
(2013) 07 RAJ CK 0099
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11059 of 2011

M/s. Balaji Marble Mines

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152
Partnership Act, 1932 — Section 63, 64, 72

Citation : (2013) 4 WLN 87

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : Kamal Dave in S.B. Civil Writ Petition No. 11059 of 2011, Mr. Rajesh Joshi in S.B. Civil Writ Petition No. 9873 of 2011, Mr. Dinesh Mehta for Mr. Rakesh Kumar Dhariwal, Mr. Mahesh Thanvi for Mr. Rajhand Upadhyay and Mr. Ranveer Singh in S.B. Civil Writ Petition Nos. 9873 and 11059/2011, for the Appellant; Rajesh Joshi for Respondent No. 6 in SBCWP No. 11059 of 2011, Mr. Anand Purohit, Additional Advocate General Assisted by Mr. Pradhuman for the State, for the Respondent

Final Decision : Allowed

Judgement

P.K. Lohra, J.—Adjudication in both these writ petitions hovers around a common lis, and therefore, both are heard together and are disposed of by a common order at this stage with the consent of all the parties. Succinctly stated, the facts which are common in both these petitions are that M/s. Balaji Marble Mines, Makrana, a registered partnership firm, having five partners, viz., Mukesh Kumar Rinva, Bhanwarlal Aukna, Bhanwarlal Choudhary, Rakesh Kumar Dhariwal and Kana Ram Burdak (Petitioner in S.B. Civil Writ Petition No. 9873 of 2011) started business of marble mining and trading. The partnership deed was duly registered with the Registrar of Firms on 17th of November 2008. As transpired from the averments in the petition, upto March 2009 the firm continued its pursuit of the business of mining and trading of marble. On 25th of April 2009, there was some alleged special event facilitating change in the constitution of the firm, which is

the genesis of this litigation. As pleaded in the writ petition, on 25th of April 2009, out of the five partners of the firm, two partners viz., Kana Ram Burdak and Rakesh Kumar Dhariwal decided to call it a day and with a view to retire from the firm executed a partnership dissolution deed on the same day. The said dissolution deed was signed by all the partners and thereafter all the partners including the retiring partners submitted prescribed Form "E" with the Registrar of Firms, Nagaur on 14th of May 2009. The effect of submission of Form "E" changed the previous entry about the firm on 14th of May 2009. When the change in constitution of the firm as a consequence of retirement of two partners came into offing, the requisite amount of the share of both the retiring partners was paid to them. In support whereof, the Bank statement of the firm is placed on record. It is also pleaded in the writ petition that after completion of the formalities of retirement of two partners, a supplementary deed was executed by the remaining partners on 1st of June 2009. It appears that there was some sense of discord amongst the original partners of the firm and the contentious issue apparently was the retirement deed and the subsequent events thereof. From the averments contained in the writ petition it can be conveniently churned out that respondent Rakesh Dhariwal was not happily disposed with the chain of events, and therefore, he made an endeavor to solicit information from the Mining Engineer, Ajmer under the Right to Information Act, pursuant to retirement deed and Form "E" submitted in this behalf. In response thereto, the Mining Engineer divulged him the requisite information on 24th of November 2009. Reiterating the sequence of events that change in the constitution of the firm has taken place in strict adherence of law, it is detailed in the writ petition that the respondent Rakesh Dhariwal though solicited information under the RTI Act but the amount paid to him by the firm of his share for the purpose of his retirement from the firm was utilized by him and the issue relating to the change in the constitution of the firm was settled perpetually. The positive assertion of the petitioner firm in the writ petition is that inspite of the fact that the matter relating to change in constitution of the firm had settled in a streamline manner, the respondent Rakesh Dhariwal made an abortive attempt to unsettle and dwindle the same and in his that pursuit laid an application u/s 64 of the Indian Partnership Act 1932 (for brevity, hereinafter referred to as "Act of 1932") before the Registrar of Firms on 20th of September 2010. Taking cognizance of the said application of the respondent, the Registrar served notice on the partners of the firm on 2nd November 2010. The notice was duly replied by the partners of the firm and it was categorically averred in the return that retirement deed was duly signed by respondent Rakesh Dhariwal and the requisite amount which was part of his share in the firm has already been paid to him by Cheque No. 36947 of Bank of Rajasthan, Makrana, and the amount aforesaid has also been withdrawn by the respondent. Eventually, the Registrar decided the said application of the respondent and vide its entry dated 2nd of August 2011 ordered rectification in the change of constitution of the firm by re-entering the names of the alleged retiring partners, viz., Rakesh Dhariwal and Kana Ram Burdak. Before making the impugned entry, the Registrar of Firms, at his own sent the signatures of the

