
(2011) 01 DEL CK 0338

In the Delhi High Court

Case No : Writ Petition (C) No. 15024 of 2006

RPFC

APPELLANT

Vs

Salwan Furnishing

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16,
16(1), 7A

Citation : (2011) 179 DLT 191

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : R.C. Chawla, for the Appellant; Siddharth Yadav and K.B. Thakur, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—Learned Counsel appearing on behalf of the Petitioner states that he got the file of this case only yesterday and therefore seeks an adjournment. I am unable to accede to the request of the counsel for the Petitioner because the last five orders show the presence of the same counsel and which orders read as under:

At the request of the learned Counsel for the parties, list on 07.01.2011.

2. Counsel for the Petitioner also states that he appeared only as a standing counsel though the counsel was someone else. Firstly, the order sheets do not reflect this position and in any case, the last date of hearing was way back on 12.8.2010, there being sufficient time to take the file and prepare the case, and therefore, this Court is not inclined to again adjourn the matter which has been repeatedly adjourned.

3. I, therefore, with the assistance of counsel for the Respondent have gone through the record and am proceeding to dispose of the petition.

4. The challenge by means of this petition is to the impugned order dated 8.11.2005 passed by the Presiding Officer of the Employees Provident Fund Appellate Tribunal accepting the appeal of the Respondent and setting aside the impugned order holding the Respondent liable u/s 7-A and the related provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

5. The facts of the case are that M/s M.R. Salwan & Sons was a partnership firm. This partnership had three partners namely Sh. Shiv Dutt Salwan, Sh. Ramesh Dutt Salwan and Sh. Naresh Dutt Salwan. Disputes arose in this partnership firm which was thereafter dissolved when a suit for dissolution of firm was filed in the High Court of Delhi. The Deed of Dissolution is dated 02.3.1973. There were also other litigations between the parties with respect to the plot on which the business was carried out and the plot was also partitioned by a judgment and decree dated 15.7.1985 of the Addl. District Judge, Delhi in Suit No. 1124/1979 and 90/1984.

6. After the cessation of the old partnership business, a new business in the name of M/s Salwan Furnishing Company was started and in which only one of the old partners namely Sh.S.D. Salwan was a partner and none of the other partners who were the partners of the old firm were the partners in the new firm. This new partnership concern never had 20 employees as per the stand of the Respondent. Though, the business was carried in the same premises with certain machinery of the old firm however, the business was an entirely new business.

7. The Petitioner, however, initiated proceedings and which resulted in the impugned order dated 12.11.1987 passed by the Assistant Provident Fund Commissioner holding the new concern to be liable and holding that the new concern is in continuation of the old partnership concern. It is this order dated 12.11.1987, which has been set aside by the impugned order dated 8.11.2005 of the Appellate Tribunal.

8. The relevant findings of the Appellate Tribunal are contained in para-5 of the impugned order which pithily gives the conspectus of the case and reads as under:

5. I have considered the rival contentions of both the parties and I have perused the judgments relied upon by both the parties. I find force in the contentions of the learned Counsel for the Appellant. It is clear from the facts of this case, which have been narrated in the preceding paras hereinabove, that the partners of Mr. M.R. Salwan & Sons could not continue business any further since disputes arose between them. Even the suit for dissolution of firm had to be filed in the Hon"ble High Court of Delhi. During the said litigation between the partners it was decided to dissolve the firm. A deed of dissolution dated 02.03.1973 was executed between the partners and pursuant thereof erstwhile firms was dissolved. Moveable and immovable properties were distributed amongst the partners in terms of dissolution deed. Plot No. B-104, Mayapuri Industrial Area, Phase-I, New Delhi, which was owned by all the three partners of M/s M.R.

Salwan & Sons was also divided, as per dissolution deed. Only after dissolution of M/s.S.D. Salwan & Sons, one of the partners of Mr. S.D. Salwan started business independently in the name of M/s Salwan Furnishing Company from the premises, which fell to his share. Subsequently, plot at Mayapuri Industrial Area, Phase-I, New Delhi was divided pursuant to the decree of the Court of Additional Sessions Judge. Mr. S.D. Salwan, started business in the name and style of Appellant from the portion, which had fallen to his share as a new venture. Merely because some of the machinery and immovable properties of the erstwhile firm, fell to share of Mr. S.D. Salwan were also utilized for carrying the same line of business would not make much difference in the peculiar facts of this case. From the facts narrated herein above, it cannot be said that dissolution was not bona-fide. Firm had to be dissolved on account of disputes between the partners and thereafter if one of the partners had started his own business from the portion of the immovable property, which fell to his share would not mean that business started by him can be termed as continuation of old business more so when new set of employees were employed. The judgments relied upon by the Appellant duly support its case. The judgments cited supra relied upon by the learned Counsel for the Appellant can more appropriately be applied in the facts of this case. This is not a case where out of three partners, one partner retired and other partners continued with the same business. Judgment relied upon by the learned Counsel for the Respondent is in different facts and is of no help to the Respondent for the aforementioned reason. In these facts, it cannot be said that the Appellant was continuation of the old business. Accordingly, this appeal is allowed and impugned order is set aside. Appeal file be consigned to record room. Copy of this order be given to both the parties.

