(2016) 12 DEL CK 0007

In the Delhi High Court

Case No : CS (OS) 624 of 2013 & I.A. 9608 of 2015 & O.A. 181 of 2015

Pinky Jain APPELLANT

Vs

M/s Ameya Universal Project Pvt. Ltd. RESPONDENT

Date of Decision : 01-12-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Partnership Act, 1932 — Section 69

Citation : (2017) 2 ADDelhi 167 : (2016) 235 DLT 303

Hon'ble Judges : Ms. Deepa Sharma, J.

Bench : Single Bench

Advocate : Mr. Dinesh Kumar Gupta and Mr. Vidit Gupta, Advocates, for the Plaintiffs; Mr. Vikas Dhawan, Mr. S.P.Das and Mr. S.Panda, Advocates, for the Defendant

Final Decision : Dismissed

Judgement

Ms. Deepa Sharma, J. - The plaintiff had filed an O.A.181/2015 against the order of the Joint Registrar dated 17.04.2015 whereby the plaintiffs'' request for directions to the defendant to permit the inspection of its documents was rejected. When the case was fixed for arguments on this O.A., the defendant raised the issue about maintainability of suit on the ground that the suit relates to an unregistered partnership agreement and in view of Section 69 of the Partnership Act, 1932 (hereinafter referred to as ''the Act'') it is barred and is to be rejected. It is argued that one of the reliefs the plaintiffs have sought is for dissolution of partnership.

2. The plaintiffs have controverted the above contentions.

3. The relevant facts in brief are as follows:

The plaintiffs have filed a suit on a Memorandum of Understanding (MoU) dated 10.07.2010 entered into between plaintiffs and the defendant in respect of business in the project namely "The Saphhire" in Sector-49, Gurgaon. Plaintiffs have stated that they had contributed a sum of Rs. 5.5 crores into that project and they were assured guaranteed profit of Rs.5,27,20,964/-and were also entitled to recover 50% of the profit. This suit was filed by the plaintiffs for recovery of Rs. 2,03,60,482/- and they have also sought preliminary decree directing the defendant to render the true and correct account relating to the business carried out in terms of MoU dated 10.07.2010 along with interest and also prayed for the dissolution of the partnership.

4. The defendant has taken the plea that Section 69 of the Act prohibits the filing of a suit by a partner against another partner or against the partnership firm unless either the partnership stands dissolved or the partnership deed is a registered document. It is argued by the learned counsel for the defendant that neither the MoU; which the plaintiffs alleges to be a partnership agreement; is a registered document nor plaintiffs have pleaded that the partnership was dissolved at any point of time rather they have sought dissolution without pleading any grounds for such dissolution.

5. It is argued by the learned counsel for the defendant that the entire suit is based on the premise that there is a partnership agreement between the parties and thus the present suit is barred under Section 69 of the Act as the MoU is an unregistered document. It is further argued that while deciding the maintainability of the suit, the court has to take into consideration the averments of the plaint. It is also argued that though the plaintiffs have sought dissolution of partnership in their prayer clause, no averment is there in the plaint showing that the plaintiffs are seeking dissolution of the partnership. It is further argued that there is no averment in the plaint that the firm stood dissolved nor does the plaint discloses that the suit is for enforcement of any right to sue for the dissolution of the partnership. It is further submitted that Chapter VI of the Act deals with the dissolution of partnership on several contingencies enumerated therein and the plaint is silent about it. It is further submitted that the plaintiffs have not in the cause of action paragraph i.e. para 16 of the plaint have shown any cause for dissolution of partnership. It is further argued that there is no whisper about the fact that the partnership stood dissolved or that they were seeking dissolution of the partnership.

6. It is argued by the learned counsel for the plaintiffs that the partnership was dissolved before the plaintiffs have filed the suit and the suit is not hit by Section 69 of the Act.

7. I have given thoughtful consideration to the rival contentions of the parties.

8. It is a settled proposition of law that under Order 7, Rule 11 of the Code of Civil Procedure (CPC) in six classes of cases mentioned in clauses (a) to (f), the court is empowered to reject the plaint suo motu at any stage even after filing of the written statement. While considering the question whether the plaint is liable to be rejected or not, the court is to consider only the averments in the plaint and the documents filed along with the plaint.

