

(2000) 05 PAT CK 0046

In the Patna High Court

Case No : Civil Writ Journ. Case No's. 640 with 486 of 1998 of 1996

Rajendra Prasad Gupta

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Evidence Act, 1872 — Section 115

State Financial Corporations Act, 1951 — Section 29

Citation : AIR 2000 Patna 331 : (2000) 4 PLJR 15

Hon'ble Judges : Sudhir Kumar Katriar, J

Bench : Single Bench

Advocate : Narendra Prasad, Din Bhandhu Singh and Neeta Sinha, for the Appellant; P.K. Shahi and S.S. Dwivedi, for the Respondent

Final Decision : Dismissed

Judgement

Sudhdir Kumar Katriar, J.—Both these writ petitions have a good deal in common were directed to be heard together and are, therefore, being disposed of by a common judgment. In fact, CWJC No. 4486 of 1998 is consequential to CWJC No. 640 of 1996. I would like first to deal with CWJC No. 640 of 1996, as the facts are being taken from this writ petition, and CWJC No. 4486 of 1998 would be specifically mentioned when facts would be taken from that writ petition. CWJC No. 640 of 1996 is directed against the resolution dated 21-5-88 (Annexure 1), passed by the Regional Manager of Bihar State Financial Corporation (hereinafter referred to as "the Corporation"), whereby M/s Sri Bhagwatijee Rice Mill (hereinafter referred to as the "rice mill"), was permitted to be reconstituted. The said resolution is extracted hereinbelow for the facility of quick reference :-

"Resolve that M/s. Sri Bhagwatijee Rice Mill is allowed to accept the resignation of the partners Sri Rajendra Gupta, Sri Gupteshwar Prasad and Smt. Bhagwati Devi and further allowed that Sri Surendra Pd. will be the Managing Partner and to include Smt. Shashi Gupta as a new partner of the concern."

2. The writ petition is further directed against the consequential order issued bearing Reference No. 405/88-89, dated 24-5-88 (Annexure 1), issued under the signature of Mr. R. Haque, Regional Manager, Patna, notifying the aforesaid resolution.

3. The rice mill was ancestral property of the petitioner and was allotted to the share of Gupteshwar Shah, father of the petitioner, in a family partition. Gupteshwar Shah, his wife (Bhagwati Devi), the petitioner (son of Gupteshwar Shah) and respondent No. 4 (Surendra Prasad, the second son of Gupteshwar Shah and full brother of the petitioner herein), had constituted a partnership firm to do the business of the rice mill. Gupteshwar Shah held share to the extent of 30%, his wife to the extent of 10%, the petitioner to the extent of 30%, and respondent No. 4 to the extent of 30% in the partnership business. The partnership deed dated 9-8-93 is marked Annexure 1 to CWJC No. 4486 of 1998. The petitioner, Gupteshwar Prasad and Bhagwati Devi withdrew from the partnership business, surrendering their interest in the business in favour of the respondent No. 4. It appears that respondent No. 4 and his wife (respondent No. 5) reconstituted the partnership business, and accordingly the petitioner had addressed his letter dated 20-9-87 (Annexure A to the counter-affidavit of respondents Nos. 2, 3 and 4 in CWJC No. 4486 of 1988), to the partners which is to the following effect :-

"As per partnership deed executed on 1-6-81 and as per clause No. 12 of the deed I give this notice to you all that I do not want to continue as partner in this firm from 27-10-87. Please settle my account and keep it in the books of firm and I will take it when I will need it.

Sorry for the inconvenience caused to you.

Nokha Sd/- Rajendra Prasad Gupta"

20-9-87

4. Bhagwati Devi had addressed a similar letter dated 20-9-87 (Annexure A/1 in CWJC No. 4486 of 1988), to the partners wanting to retire from the partnership. Likewise, Gupteshwar Prasad had addressed his letter dated 20-9-87 (Annexure A/2 in CWJC No. 4486 of 1998), to the other partners of the business withdrawing from the partnership. The partnership business had taken loans from the Corporation. It appears that Surendra Prasad Gupta and his wife (Shashi Gupta, respondent No. 5), had submitted the aforesaid letters (Annexure A series) to the Corporation to take note of the reconstitution of the partnership business. The same was taken note of by the Corporation and passed the impugned order.

