
(2019) 02 RAJ CK 0038
In the Rajasthan High Court
Case No : Civil Revision No. 63 Of 2017

Smt. Sajjan Baid

APPELLANT

Vs

Sumermal And Ors

RESPONDENT

Date of Decision : 06-02-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 9, 115, Order 7 Rule 11, Order 7 Rule 11(d)
Partnership Act, 1932 — Section 56, 69, 69(1), 69(2), 69(2A), 69(3)(a)
Presidency Small Cause Courts Act, 1882 — Section 19

Citation : (2019) 02 RAJ CK 0038

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : O.P. Mehta, Pradeep Gehlot, Muktesh Maheshwari, Vinay Kothari

Final Decision : Allowed

Judgement

By the instant revision petition, under Section 115 of the Code of Civil Procedure, 1908 (for short, 'CPC'), fourth defendant-petitioner has challenged order dated 6th of February, 2017, passed by Addl. District Judge No.1, Jodhpur Metropolitan, Jodhpur (for short, 'learned Court below'). The learned Court below, by the order impugned has rejected application of the petitioner-defendant under Order 7 Rule 11 CPC in a suit for rendition of accounts and permanent injunction laid by first respondent-plaintiff.

Succinctly stated, the facts of the case are that respondent-plaintiff Sumermal instituted a civil suit for aforementioned reliefs, inter-alia, on the ground that besides being family member petitioner-defendant No.4, Smt. Sajjan Devi is also partner of firm M/s. Baid Gum & Chemicals, situated at Plot No.P/84, Marudhar Industrial Area, II Phase, Basni, having three partners; viz., plaintiff himself, Dhanraj Baid, and defendant No.4/petitioner Smt. Sajjan Baid. It is also averred that aforesaid industrial plot was allotted in the joint name of all the three partners of the firm by respondent RIICO on 31st of October, 1983 and accordingly lease agreement was executed. It is further stated in the plaint that

with the concurrence of all the three partners, Shri Dhanraj Baid was entrusted the task of managing business affairs of the firm and he also maintained the account-books. The plaint also contained specific averment that on completion of financial year, respective partners were allotted their share of profit in the firm. As per version of the respondent-plaintiff, business of the firm was fairly well but all of a sudden one of the partners Dhanraj Baid, who was managing the affairs of firm, passed away on 7th of February, 2011 and after his untimely death the petitioner/defendant No.4 Smt. Sajjan Baid and her son Ajit Kumar took-over the reins of business. With the advent of time, Ajit Kumar took control of entire business and first respondent plaintiff too consented for same by reposing confidence in his ability and further acknowledging his competence to maintain account-books properly. As per the plaint, it so happened that upon completion of financial year 2012-13 when respondent-plaintiff asked Ajit Kumar to show account-books then he informed that during that financial year the firm had not earned any profit. The version of respondent-plaintiff as per plaint is that despite repeated requests and demands, Ajit Kumar did not show him account-books and adopted the practice of delay-dallying. For showing cause of action, it is averred in the plaint that when respondent-plaintiff made repeated demands for account-books, Ajit Kumar threatened him to dissolve the firm and sell it to some third person. In this behalf, it is averred by the plaintiff that he submitted an application in the office of respondent RIICO. The plaint also contained certain recitals regarding 1/3rd share of the respondent-plaintiff in the industrial plot allotted by RIICO and his legitimate claim to the extent of his share in the profit ratio. Besides that, some other averments were also made in the plaint and finally the reliefs were claimed as aforementioned.

To resist the suit and question its maintainability, as being barred by law, at the behest of petitioner-defendant an application under Order 7 Rule 11 CPC was submitted before learned Court below. In the application, it is inter-alia averred by the petitioner-defendant that the suit as such is barred by law being hit by Section 69 of the Partnership Act, 1932 (for short, 'Act'). Therefore, essentially for rejection of the plaint, at the threshold, petitioner-defendant took shelter of clause (d) of Rule 11, Order 7 CPC.

The application is contested by respondent-plaintiff by filing its reply. In the return, respondent-plaintiff took a specific objection that the suit is not hit by Section 69 of the Act, and therefore, the application merits outright rejection. The learned Court below, after hearing rival parties, by the order impugned dismissed the application of the petitioner-defendant.

