section 46 of the Indian Partnership Act, 1932 ("Partnership Act") and therefore, could not be categorized as a commercial dispute.

3. The learned senior counsel for the Appellant states that the learned Single Judge failed to consider that even if the partnership firm stood dissolved, the distribution of assets of the partnership firm amongst the legal heirs of one of the deceased partners and the sole surviving partner would still be a dispute arising out of a partnership agreement and therefore, fall within the ambit of a commercial dispute.

4. He submits that the learned Single Judge has erred by holding that once the partnership is automatically dissolved under Section 42(c) of the Partnership Act, then Section 46 of the said Act will not have any relevance.

5. He further contends that the Respondents (herein) in the plaint have only claimed their rights under the partnership agreement. In support of his contention, he relies upon paragraphs 23, 24 and 31 of the plaint. The same are reproduced hereinbelow:-

"23. That in view of the aforementioned acts of omission & commission on the part of Defendants No. 1 & 2 who have colluded and connived with each other to completely oust the Plaintiffs from business, assets and income of



partnership business, the Plaintiffs have been put to great hardship.

24. That as stated herein above, both partners/ brothers had no other source of income except the income from Defendant No.4 Firm. It is reiterated that Defendant no.1 purchased immoveable properties as detailed at item nos. 4 of Schedule-A attached to the plaint from monies belonging to partnership firm and therefore they are deemed to have been acquired for and on behalf of Defendant No.4 firm and vest in it.

xxx xxx xxx

31. That Plaintiffs have been constantly persuading Defendant No.1 to admit Plaintiff Nos.1 & 2 in the partnership firm in place of Late Rajender Gupta and execute a fresh Partnership Deed in respect thereto, however, Defendant Nos.1 & 2 with mala fide intention and also in order to grab all the properties of partnership firm did not accede to the request of Plaintiffs.”

6. He lastly places reliance upon the judgment of another learned Single Judge in ***Jatin Jain & Ors. vs. Anuj Jain & Ors. (2024) SCC OnLine Del 2076.***

7. Having heard learned counsel for the Appellant, this Court is of the view that the partnership deed was an agreement executed only between the Appellant and Mr. Rajender Gupta. The legal heirs of the latter were not even parties to the deed. It is not in dispute that the partnership firm stood automatically dissolved on the day Mr. Rajender Gupta passed away. The claims are only with respect to the distribution of assets between the parties, and that too, as legal heirs of the deceased partner. Admittedly, the partnership agreement in question does not provide for distribution of assets between the legal heirs of a deceased partner and a surviving partner. Further, the judgment in ***Jatin Jain & Ors. vs. Anuj Jain*** (supra) has no application to the facts of the present case as it does not deal with disputes between the legal heirs of a deceased partner and a surviving partner.

8. The claims being agitated in the underlying suit are at best under the Partnership Act and not in furtherance of the partnership agreement as stipulated in Section 2(1)(c)(xv) of the Commercial Courts Act, 2015.



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9. Moreover, from a perusal of Schedule A & B of the Plaint as well as the paragraphs of the plaint reproduced hereinabove, it appears that the relief of declaration is being sought against certain properties which are claimed to be ancestral properties. Thus, the relief in the plaint is with regard to properties beyond the erstwhile partnership firm.

10. In any event, the appeal is barred by delay of 118 days. Consequently, the present appeal along with the applications is dismissed both on the ground of delay as well as on merit.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

OCTOBER 14, 2024
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