
(2015) 05 RAJ CK 0082

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) Nos. 703, 704 and 1207 of 2013

Rakesh Dhariwal and Others

APPELLANT

Vs

Balaji Marble Mines and Others

RESPONDENT

Date of Decision : 29-05-2015

Acts Referred:

Partnership Act, 1932 — Section 63, 64, 64(1), 64(2)

Citation : AIR 2015 Raj 123 : (2015) 4 CDR 1942 : (2015) 3 RLW 2289 :
(2015) 4 WLN 169

Hon'ble Judges : Govind Mathur, J; Jaishree Thakur, J

Bench : Division Bench

Advocate : Dinesh Mehta and Sharad Kothari, for the Appellant; Kamal Dave and Rajesh Joshi, Advocates for the Respondent

Final Decision : Allowed

Judgement

Govind Mathur, J.

1. To question correctness of the judgment dated July 25, 2013, these appeals are preferred.

2. In brief, facts of the case are that M/s. Balaji Marble Mines, Makrana came to be registered as a partnership firm as per provisions of the Indian Partnership Act, 1932 (hereinafter referred to as "the Act of 1932") with M/s. Mukesh Kumar Rinva, Bhanwarlal Aukna, Bhanwarlal Choudhary, Rakesh Kumar Dhariwal and Kanaram Burdak as its partners.

3. On 25.4.2009 out of five partners named above two partners viz. Rakesh Kumar Dhariwal and Kanaram Burdak said to have signed a dissolution deed to retire from the firm. All the partners, thus, said to have submitted to the Registrar of Firms an application in prescribed form "E". As a consequent to the same a change was made in the constitution of the firm and out of five only three persons viz. Shri Mukesh Kumar Rinva, Bhanwarlal Aukna and Bhanwarlal Choudhary were kept as partners of the firm.

4. Acting upon an application submitted by appellant Shri Rakesh Kumar Dhariwal, the Mining Engineer, Ajmer, supplied him certain information and on basis of that he submitted an application to the Registrar of Firms, Nagaur to restore him as a partner of the firm M/s. Balaji Marble Mines being retired from it on basis of a forged partnership dissolution deed and also by submitting a forged form "E". The Registrar of Firms acting upon the application submitted by the appellant called upon the other partners of the firm to furnish their explanation. The Registrar of Firms, after making necessary inquiry including examination of the signatures said to be of the appellant by the State Forensic Science Laboratory, arrived at a conclusion that the retirement of the appellant from the firm w.e.f. 25.4.2009 was obtained on basis of a forged document, hence, a mistake occurred. Accordingly, the Registrar rectified the mistake and declared the appellant as well as Shri Kanaram Burdak as partners of the firm under an order dated 2.8.2011. On rectification of mistake by the Registrar of Firms the Mining Engineer, Ajmer by communication dated 4.8.2011 requested the firm to furnish partnership deed having all the five partners and to execute the agreement accordingly.

5. Being aggrieved by re-entry of the appellant as partner of the firm under orders of the Registrar of Firms, a petition for writ was filed by Shri Kanaram Burdak and then another writ petition was preferred by the firm M/s. Balaji Marble Mines with assertion that under the Act of 1932 the Registrar of Firms is having limited powers for rectification of mistake and that could have been exercised only to remove manifest mistakes and not the disputed issues. The petitioners contended that in the case in hand the Registrar of Firms made a complete inquiry including verification of signatures on form "E" through the State Forensic Science Laboratory though such detailed inquiry is not contemplated under the Act of 1932.

6. The writ petitions came to be accepted by learned Single Bench by arriving at a conclusion that the language employed in Section 64 of the Act of 1932 leaves no shadow of doubt that the 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. While rectifying the mistake the Registrar is not empowered to adjudicate any dispute including inconsistencies in the entries. Learned Single Judge while arriving at the conclusion as above relied upon a Single Bench judgment of this Court in M/s. Sri Lakha Granites v. Eklavya Singh and Anr., reported in AIR 2011 Rajasthan 49, relevant portion of that reads as under :--

"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."

(Emphasis given by us.)