Heard learned counsel for the parties, perused the impugned order and other materials available on record.

Mr. O.P. Mehta, learned counsel for the petitioner, in support of his various contentions, has placed reliance on following judgments:

(1) M/s. Shivraj Fine Art Litho Works & Ors. V/s. Purushottam & Ors. [AIR 1993

(Bom) 30]

(2) The Church of Christ Charitable Trust & Educational Charitable Trust & Educational Charitable Society V/s. M/s. Ponniamman Educational Trust [AIR 2012 SC 3912]

(3) Saikat Dey V/s. Dukhiram Paul & Ors. [AIR 2015 (Cal) 351]

(4) Ashish Verma V/s. Neeraj Vyas & Ors. [AIR 2012 (MP) 9]

(5) V. Subramaniam V/s. Rajesh Raghuvandra Rao [2009 AIR SCW 3329]

Per contra, learned counsel for the respondent-plaintiff, Mr. Muktesh Maheshwari has cited following legal precedents:

(1) Seth Loonkaran Sethiya & Ors. V/s. Mr. Ivan E. John & Ors. [(1977) 1 SCC 379]

(2) Chandrayya Mutwayya Irabatti V/s. Sidram Ganpat Ingale [2006 (1) Civil Court Cases 600 (Bombay)]

(3) Kanwalji Singh V/s. Jarnail Singh [2007 (1) Civil Court Cases 462 (P & H)]

(4) Mangilal Jagrupji Jain V/s. Bharat Shankarlal Dhakad (HUF) & Ors. [2012 (1) Civil Court Cases 840 (Bombay)]

(5) Valji Shamji Chheda & Ors. V/s. Bhuderbhai Bajidas Patel & Ors. [2003 (1) Civil Court Cases 638 (Bombay)]

The pivotal question, which came up for consideration before the learned Court below, relates to bar of Civil Court's jurisdiction to try the suit. In common parlance, as per Section 9, Civil Court has inherent jurisdiction to try all types of civil disputes unless its jurisdiction is curbed expressly or by necessary implication by any statutory provision and is conferred on any other Tribunal or authority. Therefore, the jurisdiction of Civil Court is plenary in nature and of wide amplitude to try all types of suits unless its jurisdiction is ousted by expression or necessary implication. As and when a question arises before the Civil Court as to whether its jurisdiction is excluded expressly or by necessary implication, the Court has to consider and examine the remedy afforded by an alternative provision prescribed by the statute to be sufficient or adequate. Where a statute has given finality to the orders of the Special Tribunal, the Civil Courts jurisdiction can be regarded as having been excluded if there is an adequate remedy to do what the Civil Court would normally do in a civil suit. The jurisdiction of the Court is to be determined on the basis of allegations made in the plaint and does not depend on the defence taken in written statement.

In the instant matter, petitioner-defendant with a view to seek rejection of plaint, romped in Section 69 of the Act, which according to him excludes the jurisdiction of Civil Court looking to the nature of the suit. In the application under Order 7 Rule 11 CPC, precisely, the petitioner-defendant has relied upon Section 69(1) of the Act. E.converso, the respondent-plaintiff has harped on clause (a) of sub-

section (3) of Section 69 of the Act, which according to him is an exception to sub-sections (1) & (2) of Section 69 of the Act.

The learned Court below, while examining the issue has essential, placed reliance on clause (a) of sub-section (3) of Section 69 of the Act for nixing the application of the petitioner-defendant. For making judicial review of the impugned order in exercise of revisional jurisdiction, it would be just and appropriate to construe broadly the legislative intent behind enactment of Section 69 of the Act. The complete text of Section 69 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 suits 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 the territories to which this Act extends, or whose places of business in the said territories are situated in areas to which, by notification under Section 56, the CHAPTER does not apply, or

(b) to any suit or claim or 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 (15 of 1882), to 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."

