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

% **Date of decision: 22nd April, 2025**

+ **FAO 461/2018 and CM APPL. 40605/2018**

SUMANT RAI DEEWAN

.....Appellant

Through: **Mr. Sanjeev Kumar Sharma and Ms. Shalini Sharma, Adv.**

versus

M/S INDIAN HANDICRAFTS & ORS.

.....Respondents

Through: **Mr. N.P. Singh, Adv.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. Having heard the learned counsels for the parties present and upon perusal of the record, this Court proceeds to decide the present appeal preferred by the appellant under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 [“CPC”], whereby the impugned order dated 19.01.2018 passed by the learned Additional District Judge-02, South District, Saket Court, New Delhi [“**Trial Court**”], dismissing the application filed by the appellant under Order XXII Rule 10 of the CPC in a pending suit is assailed.

2. In a nutshell, a suit for recovery of Rs. 12,88,813/- along with *pendente lite* and future interest was filed on behalf of partnership firm viz. M/s. Concept Clothing acting through its Partner/Authorized Signatory, Ms. Gayatri Deewan, against the respondent/defendants, which was instituted on 02.01.2010. It appears that during the pendency of the suit, an



application under Order XXII Rule 10 of the CPC was moved on behalf of the appellant, who is the husband of the earlier partner, Ms. Gayatri Deewan, that the firm had been dissolved and the entire assets, properties and liabilities of the partnership firm have been taken over by M/s. Concept Clothing as the sole proprietorship concern of the appellant, in terms of the dissolution deed dated 31.12.2010. The said application came to be dismissed by the learned trial Court *vide* the impugned order dated 19.01.2018, which reads as under:

“4. As per the averments of the application, the applicant is a sole proprietorship which has taken over the liabilities and assets of the Plaintiff Firm. However, a perusal of the Takeover Deed reveals that the assets and liabilities of the Plaintiff Firm have been taken over by a registered Company as is reflected on the first page of the Takeover Deed. Strangely enough, in the subsequent paras, the acquiring company is shown to be a proprietorship of the applicant herein-Sumant Deewan. It is thus not even clear whether take over has been effected by an incorporated Company or a sole proprietorship. The application is thus not maintainable on this short ground.

5. If at all the application could be filed, it had to be moved on behalf of the Company which purportedly took over the assets and liabilities of the Plaintiff Firm. On the contrary, the averments in the application at hand portray a different picture i.e. regarding the status of assignee being a sole proprietorship. Consequently, the application is declined as being not maintainable.

6. At this stage, it is relevant to highlight that the matter was first listed for leading evidence on behalf of the plaintiff, on 06.01.2012. However, since then neither evidence has been led nor any partner of the Firm or an AR on its behalf has put in appearance. Since 06.01.2012 the Court has practically been misled by seeking adjournments on the ground that plaintiff and the defendants are trying to settle the matter. If the assets of the Plaintiff Firm had been taken over as early as 27.12.2010, why were adjournments sought for over 5 years on the premise of settling the matter by the Plaintiff Firm with the defendants. The manner in which the time of the Court has been wasted is an example of how casually the litigants view the Court's process. That apart, the application should also have been supported by an affidavit of one of the partners of plaintiff, affirming the fact of takeover of the assets and liabilities of the Plaintiff Firm and its dissolution. Even though the dissolution deed of the plaintiff Firm has been filed, there is nothing to show that the Registrar of



Firms was informed of the dissolution and the partnership Firm has been officially struck off from the records of the Registrar of Firms. Thus, it cannot be presumed that Plaintiff Firm stands dissolved or its have been acquired by another entity. The present suit was instituted in the year 2009 and we are already in the year 2018 but till date no evidence has been led by the Plaintiff Firm, as is evident from the previous orders starting from 06.01.2012. Consequently, the right of the Plaintiff Firm to lead evidence stands closed.

7. Put up again on 12.03.2018 for leading evidence on behalf of the defendants.”

3. During the course of arguments, it was clarified that the partnership firm was a registered partnership firm, and therefore, bar of Section 69 of the Partnership Act, 1932, did not apply. Be that at it may, insofar as the present appellant is concerned, although the dissolution deed is dated 31.12.2010, it appears that the present application under Order XXII Rule 10 of the CPC was moved belatedly on 06.10.2017, i.e., after more than 7 years of arising of the cause of action. It is but apparent that by virtue of dissolution deed dated 31.12.2010, right to sue had been acquired by the appellant as the sole proprietor to continue with the suit and he had a period of three years to get himself impleaded as the sole plaintiff. The application under Order XXII Rule 10 of the CPC is not only woefully barred by limitation, but even the part of the impugned order, whereby the evidence of the plaintiff was closed has not been assailed in the present proceedings or in any other independent proceedings.

4. In view of the above, this Court is not inclined to interfere with the impugned order dated 19.01.2018. The appeal is accordingly dismissed.

5. The pending application also stands disposed of.

DHARMESH SHARMA, J.

APRIL 22, 2025/Sadiq