(2016) 02 P&H CK 0069

In the Punjab And Haryana At Chandigarh

Case No : RSA No. 3137 of 2010 (O&M)

M/s Eureka Industries & Others — APPELLANT

Vs

Mrs. Anjana Shoor — RESPONDENT

Date of Decision : 18-02-2016

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2016) 2 PLR 320

Hon'ble Judges : Shekhar Dhawan, J.

Bench : Single Bench

Advocate : Rajinder Mahajan, Advocate, for the Appellant; M.S. Sachdeva, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Shekhar Dhawan, J.- Present Regular Second Appeal is directed against the concurrent findings of both the Courts below, whereby, suit filed by plaintiff - Anjana Shoor for rendition of accounts and for passing a decree of the amount found due against the defendants, was decreed by the Court of first Instance vide judgment and decree dated 4.6.2008. The appeal filed by the defendants was dismissed by learned Additional District Judge, Jalandhar vide judgment and decree dated 3.5.2010.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this appeal; that plaintiff had filed a suit for rendition of accounts and for passing a decree of the amount found due against the defendants on the ground that the plaintiff was earlier partner of the firm, M/s Eureka Industries, defendant No.1 and defendants No.2 and 3 were partners in the said firm. The plaintiff was partner to the tune of 50% while defendants No. 2 and 3 were partners to the tune of 35% and 15% respectively. The partnership deed was duly registered. In the year

1998, a dispute arose between the parties and an agreement was settled on 31.12.1998 whereby assets were to be divided in due time and subsequently, due to non-settlement of terms and conditions, a fresh agreement was written and duly signed amongst the partners on 10.2.1999. On the basis of the said agreement, retirement deed dated 31.3.1999 was written and as per the same, the retiring partner was to be paid her dues in due course of time. Defendants No.2 and 3 are still running the business and had not given any amount whichever was due towards the plaintiff. Request having been made by the plaintiff but to no avail and as such necessity of the suit.

4. Defendants contested the suit on the ground that the plaintiff is not entitled to seek rendition of accounts. They also took the plea that defendant No.1 through Smt. Meenakshi Shoor had filed a civil suit for permanent injunction and the present suit was just a counter-blast of the said litigation and prayed that the suit be dismissed.

5. On the pleadings of the parties, issues were framed. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance decreed the suit of the plaintiff and returned the finding that the plaintiff was entitled to a preliminary decree and directed the defendants to give accounts to the plaintiff regarding assets and liability mentioned in the retirement deed dated 31.3.1999. The appeal preferred by the defendants before the Court of first Appeal was dismissed. As such, the present Regular Second Appeal.

6. Learned counsel for the appellants mainly submitted that after retirement deed dated 31.3.1999, suit for rendition of accounts was not maintainable and the plaintiff could file a suit for recovery only. He also submitted that the suit was filed after seeing the accounts statement on 30.3.2002. The outstanding amount was ascertained to the tune of Rs.50.00 lakhs and as such, the suit for rendition of accounts was not maintainable, but the Courts below have not considered this aspect while deciding the controversy.

7. Learned counsel for the respondent while arguing this point, submitted that the plaintiff stood retired on 31.3.1999. However, on that day, no accounts were settled and both the Courts below have also recorded concurrent findings of fact that the suit for rendition of accounts is maintainable and that is why preliminary decree was passed by the Court of first instance. It had come in the evidence that on 1.4.2003, some amount was outstanding but that amount was not ascertained and as such, suit for recovery could not be filed, rather suit for rendition of accounts only is maintainable.

8. Having considered the submissions made by learned counsel for the parties and after going through the record, this case is of the considered view that the controversy involved in this case is short and simple because the remaining facts are not in dispute that the plaintiff was partner in the firm, named, M/s Eureka Industries, defendant No.1 along with defendants No.2 and 3. Their shares were

ascertained. The retirement of the plaintiff had taken place on the basis of retirement deed dated 31.3.1999. The only substantial question of law involved in this appeal is -

Whether suit for rendition of accounts is maintainable or in the alternative, suit for recovery was to be filed?