respondent for verification to Regional Forensic Science Laboratory (for short, "RFSL") and on receipt of the report from RFSL, without affording opportunity of being heard to the partners of the petitioner firm, inserted the requisite entry by inclusion of the name of the retiring partners. In the petition, arraying the Commissioner of Industries, as a respondent in person, the firm has also made imputations that he has played pro-active role in facilitating the requisite entry. Besides Commissioner of Industries, the Registrar of Firms is also impleaded as respondent No. 9 in his personal capacity. For substantiating nexus of the Commissioner of Industries in the matter, the firm has pleaded in the writ petition that without there being any authority, the respondent No. 8 has entertained the appeals of Rakesh Dhariwal and issued letter to the Registrar of Firms, Nagaur. Being disgruntled with the impugned entry, counsel for the petitioner firm submitted numerous representations elucidating the correct legal position and pointing out that the impugned entry is illegal and in gross violation of the principles of natural justice, but nothing turned out. Thus, imploring annulment of the impugned entry, the petitioner firm has invoked the extraordinary jurisdiction of this Court and has also prayed for awarding it exemplary compensation from respondent No. 8 & 9.

2. In the second petition, which is preferred by Mr. Kana Ram Burdak, challenge to the impugned entry is on the same lines and in the prayer clause besides seeking the annulment of the impugned entry, he has also prayed for exemplary compensation from eighth respondent (Director of Industries) and respondent No. 9.

3. On behalf of respondent No. 1 to 3, reply to the writ petition is submitted and the impugned entry has been stoutly defended. The respondents have pleaded in the reply that the impugned entry has been made after due enquiry in accordance with law. Taking shelter of the report of the RFSL, the respondents have averred in the reply that there is no infirmity much less legal infirmity in the impugned entry.

4. Countering the allegations of the writ petition, the respondent Rakesh Dhariwal has also submitted his detailed reply with preliminary objections. The respondent Rakesh Dhariwal has categorically averred in the reply that the so called change in the constitution of the firm ousting him as a partner of the firm is an outcome of a conspiracy hatched by the remaining four partners and they all were in connivance to forge his signatures on Form "E". Taking a dig at the litigation in the name of the firm, the respondent has asserted in his reply that this litigation is a sheer abuse of the process of law. Refuting all the averments in toto, Mr. Rakesh Dhariwal has urged with full emphasis at his command in the return that he was never ready and willing to retire from partnership as such there is no question of his signing retirement deed as well as Form "E". With a fervid tone in his reply, Rakesh Dhariwal has submitted that on the requisite documents his all signatures are spurious. Placing heavy reliance on RFSL Report, respondent has urged that by ordering rectification in the form of

impugned entry dated 2nd of August 2011, the Registrar of Firms has exercised its discretion judiciously which cannot be faulted from any angle. Buttressing his submissions, the respondent has categorically averred that a forged document and a fraudulent transaction, which has facilitated the alleged change in the constitution of the firm, was rightly made subject matter of enquiry by the Registrar of Firms in exercise of powers conferred on it u/s 64 of the Act of 1932.

5. The respondent No. 8 & 9 have filed their separate reply to the writ petition and denied the insinuations hurled against them. In totality, they have also defended the impugned decision dated 2nd of August 2011.

6. On behalf of the petitioner firm, a rejoinder to the reply of respondent No. 7 is submitted repelling all the objections incorporated in the reply. In the rejoinder, the petitioner has reiterated all the assertions pleaded in the writ petition.