Supreme Court, in Seth Loonkaran Sethiya & Ors. (supra), while interpreting Section 69 of the Act, declared it mandatory in character and also emphasized its

effect on the suits. The Court also observed that its effect is to render a suit filed by a plaintiff in respect of right vested in him or acquired by him under a contract, which he entered into as a partner of an unregistered firm whether existing or dissolved, void. The Court held:

"A bare glance at the section is enough to show that it is mandatory in character and its effect is to render a suit by a plaintiff in respect of a right vested in him or acquired by him under a contract which he entered into as a partner of an unregistered firm, whether existing or dissolved, void. In other words, a partner of an erstwhile unregistered partnership firm cannot bring a suit to enforce a right arising out of a contract falling within the ambit of Section 69 of the Partnership Act. In the instant case, Seth Sujan Chand had to admit in unmistakable terms that the firm "Sethiya & Co." was not registered under the Indian Partnership Act. It cannot also be denied that the suit out of which the appeals have arisen was for enforcement of the agreement entered into by the plaintiff as partner of Sethiya & Co. which was an unregistered firm. That being so, the suit was undoubtedly a suit for the benefit and in the interest of the firm and consequently a suit on behalf of the firm. It is also to be borne in mind that it was never pleaded by the plaintiff, not even in the replication, that he was suing to recover the outstandings of a dissolved firm. Thus the suit was clearly hit by Section 69 of the Partnership Act and was not maintainable."

In a later judgment, in case of V. Subramaniam (supra), Supreme Court struck down sub-section (2A) of Section 69 of the Act as inserted by Maharashtra Act (29 of 1984) as arbitrary and unreasonable. However, the Supreme Court, while reiterating and acknowledging the bar of a civil suit by virtue of sub-section (1) & (2) of Section 69 of the Act, also laid emphasis on exceptions carved out under Section 69(3)(a) of the Act. The Court held:

"The English law insofar as it makes registration compulsory for a firm and imposes a penalty for non-registration was not followed when the Partnership Act was made in India in 1932 as it was considered that this step would be too drastic and would introduce several difficulties. Hence registration was made optional at the discretion of the partners, but following the English precedent, any firm which was not registered by virtue of sub-sections (1) and (2) of Section 69 disabled a partner or the firm (as the case may be) from enforcing certain claims against the firm or third parties (as the case may be) in a civil court.

An exception to this disability with regard to an unregistered firm was made in sub-section (3)(a) to Section 69, and this clause enabled the partners in an unregistered firm to sue for the dissolution of the firm or for accounts or for realising the property of the dissolved firm.

This exception in clause (a) of Section 69(3) was made on the principle that while registration of a firm is designed primarily to protect third parties, the absence of registration does not mean that the partners of an unregistered firm

lose all rights in the said firm or its property and hence cannot sue for accounts or for its dissolution or for realising their property in the firm."

Although learned counsel for the parties have relied on many legal precedents but in my view it would not be proper to encumber the order discussing all these precedents in detail.

However, indisputably, the fact remains that a suit by partner of an unregistered firm, subject to the exceptions carved out in Section 69(3)(a), is barred in a Civil Court. From the tenor of the impugned order, I am at loss to say that the learned Court below has not examined the averments contained in the plaint and also made no endeavour to construe those averments meaningfully while giving reprieve to the respondent-plaintiff and rejecting the application of the petitioner-defendant. The nature of the suit, current status of the firm and the exceptions carved out in Section 69(3)(a) have not been discussed on the touchstone of Section 69(1) of the Act by the learned Court below. This sort of situation has per se rendered impugned order vulnerable.

At the cost of repetition, it is once again reiterated that for ascertaining the nature of suit as to whether it is triable by a Civil Court or not under Section 9 CPC, averments contained in the plaint are to be looked into and any defence taken in written statement cannot be examined. Therefore, in my considered opinion, the approach of learned Court below in not construing the averments made in the plaint properly is a serious jurisdictional error. In my view, learned Court below while passing the impugned order has exercised its jurisdiction illegally or with material irregularity. Thus, the impugned order cannot escape from the limited scope of judicial review under Section 115 CPC, and therefore, unsustainable.

Resultantly, the revision petition is allowed, impugned order is quashed and set aside, and the matter is remanded/sent back to learned Court below for deciding the application of the petitioner-defendant under Order 7 Rule 11 CPC afresh strictly in accordance with law.