
(2010) 10 RAJ CK 0077
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5503 of 2009

Sri Lakha Granites

APPELLANT

Vs

Eklavya Singh and Another

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Partnership Act, 1932 — Section 57, 58, 58(2), 59, 63
Rajasthan Partnership Rules, 1952 — Rule 13, 4, 6
Specific Relief Act, 1963 — Section 31

Citation : AIR 2011 Raj 49 : (2011) 2 CivCC 391 : (2011) 1 RLW 923

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sangeet Lodha, J.—In this writ petition, the Petitioner, a registered partnership firm has assailed the validity of the order dated 18.5.09 passed by the Registrar of Firms, Jaisalmer ("Registrar") in exercise of the power conferred u/s 64 of the Partnership Act, 1932 (in short "the Act"), cancelling the orders dated 7.2.05 and 13.10.06 recording the changes occurred in the constitution of the firm in the Registrar of firms.

2. The relevant facts in nutshell are that the Petitioner, a partnership firm, engaged in business of excavation and sale of granite, stones and other related goods was duly registered by the Registrar under the provisions of Section 58 of the Act. A certificate of registration was also issued on 7.3.03.

3. As per the partnership deed dated 3.3.03, the firm was consisting of eight partners namely, Eklavya Singh, Prithvi Raj, Prahalad Rai Tak, Kishore Kumar, Naresh Kumar, Devender Kumar, Chandra Shekhar and Raj Sethia.

4. On 17.1.05, the Petitioner firm made an application to the Registrar for recording of alteration in constitution of the firm due to retirement of three partners namely, Chandra Shekhar, Prithvi Raj and Kishore Kumar and induction

of one new partner Smt. Savitri Devi. The application was accompanied by deed of reconstitution of partnership. After considering the relevant documents, the changes asked for were permitted by the Registrar vide order dated 7.2.05 and accordingly, the changes in the constitution of the firm were recorded in the Register of Firms maintained by the Registrar.

5. Thereafter, due to change of status of the partners of the firm, on account of retirement of one of the partners, Mr. Eklavya Singh, the Respondent No. 1 herein, the Petitioner firm again made an application along with relevant documents including deed of reconstitution of partnership firm, for necessary alteration and accordingly, the changes were recorded by the Registrar vide order dated 13.10.06.

6. The Respondent No. 1 who was admittedly one of the partners of the Petitioner firm initially constituted, submitted an appeal before the Registrar on 23.4.09, for cancellation of alleged new registration dated 13.10.06 and 7.2.05 and for restoration of the original registration No. 14/2/03 dated 7.3.03.

7. The Registrar sent a notice dated 30.4.09 to the partners of the petition firm directing them to furnish information/explanation on certain points as set out in the notice so also to produce certain documents. In response thereto, the Petitioner firm vide communication dated 1.5.09 requested the Registrar to first supply to the Petitioner firm the copy of the application submitted by the Respondent No. 1 and the documents submitted in support thereof. The Petitioner firm also applied for copies of these documents submitted by the Respondent No. 1, under the provisions of the Right to Information Act and deposited the amount requisite through postal order. It is alleged that the documents asked for were not supplied to the Petitioner firm instead the Registrar proceeded to pass an order dated 18.5.09 without giving an opportunity of hearing to the Petitioner firm and its partners, declaring the changes in the constitution of the partnership firm effected vide order dated 7.2.05 (wrongly mentioned in the order impugned as 17.2.05) and 13.10.06 as void ab initio and declaring the original registration as on 7.3.03 as valid, restored the same. Hence, this petition.

8. It is contended by the learned Counsel for the Petitioner that the order impugned passed by the Registrar is ex facie against the provision of law and without jurisdiction. Learned Counsel submitted that changes in the constitution of the firm were recorded by the Registrar in the Register of Firms vide order dated 7.2.05 and 13.10.06, on being satisfied that the provisions of Section 58 of the Act stand only complied with and therefore, no jurisdiction was left with the Registrar to alter the entries in exercise of the power conferred u/s 64 of the Act. Learned Counsel submitted that u/s 64 of the Act, the Registrar has limited power and in exercise thereof, it may rectify any apparent mistake in order to bring the entry in the Register of Firms into conformity with the documents relating to the firm filed. Learned Counsel submitted that Section 64 of the Act does not confer jurisdiction upon the Registrar to hold an enquiry and determine

