
(2010) 08 JH CK 0087
In the Jharkhand High Court

Shivpujan Yadav	Vs	APPELLANT
Bishnudeo Prasad and Others		RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Partnership Act, 1932 — Section 33, 69(1), 69(2)

Citation : AIR 2011 Jhar 40

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—This writ petition has been filed against the order dated 23.7.2008 passed by the learned 1st Additional District Judge Garhwa in Misc. Appeal No. 6 of 2007 allowing the appeal and setting aside the order passed by the learned Subordinate Judge-I, Garhwa in Title Suit No. 23 of 2007 dated 6.7.2007 by which the prayer of the plaintiff-respondent No. 1 for grant of temporary injunction was rejected. After allowing the appeal certain directions have also been issued by way of interim arrangement during pendency of the suit.

2. The plaintiff-respondent No. 1-Bishundeo Prasad filed the said suit for adjudication and declaration that the Deed of Reconstitution of Partnership dated 12.10.2006 ("2006 Deed" for short) is null, void and inoperative, and for restraining the defendants from proceeding on the basis of the said deed. Plaintiff filed a petition for injunction along with the plaint making the plaint part of it. The contesting defendants 1 to 6 filed their rejoinder to the injunction petition.

3. The trial court by order dated 6.7.2007 rejected the prayer for injunction, inter alia, observing that prima facie case is made out in favour of both the parties, but the balance of convenience was in favour of defendants and that the loss to the plaintiff can be compensated and therefore there was no irreparable loss. The

plaintiff preferred appeal being Misc. Appeal No. 6 of 2007 against the said order. The appellate court set aside the said order and allowed the appeal by the order impugned dated 23.7.2008 with certain directions.

4. Mr. P.K. Prasad, learned senior counsel, appearing for the petitioner assailed the impugned orders on the following grounds. The suit filed by the plaintiff/respondent No. 1- Bishnudeo Prasad is hit by Section 69(1) and (2) of the Partnership Act, 1932; by the impugned order, the suit has been allowed practically and the plaintiff has been granted greater reliefs than prayed by him; in the injunction petition, in which even the ingredients for grant of injunction were not pleaded.

5. On the other hand, Mr. Kalyan Roy, appearing for respondent No. 1 supported the impugned order.

6. Undisputedly, under an unregistered Partnership Deed dated 30.5.1998 ("1998 Deed" for short), the firm, which was continuing from before in the name and style of "Project Construction Corporation" was reconstituted. Clause 24 and 26 of the 1998 Deed provided as follows:

24. In case the firm is dissolved for any reason whatsoever the name and goodwill of the firm as well as the assets of the firm shall always remain the property of the FIRST PARTNER namely Bishnu Deo Prasad who shall be entitled to carry on the business in the name of the firm with the assets and liabilities, goodwill and other effects either as its sole proprietorship or in partnership by introducing one or more new partners. The retiring partners shall only be entitled to the amount standing in their capital accounts. None of the other partners shall be entitled to carry on any business in the name of the firm.

26. That notwithstanding anything contained in any of the clauses hereinabove and notwithstanding any law in force for the time being if it is found that any or more of the partners are doing or committing any act, deed matter or thing calculated to prejudicially effect the interest of the partnership business such partner/partners shall by a majority decision of the partners be expelled from the partnership. It is being made clear that the provision regarding expulsion shall in no case be applicable to the FIRST PARTNER Bishnu Deo Prasad.

7. Similar stipulations were carried in reconstituted "2003 Deed" as Clause 22 and 24 respectively. Plaintiff-Bishnudeo Prasad had 40% and his son Rahul Deo had 10% share in both the 1998 and 2003 Deeds.

8. As per Clause-12 of "1998 Deed", the bank account were to be operated under the joint signature of the first partner- Bishnudeo Prasad with any one of 3rd, 4th, 5th and 6th partners i.e. excluding the 2nd partner-Rahul Deo-son of Bishnudeo Prasad and the 7th partner. But as per Clause-12 of "2003 Deed", the bank account could be operated under the joint signatures of the first partner-Bishnudeo Prasad and any one of the partners. It is said on behalf of petitioner that taking advantage of the said Clause-12, Bishnudeo Prasad operated bank

accounts with his son Rahul Deo and therefore the firm was reconstituted by "2006 Deed" expelling Bishnudeo Prasad and his son Rahul Deo and inducting other partners. It may be noted here that under "2006 Deed" the Partnership was sought to be continued in the name of "Project Construction Corporation".

9. Section 33 of the Partnership Act, inter alia, provides for expulsion of partners by majority, save in exercising good faith of powers conferred by Contract between partners. In this case parties executed the "2003 Deed" and the disputes arose therefrom, and therefore it appears that the "2003 Deed" was acted upon. Even as per the undisputed "1998 Deed", also only Bishnudeo Prasad was entitled to carry with him the assets/liabilities, the goodwill and name of the firm in case of dissolution; and he could not be expelled from the partnership. But under the "2006 Deed" in question, the Firm is sought to continue in the name and style of "Project Construction Corporation" and Bishnudeo Prasad has been expelled, in violation of "1998 Deed" and also "2003 Deed".

10. The contentions of Mr. Prasad, appearing for the petitioner that the suit is barred u/s 69(1) and (2) of Partnership Act are not acceptable. Plaintiff/respondent No. 1 is not a partner and he is not suing as partner of the reconstituted firm under "2006 Deed" and therefore, the bar of Section 69(1) is not applicable in this case. The bar of Section 69(2) is also not applicable as this suit has not been instituted by or on behalf of the firm.

11. In the impugned order, the lower appellate court has moulded the reliefs, taking into consideration the facts and circumstances of this case. I find no reason to interfere with the impugned order in exercise of supervisory power under Article 227 of the Constitution of India.

12. It was lastly submitted by Mr. Prasad that the operation of the impugned order was stayed in this case on 8.9.2008 and has continued for a long time and that the contesting defendants have filed their written statements and therefore direction may be issued for early disposal of the suit and the said order of stay may be allowed to continue till then.

13. In the facts and circumstances of this case, as noticed hereinbefore, in my opinion allowing such prayer will not be proper, and in the interest of justice. However, the parties are directed to cooperate in early disposal of the suit and the same be disposed of expeditiously.

14. It is made clear that the observations made by the trial court, lower appellate court and this Court will not prejudice the parties on the merits in the suit.

With these observations and directions, this writ petition is dismissed. However, no costs.