9. The Supreme Court in case of Saleem Bhai & Ors. v. State of Maharashtra & Ors. AIR 2003 SC 759 held as under:

"9. A perusal of Order 7, Rule 11 C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7, Rule 11 C.P.C. at any state of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Rule 11 Order 7 C.P.C., the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7, Rule 11 C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.

10. We are, therefore, of the view that for the afore-mentioned reasons, the common order under challenge is liable to be set aside and we, accordingly, do so. We remit the cases to the trial court for deciding the application under Order 7, Rule 11 C.P.C. on the basis of the averments in the plaint, after affording an opportunity of being heard to the parties in accordance with law."

10. Hence, the Court has to decide only on the basis of averments in the plaint. The learned counsel for the plaintiffs has failed to point out any averment in the plaint to show that he has pleaded any reason for dissolution of the partnership. It is argued that the partnership was already dissolved when the suit was filed but the plaint is silent on this fact. On the other hand, in his prayer clause, the plaintiffs have sought dissolution of partnership without disclosing any contingency as mentioned in Chapter VI of the Act. The plaintiffs start their submissions in the plaint as under:

1. That the directors namely Mr. Deepak Gupta & Mr. Sanjay Gupta of the defendant were known to the plaintiffs, accordingly, have approached to the plaintiffs for developing the project in partnership. ??.

3. That believing upon the representations & assurances, of the defendant, the plaintiffs have entered into Memorandum of Understanding dated 10.07.2010 containing terms & conditions for running of the business in partnership, duly signed by the parties, therein it has been specifically agreed that the responsibility & authority for development and marketing of the developed portion in the aforesaid project was undertaken by the defendant and the defendant was authorised to receive/collect the entire sale consideration in respect of the FSI from the prospective buyers in respect of developed portions in the project.

7. That the partnership business and the agreement are entered between the parties in good faith and by reposing the trust upon each other??

8. That the accounts books were maintained by the defendant relating to the partnership business for the purchase of FSI, incurring expenses in developing thereto and realisation of sale proceeds from the prospective buyers relating to developed portion, same are in power, possession & control of the defendant.

9. That since the defendant has failed to render the account of business, as promised and it was incumbent upon the defendant, accordingly plaintiffs are entitled for:

xxxxx xxxxxx xxxxxx

(iv) Copy of account books and basing material, maintained by the defendant relating to the partnership business & bank account.

16. That the cause of action to file the present suit arose on 10.07.2010, when the plaintiffs & defendant have entered into M.O.U. for running the business, thereafter, on introducing the capital, further receipt thereof in part, thereafter, on each & every demand for rendering true & correct account and at least payment of minimum assured profit, on serving of legal notice dated 12.07.2012, on receipt of reply dated 25.07.2012, finally serving of rejoinder legal notice dated 09.10.2012, still continuing and subsists and suit is within the period of limitation.

Prayer:

(b) a preliminary decree directing the defendant to render the true & correct account relating to the business, carried on by the parties in terms of M.O.U. dated 10.07.2010 dissolved the partnership business;"

11. As per Section 4 of the Act, partnership is the relation between persons who have agreed to share the profit of a business carried out by all or any of them. The averments in the plaint clearly discloses that the said MoU on which the plaintiffs have relied was in the nature of an agreement to share the profit of the business and thus vide this MoU the parties had entered into a partnership. Also there is not a whisper in the plaint that the partnership was ever dissolved. On the other hand, the plaintiffs in their prayer clause claimed the dissolution of the partnership business. The suit relates to the existing partnership. There is no dispute that the said MoU is an unregistered document.

12. Section 69 of the Act reads as under:

"69. Effect of non registration.-

(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any

Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect,-

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920) to realise the property of an insolvent partner.

(4) This section shall not apply,-

(a) to firms or to partners in firms which have no place of business in 8 [the territories to which this Act extends], or whose places of business in 9 [the said territories], are situated in areas to which, by notification under 10 [section 56], this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882 (5 of 1882), or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

13. This provision prohibits the institution of any suit in any court by a person who is suing as a partner in a firm against the firm or any person alleged to be or have been a partner in the said firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm. However, if the firm is dissolved then non-registration of firm does not come into way and suit can be filed by the partner of a dissolved firm. In this case, it is not the plaintiffs'' case that the firm was dissolved rather in prayer ''b'' they claim dissolution of firm.

14. In view of the above discussion, it is apparent that the suit of the plaintiffs is barred under Section 69 of the Act. The suit is, therefore, not maintainable and is dismissed along with the pending applications.