7. The verdict of learned Single Bench in *M/s. Sri Lakha Granites v. Eklavya Singh and Anr.* (supra) came to be affirmed by Division Bench of this Court on 18th March, 2013 in DB Civil Special Appeal Writ No. 699/2011, *Eklavya Singh v. M/s. Sri Lakha Granites and Ors.*, with following observations :--

"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, under Section 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 under Section 64 of the Act which being a summary proceeding, wherein only rectification of any apparent mistakes is permissible and in such matters, the proper course would be to have the matter adjudicated by ordinary courts of law."

(Emphasis supplied by us.)

8. In appeal, the argument advanced by learned counsel for the appellant is that the change in the constitution of the firm retiring the appellant as its partner was effected without giving him any notice as envisaged under Section 63 of the Act of 1932 and that too on basis of a forged document. The signatures said to be made by the appellant on the dissolution deed as well as on "E" form were examined by the State Forensic Science Laboratory and the same were not found genuine. The Registrar of Firms, thus, looking to spurious signatures and preparation of fabricated documents rightly invoked his authority under Section 64 of the Act and rectified the mistake. Learned Single Judge failed to appreciate

that Sections 64(1) and 64(2) are having different fields for operation and under Section 64(1) of the Act of 1932 the Registrar of Firms can remove the mistakes of serious nature by adopting the procedure of inquiry given under Rule 13 of the Rajasthan Partnership Rules, 1952 (hereinafter referred to as "the Rules of 1952").

9. Per contra, as per learned counsel for the respondents the scope of Section 64 of the Act of 1932 has already been examined by this Court in the case of M/s. Sri Lakha Granites v. Eklavya Singh and Anr. (supra) and that has already been approved by the Division Bench of this Court, therefore, no other view can be taken by this Court in the instant matter.

10. Heard learned counsels and considered the rival contentions.

11. Part-VII of the Indian Partnership Act, 1932 pertains to registration of firms and as per Section 64 of it the Registrar of Firms is having authority to rectify mistakes. Section 64 ibid reads 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) On 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."

12. The authority given to the Registrar under Section 64(1) of the Act of 1932 is quite wide and this power can be exercised by him "suo moto" or on noticing the mistake being brought into his knowledge by any means including through application by any of the partner/partners of the firm concerned.

13. On the other hand, the authority to rectify any mistake as per sub-section(2) of Section 64 of the Act of 1932 can be exercised only on an application made by all the parties who have signed any document relating to the firm. The legislature has given these two modes for rectification of the mistakes to the Registrar for distinct purposes. The power given under sub-section(2) of Section 64 of the Act of 1932 can be invoked where all partners of the firm are at consensus about the mistake occurred in the document relating to the firm filed under Chapter VII of the Act. The mistake sought to be rectified under Section 64(2) of the Act must be having nature of no dispute between the parties and every partner must be of the view that the mistake occurred in the Register of Firms demands rectification. The mistakes sought to be rectified under this clause are bonafide mistakes and, therefore, to rectify such mistakes, signatures of all partners are required on form "E". While rectifying mistake of such nature the role of Registrar of Firms is quite limited and he is required to rely upon the partners and to ensure his prima facie satisfaction about the mistake pointed out. The Registrar while invoking this authority is not supposed to make a detailed inquiry

or to examine the issue in detail.

14. On the other hand, as per Section 64(1) of the Act of 1932 the Registrar is having 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 Chapter VII of the Act. The power under this part of Section 64 can be invoked by the Registrar of Firms "suo moto" or on application of any other person including any partner of firm. Under Section 64(1) of the Act of 1932 the Registrar is required to rectify those mistakes for which all partners of the firm or some of the partners of the firm or any partner of the firm may be or may not be agreeable. There may be a dispute about such mistake, but it is for the Registrar of Firms to satisfy himself that some mistake exists and that deserves to be rectified. The mistakes which are to be rectified under sub-section(1) of Section 64 of the Act of 1932 may have occurred due to misrepresentation or fraud or due to any such reason for which the partners may have some dispute. These kind of serious mistakes can be rectified by the Registrar only after arriving at an absolute satisfaction about commission and existence of such mistake. Necessary satisfaction to rectify such error can be arrived only after examining the stand of the disputing partners. It is important to notice that the rule framing authority also apprehended such disputes in entries of a register, therefore, under the Rules of 1952 necessary procedure is given for that. Rules 12 and 13 of the Rules of 1952 which are relevant for the purpose, read as under:--

"12. Procedure on dispute.- If any person wishes to dispute any entry in the register such person shall give the Registrar, notice in writing, that he disputes the said entry and the Registrar shall make a remark in red ink in the remarks column against the entry so disputed.