the validity of deed of reconstitution of partnership firm and cancel the changes in the constitution of the firm recorded in the Register of Firm in conformity with the provisions of Section 63 of the Act. Learned Counsel submitted that the remedy for cancellation of a partnership deed is available under the general law before the civil court of competent jurisdiction only and the Registrar has no jurisdiction whatsoever to entertain any appeal or application for cancellation of the registered partnership deed or the entries made in the Register of Firms on the basis of such partnership deeds. Learned Counsel submitted that for cancellation of an instrument, the procedure is provided u/s 31 of the Specific Relief Act, 1963 i.e. by way of a suit before the civil court of competent jurisdiction. Learned Counsel submitted that in exercise of power conferred u/s 64, the Registrar can only rectify the apparent mistake occurred in making the entries but it has absolutely no jurisdiction to declare an instrument of partnership or the changes in the constitution of the firm recorded on that basis as void. Learned Counsel submitted that it is apparent on the face of record that the order impugned has been passed by the Registrar in gross violation of elementary principle of natural justice. It is submitted by the learned Counsel that the documents applied for by the Petitioner firm were not supplied to it and no opportunity whatsoever was afforded to it to defend the matter. Learned Counsel submitted that the Act or the Rules made there under do not provide for any appeal and as a matter of fact, from the perusal of the memo of appeal, it is manifestly clear that in the form of appeal, the Respondent No. 1 raised the objection against the changes in the constitution of the firm effected by making appropriate entries in the Register of Firms maintained by the Registrar. Accordingly, it is submitted by the learned Counsel that the Registrar has seriously erred in entertaining the alleged appeal and passing the order impugned declaring the subsequent partnership deed as null and void and deleting the entries effected in the record on the basis of said partnership deeds. It is submitted that the proceedings for cancellation were initiated by the Registrar, at the instance of Respondent No. 4, a Senior IAS Officer in the State Government, who happens to be father of the Respondent No. 1. Learned Counsel submitted that the various proceedings have been initiated by the Respondent No. 1, so as to create the pressure and extract money from the Petitioner firm and its partners.

9. Per contra, learned Counsel appearing for the Respondent No. 1 submitted that the Registrar of the firm has been given a wide power to make changes on account of any mistake, at all times, in order to bring the entries in the Register of Firms in conformity with the documents relating to the firm filed for registration. Learned Counsel submitted that under Rule 13 of the Partnership Rules, 1952 (in short "the Rules") the Registrar has specific powers of inquiry and investigation, particularly when a dispute arises amongst the partners of the firm. Learned Counsel submitted that in exercise of such power, the Registrar has discretion to call upon all or any of the partners to produce original deeds, documents, or such evidence as he thinks fit in order to ascertain the rights of

the parties. Learned Counsel submitted that admittedly by way of notice dated 30.4.09, the Petitioner firm was asked to furnish the original deeds and other documents in pursuant to the application filed by the Respondent on 23.4.09. Learned Counsel submitted that the notice issued was not responded by the Petitioner and its partners, therefore, after due consideration of the material on record, the order impugned passed by the Registrar in exercise of the power conferred Under Sections 58, 63 & 64 read with Rule 13 of the Rules, is just and proper and does not warrant any interference by this Court. Learned Counsel submitted that it is incorrect to state that the partnership deeds produced by the Petitioner firm for obtaining the orders dated 7.2.05 and 13.10.06 were registered instruments. Learned Counsel submitted that the partnership deed which was registered vide registration certificate dated 7.3.03 is the only valid document and it continues to be in existence till this date. Learned Counsel submitted that by adopting fraudulent means, the partners of the Petitioner firm got the forged signature of the Respondent No. 1 on the alleged reconstituted partnership deed and obtained the order dated 7.2.05 and 13.10.06 from the Registrar. Learned Counsel submitted that before effecting the changes, the Registrar was under an obligation to compare the documents and signature thereupon with original partnership deed and only thereafter, the requisite changes could have been made. Accordingly, it is submitted by the learned Counsel that it was a case of apparent mistake on the part of the Registrar and the same has rightly been rectified exercising the power u/s 64 of the Act read with Rule 13 of the Rules. Learned Counsel submitted that the Petitioner firm was extended an opportunity of hearing by issuing notice dated 30.4.09 but it did not choose to avail the opportunity therefore, now it cannot be permitted to complain that the order impugned has been passed in violation of the principles of natural justice. Learned Counsel submitted that a bare perusal of the provisions of Sections 58 - 64 of the Act and Rule 13 of the Rules makes it abundantly clear that the Registrar is empowered and competent to initiate inquiry and investigation either on his own motion or upon any application submitted by any of the partners. Learned Counsel contended that the entries regarding alteration in the constitution of the firm were made by the Registrar ignoring the mandatory requirement provided for under Rule 4 and Rule 6 of the Rules and therefore, for this reason also, it was an apparent mistake which has rightly been rectified. Learned Counsel submitted that the notice dated 17.1.05 and 1.4.05 given on behalf of the firm wherein the Respondent No. 1 has been shown to be one of the signatories is ex facie false inasmuch as on 17.1.05 so also on 1.4.05, the Respondent No. 1 was not available in India and therefore, the notice given for changes in the constitution of the firm being not in conformity with the provisions of Section 63 of the Act and Rule 4 and 6 of the Rules, the entries effected on that basis has to be treated as null and void. Learned Counsel submitted that before effecting any changes in the entry with regard to constitution of the firm recorded in the register maintained, the Registrar is under an obligation to examine the legality of the documents produced. Learned Counsel submitted that indisputably, no inquiry worth the name was made by the