5. While assailing the validity of the impugned action of the Corporation, learned counsel for the petitioner submitted that the impugned order (Annexure 1) is wholly without jurisdiction. The resolution is based on the aforesaid letters (Annexure A series) which are not in accordance with the Partnership Act. The

Corporation has no authority to decide the question of partnership. He next submitted that the aforesaid resolution of the Corporation and the consequent communication dated 30-9-93 (Annexure 2), from the Corporation to the petitioner, amount to breaking and reconstituting the partnership and adjudicating the issue which is wholly beyond its jurisdiction. He further submitted that the Corporation is hands in gloves with respondents Nos. 4 and 5. It is manifest on the face of the aforesaid letters (Annexure A series) that the same are forged and fabricated documents, inter alia, for the reason that the partnership deed is dated 9-8-1983 (Annexure 1), whereas the three letters mention 1-6-1981 to be the date of the partnership deed.

6. Learned counsel for the Corporation submitted that the petitioner has already instituted T.S. No. 67 of 1992 in the Court of Sub Judge VII, Sasaram, where the erstwhile partners are defendants. The suit has been instituted for dissolution of partnership and rendition of accounts. The present petitioner's injunction application praying to injunct Surendra Prasad and his wife from alienating the suit property was rejected by the learned Sub Judge by order dated 27-1-99 (Annexure 9 in CWJC No. 4486 of 1998). The same was challenged by the present petitioner in appeal which was registered as M.A.No. 3 of 1998 and was dismissed by order dated 7-3-98, passed by the District Judge, Sasaram (Annexure A in CWJC No. 4486 of 1998). He submits that having elected the remedy of suit, the petitioner cannot pursue the present writ petition and the same is not maintainable. The question of his withdrawal from the partnership and the issue relating to forgery of letters in question are inherent in the reliefs sought for in T.S. No. 67 of 1992. He has also invited my attention to the proceedings of Cr. Misc. No. 1102 of 1991, which was an application for anticipatory bail of the petitioner in the High Court.

7. Learned counsel for respondents Nos. 4 and 5 has supported the stand taken by the Corporation.

8. Having considered the rival submissions, I am of the view that CWJC No. 640 of 1996 has to be dismissed. Learned counsel for the respondents are right in their submission that the petitioner has already instituted T.S.No. 67 of 1992 where the question of withdrawal of the present petitioner from the partnership business and the forgery of his letter dated 20-9-87 (Annexure A) are sought to be adjudicated. In that view of the matter, it is correct to state that having chosen the remedy of civil suit, it is no longer open to the petitioner to pursue the present writ petition for the same reliefs and I accordingly hold that the same is not maintainable. He rightly relies on a Division Bench judgment of this Court reported in Sachidanand Roy and Others Vs. The State of Bihar and Others, , wherein it has been held as follows:-

"Therefore, in the opinion of this Court, under the principle of doctrine of election, once a forum is elected by a litigant, without getting that remedy exhausted or withdrawn on a reasonable ground, he cannot switch on at his own sweet-will or shims during the pendency of that proceeding to any other forum,

particularly remedy under Article 226 of the Constitution cannot be resorted to.

And normally a writ Court will not permit its extraordinary jurisdiction to be converted into a Civil Court under the ordinary law when admittedly a Suit pending and interim orders passed by the trial Court have not been challenged availing of the statutory remedy provided under the Civil Procedure Code. (See the decision in the case of Swetambar Sthanakwasi Jain Samiti and another Vs. The Alleged Committee of Management, Sri R.J.I. College, Agra and others, ."

