$~69 & 71

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

% ***Date of Decision:26th March, 2025***

\+ CM(M) 546/2025 & CM APPL. 17260-17261/2025

ANKIT BANSAL .....Petitioner

Through: Mr. Vishal Ranjan, Advocate

versus

S. PARAMJEET SINGH KHURANA .....Respondent

Through: Advocate (Appearance not given)

\+ CM(M) 3573/2024 & CM APPL. 5950/2025

ANKIT BANSAL .....Petitioner

Through: Mr. Vishal Ranjan, Advocate

versus

S. PARAMJEET SINGH KHURANA .....Respondent

Through: Advocate (Appearance not given)

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T *(oral)*

1. Both the aforesaid petitions emanate from the same suit and have been filed by the defendant.

2. With the consent of learned counsel for the parties, both the petitions have been taken up together and are being disposed of by this common judgment.

3. The following issues, as amended by order dated 23.08.2024, were framed by the learned Trial Court: -

> *1. Whether the firm M/s. Video Voice INC has been dissolved as per law? If yes, then whether accounts were settled after rendition of accounts between the parties? OPD*

2. *Whether the plaintiff is entitled for recovery of Rs. 1,03,15,022 inclusive of interest upto 31.5.2020?/- (OPP)*

3. *Whether the plaintiff is entitled for the interest. If yes at what rate?(OPP)*

4. *Whether the plaintiff is entitled for decree of permanent injunction retraining D-1 from creating third party rights in respect of capital of Mis Video voice INC? (OPP)*

5. *Whether the Plaintiff is entitled for decree of declaration in respect of personal assets of D-1 to D-3 and an order of permanent injunction retraining them from creating third party rights in respect of their movable and immovable assets? (OPP)*

6. *Whether the Plaintiff is entitled for costs of the suit? (OPP)*

7. *Relief"*

4. The grievance of the defendant is that the onus with respect to issue no. 1 above could not have been fastened upon him alone and such onus has to be discharged by both the sides.

5. Learned counsel for plaintiff/respondent herein submits that he would have no objection if the onus in this regard is put on both the parties.

6. Accordingly, the onus to prove the abovesaid Issue No. 1 would be on both the parties.

7. It is also admitted fact that when the aforesaid suit was pending adjudication, defendant had moved an application under Order VII Rule 11 CPC and his sole legal contention was that the suit was barred by law as the partnership firm in question was unregistered one and, therefore, suit was barred in terms of Section 69(3) of Indian Partnership Act.

8. Such contention was rejected by the learned Trial Court vide order dated 14.02.2023 and while dismissing the aforesaid application, learned Trial Court had also observed that for deciding any such application under Order

VII Rule 11 CPC, only the contents of the plaint and the documents relied upon by the plaintiff were to be seen and not the defence raised by the defendant. Undoubtedly, though the aforesaid order has attained finality as the revision petition filed by the defendant was also dismissed by this Court, since the decision with respect to the aforesaid aspect was taken at a preliminary stage while confining to the averments made in the plaint and the documents of the plaintiff, no prejudice would be caused if additional issue, to the following effect, is also framed: -

> *"Whether the present suit is barred under Section 69(3) Indian Partnership Act? OPD"*

9. Learned counsel for defendant has, in all fairness, submitted that he does not press that the aforesaid *additional issue* be treated as a preliminary issue. Learned counsel for plaintiff has also no objection to abovesaid additional issue.

10. The abovesaid additional issue shall be numbered as Issue No. 1(A) and be adjudicated by learned Trial Court, at the time of final disposal, in accordance with law.

11. Both the aforesaid petitions stand disposed in the aforesaid terms.

12. All the pending applications also stand disposed of.

13. Next date of hearing i.e. 07.07.2025 stands cancelled.

(MANOJ JAIN)
JUDGE

MARCH 26, 2025/*dr/pb*