I fully agree with the aforesaid conclusions and observations.

9. The learned Counsel for the Respondent relies upon Union of India and Others Vs. A.S. Amarnath, wherein in nearly identical circumstances it was held that if one partnership firm is dissolved and a new partnership firm comes into existence, there is no connection of the new partnership firm with the dissolved old partnership concern and the new partnership concern will be entitled to the infancy benefit u/s 16 of the subject Act. The relevant para of the said judgment is para-1 and which reads as under:

1. The Union of India as Appellant has brought in challenge the judgment and order of the High Court of Judicature at Madras allowing the writ petition filed by the Respondent, proprietor of one Sarathi Dye House, Madurai. The Regional Provident Fund Commissioner had taken the view that the Respondent had continued the business of the erstwhile firm wherein his father was a managing partner after a new firm was established by him earlier with his brother as its partner and thereafter as proprietor and therefore, the infancy benefit could not be claimed by the Respondent's concern as per the provisions of Employees' Provident Funds and Miscellaneous provisions Act, 1952 (hereinafter to be referred to as "the Act"). The Respondent's contention before the authorities

under the said Act was that for the period from 23-1-1978 to 28-2-1981, infancy benefit was available u/s 16(1)(b) of the Act. The authority functioning under the Act repelled that contention by taking the view that the Respondent's concern was not entitled to such benefit as it was the continuation of the erstwhile firm's business. The Respondent carried the matter in a writ petition before the High Court. The High Court by the impugned judgment has taken the view that the Respondent's concern was entitled to the infancy benefit as it was a new concern and the earlier partnership business run by the erstwhile partnership concern was already closed and a new business was run by the new concern which entitled it to claim the infancy benefit. The view taken by the High Court is based on relevant facts which have been noted in the impugned judgment. Earlier, the firm was Sarathi & Co. There were three partners constituting the said firm. The partners were, (i) Shri A.R. Sahasraman, (ii) Shri A.P. Keswavan, and (iii) Smt. A.R.S. Thulasi Bai. Incidentally, the first partner was the father of the present Respondent. The business of the said firm could not be carried out further as the Respondent's father who was the managing partner of the said firm died on 6-11-1977. The business was closed. In view of the closure of the said business, all workmen earlier employed by the said firm were given closure compensation as per the provisions of the Industrial Dispute Act, 1947. The workmen accepted the said closure compensation. The union of workmen representing them sought to challenge the said closure. The industrial dispute raised by them was not referred for adjudication by the State Government under the provisions of the Industrial Disputes Act as it was held by the State Government that the closure was bona fide, valid and effective. The workmen accepted the said finding of the State Government. Thereafter, the Respondent who was one of the sons of the deceased partner of the firm, Sarathi & Co. along with his brother A.S. Ramesh entered into a partnership on 13-2-1978 under the name and style of Sarathi Dye House which survived up to 1981 and thereafter got dissolved. On these facts, the High Court has noted that it could not be held that the business of the old firm was continued by the Respondent in the firm wherein the partners were entirely different and even though some of the workmen might have been employed by the new firm, it cannot be said that the old business was continued by the new concern. It was also observed that merely because the new entity is utilising the licence exploited by the old firm and the name of the new firm is identical with the name of the old firm and items of and machinery utilised by the old firm and items of machinery utilised by the old firm have been availed of by the new concern, it cannot be said that the said business had continued and therefore, the claim of infancy benefit was not available to the new concern. These are pure finding of facts based on relevant evidence. In our view, it requires no interference under Article 136 of the Constitution.

(Emphasis added)

10. I do not find any illegality or perversity in the impugned order dated 8.11.2005 inasmuch as it is a fact proved on record that there were serious disputes between the old partners which resulted in litigation and consequently,

the firm was dissolved. The new partnership concern has only one partner in common with the old partnership concern. Merely because the business is being carried out in part of the same premises and certain machinery of the old partnership concern was being used, will not mean that the new partnership concern was same as the old partnership concern for the purpose of the subject Act.

On similar facts the Supreme Court in Amarnath's case (supra) has held that the two partnership concerns would be different partnership concerns and the new concern cannot be fastened with the liabilities and the status of the old concern.

11. This Court would have been persuaded to exercise its powers under Article 226 of the Constitution of India if the impugned order was violative of law or there was any perversity or illegality. In view of the facts narrated above, I do not find that there is any illegality or perversity of findings to enable this Court to interfere under Article 226 of the Constitution of India. The writ petition is dismissed leaving the parties to bear their own costs.

CM No. 11927/2006 (Stay).

No orders are required to be passed in this application, the application stands disposed of.