7. Learned counsel for the petitioners, Mr. Kamal Dave and Mr. Rajesh Joshi, have strenuously argued that powers conferred on the Registrar of Firms u/s 64 of the Act of 1932 are confined to rectification of mistakes and in guise of rectification of mistake, the Registrar is not competent to make a roving enquiry. Assailing the impugned entry, the learned counsels would urge that by ordering impugned entry, the Registrar of Firms has acted de hors the law and has overstepped its jurisdiction. The learned counsel for the petitioners have contended that powers conferred on the Registrar of Firms u/s 64 of the Act of 1932 are akin to that of powers of civil Court u/s 152 CPC. Authenticating their submission, the learned counsel for the petitioners would urge that the Registrar of Firms by soliciting the report of RFSL has made an affirmative attempt to exercise the powers which were never intended by the legislature u/s 64 of the Act of 1932. Attacking the impugned entry with full vehemence, the learned counsel for the petitioners have submitted that recording of impugned entry by the Registrar of Firms is wholly without jurisdiction and in gross violation of principles of natural justice, therefore, the same cannot be sustained.

8. In support of their contentions, the learned counsel for the petitioners have placed heavy reliance on a decision of this Court in case of Sri Lakha Granites Vs. Eklavya Singh and Another, In this verdict, while considering the scope of inquiry u/s 64 of the Act of 1932, the Court made following observations in Para 20:

20. A bare perusal of Section 64 of the Act makes it abundantly clear that the Registrar can exercise the power only for rectification of the mistake so as to bring the entries made into conformity with the documents relating to the firm. In considered opinion of this court, while exercising the power of rectification of mistakes, the Registrar who is only a registering authority authorized to record the entry in respect of constitution of the firm, its dissolution etc has no authority to enter into roving and fishing inquiry into the rival claims of the parties and pronounce upon the genuineness or validity of the documents produced. Suffice it to say that if the alteration recorded in the register of the firms is in conformity with the statement made and documents produced in terms of the provisions of

Section 63 of the Act, no proceedings for cancelling or deleting the entries already made can be initiated by the Registrar in purported exercise of the power U/s. 64 of the Act. Moreover, as per the provisions of sub-section (2) of Section 64, the proceedings for rectification of mistake can be initiated by the Registrar only on application made by all the parties who have signed any document related to the firm filed before him and not otherwise. Therefore, no proceedings could have been initiated by the Registrar for cancellation of the entry recorded in conformity with the provisions of Section 63 of the Act in the garb of the power conferred U/s. 64 of the Act for rectification of the mistakes and that too at the instance of one of the partners of the firm who is alleged to have retired after reconstitution of the partnership.

9. The Court further proceeded to make following observations to circumscribe the provisions contained u/s 64 of the Act of 1932 in Para 24 of the order:

24. As noticed above, the Registrar had simply no jurisdiction whatsoever to enter into a roving and fishing inquiry to examine the genuineness and validity of the documents produced on the basis of appeal filed by the respondent no. 1 questioning the entry recorded in the Register of Firms regarding the reconstitution of the firm. It is not disputed before this Court that the present incumbent in the office of Registrar who has passed the order impugned is not the same person who had recorded the changes in the constitution of the registered firm stand complied with. There is nothing on record to show that the entries were effected by the then Registrar without being satisfied that the relevant provisions have been duly complied with. A perusal of the record produced reveals that it is not the practice in vogue in the office of the Registrar to record the complete proceedings in the matter of registration or recording of changes in constitution of a registered firm or dissolution thereof. Therefore, the inference drawn and the finding recorded by the present Registrar without there being any material to show that the entry was recorded by then Registrar without arriving at the satisfaction that the relevant provision stand complied with, is *ex facie* capricious and perverse, which cannot be countenanced by this court.

