

(2008) 11 DEL CK 0103

In the Delhi High Court

Case No : Regular First Appeal No. 297 of 1989

Mahabir Tin Works

APPELLANT

Vs

Sheel Seed Farm (Regd.)

RESPONDENT

Date of Decision : 11-11-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 7

Citation : (2008) 11 DEL CK 0103

Hon'ble Judges : Pradeep Nandrajog, J;J.R. Midha, J

Bench : Division Bench

Advocate : Rajiv Aneja, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Whatever be the worth of the success for the appellant, a victory is staring the appellant, but we do not know whether the appellant would reap the harvest thereof. The respondent is based in Sonawar Bagh, Shrinagar, a place where the appellant may hardly possibly reach, if the situation in the valley does not improve.

2. The appellant had filed a suit for recovery of Rs. 38,000/- which has suffered a dismissal on account of the finding returned that a sole proprietary firm is not a juristic entity and hence can not sue. The merits of the claim has not been adjudicated.

3. Indeed Learned Counsel for the appellant concedes that a sole proprietary firm can not sue in its name. The suit has to be filed in his own name by the sole proprietor and in the plaint he may disclose that he is carrying on business under the name and style of the sole proprietary firm.

4. But, what is to the advantage of the appellant is that an application was filed under Order 16 Rule 7 CPC to correct the memo of parties which was dismissed by the learned Trial Judge.

5. Suffice would it be to state that a wrong description of the name of the plaintiff can always be corrected. Suffice would it be to state that laws of procedure are intend to subserve the cause of substantive justice unless the compelling language of a procedural law leaves no scope to take the contrary view. Further, attempt has to be made to interpret the procedural law so that it furthers the cause of substantive justice.
6. We are afraid that the Learned Trial Judge has taken a view when appellant was not permitted to amend the cause title.
7. We allow the appeal and set aside the impugned judgment and decree dated 02.02.1989 by permitting the appellant to amend the cause title of the plaint by showing that the plaintiff is the sole proprietor and not the firm.
8. We restore the suit for fresh adjudication as per law since claim on merits has not been adjudicated.
9. Learned Counsel for the appellant states that he would obtain instructions from his client whether the suit should be further prosecuted in as much as the end result of the suit seems to be nothing but a dark alley for the appellant.
10. No costs.