13. Enquiries and investigation by the Registrar.-The Registrar may in his discretion institute such inquiries or make such investigation in respect of any matter as may in his opinion be necessary for the proper performance of his duties and the administration of the Act. In particular when a dispute arises amongst the several partners of a firm the Registrar may in his discretion call upon any of the partners or all of them to produce any original deed, documents or such other evidence as he thinks fit in order to ascertain the rights of the respective parties."

15. As per Rule 13 of the Rules of 1952 the Registrar may in his discretion institute such inquiries or make such investigation in respect of any matter as may in his opinion be necessary for the proper performance of his duties and the administration of the Act. Under this Rule, the Registrar is empowered to look into original records of the partners and also call other evidence that may be necessary to ascertain rights of the disputing parties. The Registrar while exercising powers under Section 64 of the Act of 1932 invokes his statutory authority for performance of his duties and for administration of the Act, hence the procedure given under Rule 13 of the Rules of 1952 is available to him even

while rectifying a mistake.

16. An important aspect of the matter is that Section 64 of the Act of 1932 relates to "rectification of mistake" and it nowhere mentions for "rectification of the apparent mistake". A mistake apparent means the mistake that is manifest or self-evident and does not require examination or argument for establishing it. On the other hand, a mistake may occur unilaterally, bonafidely and even due to fraud or misrepresentation. The mistakes occurred as a consequent to fraud or misrepresentation may always be not evident without making necessary inquiry. To catch such mistakes the Registrar of Firms will have to hold an inquiry within the permissible limits of Rule 13 of the Rules of 1952.

17. In *M/s. Sri Lakha Granites v. Eklavya Singh and Anr.* (supra) learned Single Bench held that the Registrar of Firms while exercising the power of rectification of mistakes 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. While arriving at this conclusion the Bench also observed that "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".

18. In this case learned Single Bench examined the issue involved in light of sub-section (2) of Section 64 of the Act of 1932 without examining the scope and amplitude of the reach of sub-section (1) of Section 64 of the Act. We are of considered opinion that the mistakes where partners are having dispute about that cannot be rectified without holding inquiry within the limits prescribed under the Rules. The law laid down in the case of *M/s. Sri Lakha Granites v. Eklavya Singh and Anr.* (supra) for the reasons given above is applicable only in the case where the partners are having no dispute about the mistake existing and that is to be rectified by invoking powers under subsection (2) of Section 64 of the Act of 1932. The Division Bench too while affirming learned Single Bench's judgment in *M/s. Sri Lakha Granites v. Eklavya Singh and Anr.* (supra) held that bonafide disputes about the documents requiring recording of evidence cannot be adjudicated under Section 64 of the Act being summary proceedings wherein rectification of only apparent mistake is available. The Division Bench while arriving at the conclusion as above did not examine the scope and amplitude of the powers available to the Registrar of Firms under sub-section (1) of Section 64 of the Act of 1932. The Division Bench as well as learned Single Bench in the cases aforesaid considered Section 64 of the Act by keeping in mind the scope of sub-section (2) of Section 64 *ibid*. Having considered the factual and legal position noticed above we are of considered opinion that the law laid down by learned Single Bench in *M/s. Sri Lakha Granites v. Eklavya Singh and Anr.* (supra) and its further affirmation by Division Bench on 18th March, 2013 in DB Civil Special Appeal Writ No. 699/2011, *Eklavya Singh v. M/s. Sri Lakha Granites and Ors.*, cannot be applied *ipse dixit* in the instant matter which is arising out of the

powers exercised by the Registrar of Firms by invoking sub-section (1) of Section 654 of the Act of 1932.