10. Learned counsel for the petitioners have further urged that the said verdict of the learned Single Judge in *Sri Lakha Granites* (supra) is upheld by the Division Bench vide its judgment dated 8th March 2013 in D.B. Civil Special Appeal (Writ) No. 699 of 2011 (*Eklavya Singh Vs. Sri Lakha Granites & Ors.*). In the said verdict, the Division Bench after thoroughly examining the powers of Registrar u/s 64 of the Act of 1932 has made following observations in Para 18:

18. It is clear from Section 64 of the Act that the Registrar has the power to rectify any mistake in order to bring the entry in the Register of Firms relating to any firm into conformity with the documents filed. But, u/s 64 of the Act, the Registrar has no jurisdiction to examine the genuineness and validity of the documents produced on the basis of the appeal/application filed by the petitioner questioning the entries dated 07.02.2005 and 13.10.2006 recorded in the

Register of Firms. Where there is bona fide dispute about the documents and interpretation of various laws requiring recording of evidence, the matter cannot be adjudicated u/s 64 of the Act which being a summary proceeding, wherein only rectification of any apparent mistake is permissible and in such matters, the proper course would be to have the matter adjudicated by ordinary courts of law.

11. Examining the scope of Rule 12 & 13 of the Rajasthan Partnership Rules 1952, the Division Bench has held that Registrar is not competent to adjudicate and decide the authenticity and correctness of the deeds. The observations to this effect were made by the Division Bench in Para 20 of the said verdict:

20. It is also to be noted that as per Rule 12 of the Rules, if any person wishes to dispute any entry in the register, such person shall give the Registrar a notice in writing and the Registrar shall make a remark to the effect at the end of the then existing entries and shall make a remark in red ink against the entries so disputed. The Registrar can make inquiries in his discretion as per Rule 13 of the Rules, but these Rules do not give the Registrar any authority to adjudicate and decide the authenticity and correctness of the deeds dated 19.10.2004 and 01.04.2005 presented by the respondents.

12. The Division Bench finally concluded in Para 22 as under:

22. Thus, in view of the above discussion the proceedings initiated by the Registrar for cancellation/rectification of the orders dated 07.02.2005 and 13.10.2005, recording the changes in the constitution of the firm in the Register of Firms and the impugned order dated 18.05.2009 passed in exercise of the power u/s 64 of the Act is without jurisdiction and beyond the power conferred upon the Registrar u/s 64 of the Act.

13. Per contra, the learned Addl. Advocate General Mr. Anand Purohit, assisted by Mr. Pradhuman Singh, has urged that the Registrar of Firms has rightly exercised its discretion when fraud was unearthed and therefore no interference with the impugned entry is warranted in exercise of extraordinary jurisdiction of this Court. Mr. Purohit would urge that when umpteen material was available with the Registrar of Firms to form an opinion that signatures of the so called retiring partner on Form "E" are spurious, it was well within the jurisdiction of the Registrar to undo the same by rectifying it in exercise of power u/s 64 of the Act of 1932.

14. Mr. Dinesh Mehta, learned counsel for contesting respondent Rakesh Dhariwal, has strenuously argued that the change in the constitution of the firm, whereby the respondent was removed as partner of the firm was effected without giving any notice to him as envisaged u/s 63 of the Act. Substantiating his contentions, learned counsel Mr. Mehta has laid emphasis on Section 72 of the Act of 1932, wherein mode of giving public notice is envisaged. Mr. Mehta has laid great emphasis on the language employed in Section 63 and 72 of the Act of 1932 and would urge that the provisions are mandatory in character and any change brought about in the constitution of the firm sans these provisions is

bad in law. On the strength of these contentions, Mr. Mehta, the learned counsel for the respondent, submits that in view of such glaring facts, the Registrar of Firms has rightly exercised his powers of rectification u/s 64 of the Act of 1932 and the same cannot be faulted in any manner.

15. Taking a dig at the conduct of the firm, Mr. Mehta has argued that after impugned entry, the respondent was re-indicted as partner of the firm and therefore filing this writ petition in the name of the firm by ignoring him as a partner, is a glaring example of impropriety and on this count alone no interference is called for. Mr. Mehta has argued with full vehemence at his command that taking into account checkered history of this case and glaring facts inasmuch as the RFSL report has clarified the position that alleged signatures of the respondent on Form "E" were not genuine, the discretion exercised by the Registrar of Firms cannot be faulted. According to Mr. Mehta, in the backdrop of the facts and circumstances of the case, the exercise of power of rectification by the Registrar of Firms is a just decision, which requires no interference by this Court in exercise of extraordinary equitable jurisdiction.