9. It is not disputed in any way that a claim for rendition of accounts is an unusual form of relief granted only in certain specific cases and to be claimed when the relationship between the parties is such that the rendition of accounts is the only relief which will enable the plaintiff to satisfactorily assert his/her right. Such a view was taken by Hon''ble Jammu and Kashmir High Court in State of Jammu and Kashmir v. L. Tota Ram, AIR 1971 [JandK] 71.

10. In such like cases of rendition of accounts, the right to seek rendition of accounts is recognised in law in administration suits for accounts of any property and for its administration, suits by a partner of a firm for dissolution of the partnership firm and accounts is maintainable. Though, there is no specific provision for rendition of accounts, the Courts have recognised an equitable right to claim rendition of accounts. Such a view was taken by Hon''ble Supreme Court in Narandas Morardas Gajiwala v. S.P.A.M. Papammal, AIR 1967 SC 333. As per provisions of Section 213 of Contract Act, an agent is bound to render proper accounts to his principal on demand without a corresponding provision in the Contract Act enabling the agent to sue the principal for accounts. Hon''ble Supreme Court has held as under:-

"In our opinion, the statute is not exhaustive and the right of the agent to sue the principal for accounts is an equitable right arising under special circumstances and is not a statutory right............. Though an agent has no statutory right for an account from his principal, nevertheless there may be special circumstances rendering it equitable that the principal should account to the agent. Such a case may arise where all the accounts are in the possession of the principal and the agent does not possess accounts to enable him to determine his claim for commission against his principal. The right of the agent may also arise in an exceptional case where his remuneration depends on the extent of dealings which are not known to him or where he cannot be aware of the extent of the amount due to him unless the accounts of his principal are gone into."

11. Undisputedly, the plaintiff being a partner and having retired from the firm on the basis of written retirement deed, she has a right to receive the accounts from the defendants and for that purpose, she is entitled to file a suit for rendition of accounts as well. Such a right can either be (a) created or recognised under a statute; or (b) based on the fiduciary relationship between the parties as in the case of a beneficiary and a trustee, or (c) claimed in equity when the relationship is such that rendition of accounts is the only relief which will enable the person seeking account to satisfactorily assert his legal right.

12. Plaintiff-Anjana Shoor, who had appeared as PW-1, deposed in her statement that she retired from the firm on the basis of written retirement deed. She had not gone through the accounts statement and she was not in possession of copy of the accounts statement. She was not given the books of accounts and regarding her capital standing in the books of accounts. Though, she had made a mention that she was entitled to recover Rs. 65,00,000/-, yet that version has not been admitted to be correct by the defendants and there is no admission on the part of defendants that they are to make payment of Rs. 65,00,000/- to the plaintiff. Though, the accounts have been settled by now for all intents and purposes, yet the account between the plaintiff and present appellants remain unsettled which the plaintiff required from the firm. The right to seek rendition of accounts and to receive the payment whichever was due towards the plaintiff, still continued even after retirement date. The appellants disputed the payment and that is why the plaintiff had no option but to file a suit for rendition of accounts and the Court of first instance has rightly passed the preliminary decree in the matter directing the present appellants to settle the accounts.

13. Similar matter was before Hon''ble Kerala High Court in Brothers Chitty Fund v. Jacob Mathew, 2004 (1) CCC 262 [Kerala], wherein Hon''ble Kerala High Court took the view that a suit for rendition of accounts is an extra ordinary remedy which is available to the plaintiff under special circumstances. The test in all such cases is whether, having regard to the terms of the agreement between the parties and the nature of the work done by the plaintiff, whether it was possible for him to bring a suit for a definite amount or for an amount which was ascertainable or on the other hand, a total sum could only be determined after the accounts in the possession of defendant had been examined.

14. In the case in hand, the accounts are in possession of the present appellants. Accounts have not finally been settled between the parties and the plaintiff was left with no other option except to file the suit for rendition of accounts and not a suit for recovery and the question of law posed above is answered against the appellants and in favour of the plaintiff-respondent that suit for rendition of accounts is maintainable at the instance of the plaintiff and not a suit for recovery as alleged by the defendants.

15. There are concurrent findings of facts recorded by both the Courts below regarding remaining facts which are not disputed before this Court and the question of law having been answered against the appellants, the present Regular Second Appeal stands dismissed being without any merit.