Registrar before effecting the changes in the entry recorded in the Register of the Firms and therefore, the order impugned passed by the Registrar rectifying the mistake apparent on the face of record is absolutely just and proper. In support of his contentions, learned Counsel has relied upon a decision of the Madras High Court in the matter of "K.C. Palanisamy, United Builders Consultants v. The Registrar of Firms, AIR 2004 Mad, 375 and a decision of the Calcutta High Court in the matter of "Durga Prosad Sarawagi and Ors. v. Registrar of Firms and Anr.," AIR 1966 Cal, 573.

10. Learned Counsel Mr. Mukul Singhvi, appearing for Respondent No. 2 supporting the orders impugned submitted that earlier the changes were directed to be recorded in the register maintained by the Registrar without verification of the documents and comparison of the signatures on the reconstituted partnership deeds with the original partnership deeds and other documents on record. Learned Counsel submitted that the notice dated 17.1.05 was submitted by one Shri Naresh Kumar who was not an authorised agent of the Petitioner firm. Accordingly, learned Counsel submitted that the changes in the constitution of the firm recorded in defiance of the provisions of Section 58 of the Act are void ab initio and therefore, the same are rightly directed to be rectified by the Registrar in exercise of the power conferred u/s 64 of the Act. Learned Counsel submitted that before passing the order impugned, notices were issued by the Registrar to the partners of the Petitioner firm but the same were not responded to, therefore, the Petitioner, which has failed to avail the opportunity of hearing, cannot be permitted to raise a grievance that the order impugned has been passed by the Registrar in violation of the principles of natural justice.

11. Replying the arguments of the learned Counsel for the parties, learned Counsel for the Petitioner submitted that alleged violation of the rules in permitting the changes is only after thought of the Petitioner inasmuch as the order impugned has not been passed by the Registrar on account of violation of the provisions of the Rules as alleged. Learned Counsel submitted that it is settled law that the validity of the order passed by a authority must be judged by the reasons mentioned therein and the same cannot be supplemented by fresh reasons in the shape of affidavit or otherwise and, therefore, the contention raised by on behalf of the Respondent No. 1 regarding alleged violation of Rules cannot be entertained.

12. I have considered the rival submissions and perused the material available on record so also the record produced by the Deputy Government Counsel appearing for the Registrar for perusal of this Court.

13. The first question which comes for consideration of this Court is as to whether the proceedings initiated by the Registrar, for rectification of the order dated 7.2.05 and 13.10.06 and the order impugned passed, cancelling the aforesaid orders recording the changes in the constitution of the Petitioner firm, are without jurisdiction, being beyond the power of the Registrar conferred by Section 64 of the Act?

14. Section 58 of the Act provides that the registration of the firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form containing the details which include the name of the firm, the place or principal business of the firm, the names of any other places where the firms carried on business, the date when each partner joined the firm, the names in full and permanent address of the partnership and the duration of the firm.

15. As per Section 59 of the Act, on statement as aforesaid signed by all the partners or by their agents specially authorised in this regard and duly verified, being submitted as aforesaid, the Registrar on being satisfied that the statement is formally correct, is under an obligation to record an entry in Register of firms accordingly.

16. Section 63 of the Act deals with recording of changes in the constitution of a registered firm and changes in the event of dissolution of the firm. As per provisions of Section 63(1), when the change occurs in the constitution of a registered firm, any incoming, continuing or outgoing partner may give notice to the Registrar for recording the changes and when a registered firm is dissolved, any person who was partner immediately before the dissolution of the firm or the agent of any such partner or person specially authorised in this behalf may give notice to the Registrar of such dissolution. It is to be noticed that Section 63 does not cast a duty upon the partners of the firm to give the notice in person, the application can even be sent by post. On notice alongwith the statement related to the firm u/s 59 being received, the Registrar shall make a record of notice in the entry related to the firm in the Register of Firms and shall file the notice alongwith the statement relating to the firm.