16. Mr. Mahesh Thanvi, learned counsel for respondent No. 8 & 9, has stoutly defended the private respondents and has vehemently repudiated all the insinuations hurled against them in the writ petition. Mr. Thanvi has, therefore, urged that no relief can be granted to the petitioners against these respondents.

17. I have heard learned counsel for the parties and thoroughly scanned the materials on record.

18. On examination of the controversy involved in the matters in entirety, there remains no room of doubt that the issues which are germane to the matter are vital and contentious. Per-se, the allegations of spurious signatures and preparation of fabricated documents are serious in nature on which a thorough enquiry is required. Depriving an individual from his right and interest in a partnership firm by practicing alleged fraud is an issue of great significance which requires thorough probe. Despite availability of umpteen materials including the RFSL report supporting the cause of the respondent Rakesh Dhariwal, the concern of this Court in the present petition is very much limited and circumspect as the Court is only required to see what is the scope of the connotation "rectification of mistakes" enshrined u/s 64 of the Act of 1932. The power of a Registrar u/s 64 of the Act of 1932 is pivotal issue and that being so this Court cannot travel beyond the same and enlarge the scope of adjudication. As the impugned entry has been made by the Registrar of Firms u/s 64 of the Act of 1932, precisely, the Court is to see the powers of the Registrar under the aforesaid Section. For appreciating this aspect of the matter, a glance at Section 64 of the Act of 1932 is imperative. The complete text of Section 64 is reproduced as under:

64. Rectification of mistakes.

(1). The Registrar shall have power at all times to rectify any mistake in order to

bring the entry in the Register of Firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter.

(2) An application made by all the parties who have signed any document relating to a firm filed under this Chapter, the Registrar may rectify any mistake in such document or in the record or note thereof made in the Register of Firms.

19. In the light of the language employed in Section 64 quoted hereinabove, there remains no shadow of doubt that powers of the Registrar are confined to rectification of mistakes and in the guise of rectification, the Registrar is not empowered to make roving enquiry and order reconstitution of the firm. The very nomenclature suggests that the Registrar under the aforesaid section has been clothed with the power to rectify the mistake. Obviously, while rectifying the mistake, a Registrar is not empowered to adjudicate any dispute including inconsistencies in the entries. Furthermore, while exercising powers u/s 64 of the Act of 1932, he is not empowered to effect any alteration or change in the entries which were made earlier dehors the mandatory provisions of law. My this view is fully fortified from the verdict of this Court in M/s. Sri Lakha Granites case (supra) which is upheld by the Division Bench in case of Eklavya Singh (supra). Therefore, the controversy hovering around powers of the Registrar of Firms u/s 64 of the Act of 1932 remains no more res-integra and any other interpretation of the said provision is a sheer ambitious contention of the respondent which cannot be acceded to by this Court.

20. Hon"ble Apex Court in its verdict in Official Liquidator Vs. Dayanand and Others, while emphasizing need of judicial discipline and adherence of Law of Precedents has held in unequivocal terms that discipline is a sine-qua-non for effective and efficient functioning of the judicial system. Deprecating such a practice in strongest words, the Court made following observations in Para 78:

78. There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. In Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, this Court observed:

If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous

decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court.

(emphasis added)

21. Further reiterating the observance of judicial discipline by the Courts, the Apex Court proceeded to make undermentioned observations in Para 90 of the verdict:

90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

22. In this view of the matter, the impugned entry dated 2nd of August 2011 (Annex. 1) made by the Registrar of Firms by ordering reconstitution of the firm by way of inclusion of respondent Rakesh Dhariwal and Kana Ram Burdak, as partners cannot be sustained and the writ petitions deserve acceptance.

23. The upshot of the above discussion is that the writ petitions are allowed, the impugned entry made by the Registrar of Firms dated 2nd of August 2011 (Annex. 1) whereby it has ordered the rectification in the change of the constitution of the firm u/s 64 by way of inclusion of Shri Rakesh Dhariwal and Kana Ram Burdak as partners of firm M/s. Balaji Marble Mines is hereby annulled and the impugned entry is quashed and set aside. The parties are left to bear their own costs.