9. Learned counsel for the petitioner has invited my attention to the following observations made by the learned Sub Judge in the aforesaid suit while disposing of the present petitioner's aforesaid application under Order 9, Rule 1, CPC, which was rejected by order dt. 27-1-98, inter alia, with the following observations :-

"From perusal Of all these papers, it is clear that the plaintiff was partner in Bhagwati Ji Rice Mills originally and he resigned along with defendant No. 1 and Late Gupteshwar Prasad in the year 1987 and asked for final accounting. That accordingly the defendant No. 3 acted and filed petition before B.S.F.C. for reconstituting the firm and it was so allowed. It also transpires that concerning licence have either being changed or are in process of change. Hence there is no doubt that at present the plaintiff is not partner in the firm....."

9.1, The same was challenged by the plaintiff (the petitioner herein) in M.A. No. 3 of 1988 before the District Judge, Rohtas at Sasaram, who was pleased to reject the same by his order dated 7-3-1998. The aforesaid finding is a circumstance to show that the Corporation was prima facie right in passing the impugned order. It also shows that the civil Court is seized of the controversy, and the same is being sought to be raised all over in the present writ petition also. Furthermore, the issues raised in the present writ petition raise complicated questions of facts and cannot be adjudicated in writ jurisdiction. This position is further fortified by the stand taken by the petitioner in Cr. Misc. No. 11102 of 1991, which was an application for anticipatory bail in Mokama PS Case No. 123 of 1991 before this Court on behalf of the petitioner. The Corporation had started the said criminal case against the petitioner and respondent No. 4 whereby the cheques issued by respondent No. 4 amounting to Rs. 95,000/-, all dated 31-3-91, in favour of the Corporation had bounced. Hence the FIR against the petitioner and respondent No. 4. The petitioner had stated as follows in paragraphs 6 and 7 of his application in the High Court which are set out hereinbelow for the facility of quick reference, which was to the effect that the petitioner has absolutely no concern with the business of the firm and he has ceased to be a partner of the firm under an agreement dated .22-1-87 ; -

"6. That at this stage it is stated that the petitioner is not business partner of the firm. It is further stated that the cheques referred in the first information report were not signed by the petitioner.

"7. That the petitioner has been residing at Sasaram since 1986 and he is doing

coal business. In fact, he has absolutely no concern with the business of the firm and he is ceased to be even partner of the firm and that also under an agreement dated 22-ID-1987."

This is also an important circumstance for the purpose of disposal of this writ petition that the petitioner had withdrawn from the partnership firm and, therefore, lends credence to the impugned order. It may incidentally be added that the petitioner was granted anticipatory bail by this Court by order dated 8-10-91 read with the order dated 9-1-92.

10. In view of the facts and circumstances stated hereinabove, I have no hesitation in concluding that the petitioner had withdrawn from the partnership and had accordingly addressed his letter dated 20-9-1987 (Annexure A to CWJC No. 4486 of 1998), to the other partners withdrawing from the partnership business. In that view of the matter, reconstitution of the partnership noted by the Corporation in its records pursuant to the letters of the erstwhile and/ or the present partners to the Corporation was a bona fide action and is hereby upheld.

11. In the result, CWJC No. 640 of 1996 is hereby dismissed.

12. This takes me on to CWJC No. 4486 of 1998, wherein the petitioner has challenged the Corporation's action u/s 29 of the Act with respect to the erstwhile rice mill. Once it is held that the petitioner had withdrawn from the partnership business, no longer having any interest in the same and the business, he has no locus standi or the cause of action to challenge the impugned action of the Corporation u/s 29 of the Act. In that view of the matter, CWJC No. 4486 of 1998 is also dismissed. Therefore, it is not necessary to consider the submission advanced on behalf of the respondents that the writ petition suffers from suppression of material facts.

13. In the result, CWJC No. 640 of 1996 as well as CWJC No. 4486 of 1998 are dismissed. The findings of facts recorded hereinabove are confined to the disposal of the present writ petition.