17. Section 69 of the Act provides for effect of non registration. Section 69(1) of the Act provides that no suit to enforce a right arising from a contract or conferred by the 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 the Firm as a partner in the firm. Similarly, Section 69(2) bars the suit by an unregistered firm or by the persons who are not or have not been shown in the Register of the Firms as partners in the firm to enforce the right, arising from a contract by or on behalf of the firm against any third party. However, by virtue of provisions of Section 69(3)(a), the bar created under Sub-section (1) & (2) of Section 69 of the Act shall not effect enforcement of any right to sue for the dissolution of the firm or for accounts of a dissolved firm or any right or power to realise the property of a dissolved firm.

18. Thus, the conjoint reading of the provisions of Section 58, 59, 63 and 69 makes it abundantly clear that the registration of the firm under the Act is optional and it entirely lie within the discretion of the firm or partners concerned. Non registration of the firm does not entail any penal consequences but, by

virtue of the provisions of Section 69, an unregistered firm will be unable to enforce its claims against third parties in the civil courts and any partner of unregistered firm will be unable to enforce his claims against third parties or against his fellow partners except the claim which falls within the exception carved out by Section 69(3)(a) of the Act. However, once a firm is registered under the Act, the statement recorded in the register regarding constitution of the firm shall be treated to be conclusive proof of the facts contained therein against the partner making them but, in no manner, affects the mutual rights and duties of the partners of a firm which shall always be governed by the contract between the partners. But then, in any case, the Registrar appointed by the State Government in exercise of the power conferred u/s 57 for the purposes of the Act is only a recording officer and possesses no power to adjudicate upon the mutual rights and duties of the partners flowing from the contract arrived at between them.

19. Section 64 of the Act confers on the Registrar a power to rectify any mistake in order to bring the entry in the Register of the Firms relating to any firm into conformity with the documents relating to that firm filed under Chapter VII of the Act in exercise of the power conferred u/s 64, the Registrar is empowered to rectify any mistake made by himself or on application made by all the parties who have signed any document relating to the firm filed under the said Chapter.

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 authorised 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.

21. In the backdrop of legal position discussed above, coming to the impugned proceedings, it is to be noticed that the proceedings for cancellation of the

changes recorded, were initiated by the Registrar on the basis of the memo of appeal submitted by the Respondent No. 1 for cancellation of the registration and not for rectification of the mistake in terms of the provisions of Section 64 of the Act. The cancellation was sought by the Respondent No. 1 on the ground that the alteration in the constitution of the firm was got recorded by the partners of the firm on the basis of the forged documents. It was alleged that the deed of reconstitution of the firm is purported to have been signed by the Respondent No. 1 on 1.4.05 whereas, on that day he was not in the country and he never signed any such document. It was alleged that there is nothing to indicate as to whether the staff/official of the Registrar have either verified/compared the deed with original or signature with the original. It was further alleged that an FIR has already been registered against the persons who had hatched a conspiracy and got the partners name changed based on forged documents.

22. Indisputably, by way of appeal preferred as aforesaid, the Respondent No. 1 sought cancellation of the registration dated 13.10.06 and 7.2.05 and not the rectification of an error in the entry recorded in conformity with the provisions of Section 63, invoking the jurisdiction of the Registrar u/s 64 of the Act. It is not disputed before this Court that no appeal is maintainable before the Registrar for cancellation of the entries made in the register of the firms. Thus, the proceedings for cancellation of the entry initiated by the Registrar on the appeal preferred by the Respondent No. 1 as aforesaid, in purported exercise of the power u/s 64 of the Act were ex facie without jurisdiction.

23. A perusal of the order impugned reveals that the alteration regarding the constitution of the firm recorded in the register maintained for the purpose has been ordered to be cancelled on the ground that alongwith the application dated 17.1.05 filed on behalf of the Petitioner firm, the original deed was not produced and the copy of the deed produced was not got verified from the original and the signature of the Respondent No. 1 thereon was not compared with the signature on original partnership deed. On the basis of the notarised copy of the passport produced by the Respondent No. 1, the Registrar concluded that on 1.4.05 the Respondent No. 1 herein was on foreign tour. Accordingly, the Registrar opined that the provisions of Section 58(2) of the Act has not been complied with. Yet another reason assigned for declaring the order dated 7.2.05 and 13.10.06 as void ab initio and in fructuous is that Shri Naresh Kumar who had produced the statement before the Registrar for alteration was not an authorised agent of the partners of the firm.