19. It shall also be relevant to notice that the Division Bench in its judgment referred above held that the power under Section 64 of the Act of 1932 can be exercised only to rectify "any apparent mistake". With due respect, Section 64 of the Act of 1932 is having two modes for rectification of mistakes and the provision aforesaid nowhere mentions for rectification of "apparent mistakes" only. The statute refers "rectification of mistake" and the scope of sub-section (1) of Section 64 of the Act of 1932 is sufficient enough to infer that the Registrar is having authority to conduct an inquiry too within the permissible limits for rectification of mistakes to administer his authority. If we confine the scope of Section 64 of the Act of 1932 only to the extent of rectification of the apparent mistake, then that shall not be in consonance to the intention of the statute. It is not open for us to add any word which is not available in the statute and the statute is otherwise conveying its meaning and intention effectively. In view of whatever discussed above we are having no hesitation in holding that learned Single Bench erred while accepting the writ petitions by applying the law laid down in the case of *M/s. Sri Lakha Granites v. Eklavya Singh and Anr.* (supra).

20. Now coming to other merits of the case, as per the appellant he never signed the dissolution deed in question and the form "E". The Registrar of Firms on receiving the application by the appellant sent the documents aforesaid to the State Forensic Science Laboratory to examine genuineness of the signatures available thereon said to be of the appellant. The State Forensic Science Laboratory in its report dated 24.5.2012 concluded that the disputed signatures show dissimilarities with the standard signatures. The conclusion arrived is supported by the reasons quoted as under:--

"The disputed signatures shows pen lifts at unusual places, blunt start, blunt finals. Hesitations and tremors are also present in disputed signatures.

The disputed and the standard signatures show dissimilarities in general writing habits such as skill, speed, slant, spacing, relative size and proportion of letters, alignment, movement etc.

The disputed and the standard signatures show dissimilarities in individual writing habits. Some of the important points of dissimilarities are mentioned below :

- (a) Abrupt start, slow drawn execution of initial horizontal stroke of first letter (R).
- (b) Relative shape, size of knot execution in medial part of body of letter (R).
- (c) Axis of angularity, extend of it, lateral width of upper part of body of letter (R).

- (d) Careful retracing, lack of fluency of stroke in execution of second character.
- (e) Blunt finish, show drawn execution of down stroke of letter (l).
- (f) Inward start, blunt start, lack of fluency of execution of letter (e).
- (g) Ligature stroke between letter (s) and letter (h).
- (h) Axis of hump, weight of stroke in execution of it of letter (h).
- (i) Unlike nature of curtailment weight of stroke in execution of final characters.
- (j) Blunt finish of vertical stem of letter (D) unlike body formation.
- (k) Ducts between letter (D) and (h).

Cumulative considerations of aforesaid points of dissimilarities are sufficient and significant enough when considered together leads to the conclusion."

21. The findings arrived by the State Forensic Science Laboratory are specific and the Registrar of Firms in our considered opinion rightly relied upon those. It is also pertinent to notice that after alleged execution of the retirement deed and form "E", the said documents were notarised by a notary public on 1.8.2011. A certified copy of the relevant register of the said notary is available on record as Anx.7/2 and on that document signatures of all partners except the present appellant are available. This fact also indicates that at the time of executing the retirement deed and the form "E" the appellant was not present. The factual aspects noticed above are sufficient to arrive at a conclusion that the Registrar of Firms rightly rectified the mistake in the register occurred due to accepting forged documents.

22. For the aforementioned reasons the appeals succeed and are hereby allowed. The judgment impugned dated 25.7.2013 is set aside and the writ petitions preferred by respondent Balaji Marble Mines, Makrana and Kanaram Burdak are dismissed. The entries made by the Registrar of Firms dated 2.8.2011 whereby it has ordered the rectification in the change of constitution of the firm by way of inclusion of Shri Rakesh Dhariwal and Kanaram Burdak as partners of Balaji Marble Mines, Makrana is restored.

23. No order to costs.