24. As noticed above, the Registrar had simply no jurisdiction whatsoever to enter into a roving and fishing inquiry to examine the genuineness and validity of the documents produced on the basis of the appeal filed by the Respondent No. 1 questioning the entry recorded in the Register of Firms regarding the reconstitution of the firm. It is not disputed before this Court that the present incumbent in the office of Registrar who has passed the order impugned is not the same person who had recorded the changes being satisfied that the

provisions for recording the changes in the constitution of the registered firm stand complied with. There is nothing on record to show that the entries were effected by then Registrar without being satisfied that the relevant provisions have been duly complied with. A perusal of the record produced reveals that it is not the practice in vogue in the office of the Registrar to record the complete proceedings in the matter of registration or recording of changes in constitution of a registered firm or dissolution thereof. Therefore, the inference drawn and the finding recorded by the present Registrar without there being any material to show that the entry was recorded by then Registrar without arriving at the satisfaction that the relevant provisions stand complied with, is *ex facie* capricious and perverse, which cannot be countenanced by this Court.

25. Coming to yet another reason assigned for cancellation of the changes recorded, that the statement was submitted by an unauthorised person, it is pertinent to note that Section 63 does not enjoin a duty upon the firm or its partner to submit the application in person and the application may even be sent by post. Therefore, there was no occasion for the Registrar to initiate the proceedings and order cancellation on the count that no documents were produced by the Respondents in response to the notice regarding the authority of Naresh Kumar to file statement on behalf of the firm or its partners.

26. Rule 13 of the Rules authorising the Registrar to hold inquiry and investigation can only relate to the matter to be dealt with by the Registrar under the provisions of the Act and not beyond it. Therefore, the contention raised by the learned Counsel for the Petitioner on the strength of Rule 13 of the Rules is also devoid of any merit.

27. Learned Counsel for the Petitioner is justified in contending that the remedy for cancellation of a partnership deed is available under the general law before the civil Court of competent jurisdiction and the Registrar has no jurisdiction whatsoever to entertain any appeal or application for declaring the reconstitution of partnership deeds as null and void and cancelled the entries made on the basis of such partnership deeds. If a document is claimed to be void or voidable, the same could always be so adjudged by the Civil Court of competent jurisdiction in terms of the provisions of Section 31 of the Specific Relief Act. Moreover, as per the provisions of Section 65 of the Act, a court deciding any matter relating to the registered firm may direct that the Registrar shall make any amendment in the entry in the Register of Firms relating to such firm which is consequential upon its decision and the Registrar shall amend the entry accordingly. This Court is informed that the Respondent No. 1 has already filed a civil suit before the District Judge, Jaisalmer for cancellation of reconstituted partnership deeds. Suffice it to say that if the reconstituted partnership deeds are declared to be void and cancelled by the civil Court, it is always open to the Respondent No. 1 to make an appropriate application before the Registrar for amendment in the entry in terms of provisions of Section 65 of the Act.

28. Thus, in view of the discussion above, in considered opinion of this Court, the

proceeding initiated by the Registrar for cancellation of the entries recorded in the Registrar of the Firms in conformity with the provisions of Section 63 of the Act and the order impugned passed in purported exercise of the power u/s 64 of the Act are ex facie without jurisdiction being beyond the power conferred upon him by Section 64 of the Act.

29. Coming to the contention of learned Counsel for the Petitioner that the order impugned has been passed in gross violation of the principle of natural justice, it is to be noticed that the notice dated 30.4.09, served upon the partners of the Petitioner firm was not a notice issued to them to show cause against the proposed rectification of mistakes or cancellation of the alteration in the entries made. As a matter of fact, by said notice, only the explanation of the partners of the Petitioner firm was sought on certain points and they were directed to produce the documents referred to in the notice. Admittedly, in response to the notice, the partners of the Petitioner firm demanded the copy of the application filed by the Respondent No. 1 and the documents produced in support thereof. It is not disputed before this Court that the copy of the application so also the documents produced in support thereof were never supplied to the partners of the Petitioner firm even on demand being raised. Thus, the order impugned passed by the Registrar adversely affecting the rights of the partners of the Petitioner firm in a most perfunctory manner without giving them any opportunity of hearing, is ex facie illegal and violative of the principle of natural justice and therefore, the same deserves to be quashed and set aside for this reason also.

30. Lastly, coming to the contention of the learned Counsel for the Respondents that the alterations were effected without compliance of the relevant provisions of the Rules, suffice it to say that a validity of an order passed by a statutory authority based on certain grounds has to be judged by the Court on the basis of the reasons contained therein and the same cannot be permitted to be supplemented by fresh reasons by way of pleadings before the court or otherwise. Reliance in this regard may be placed on a decision of the Hon'ble Supreme Court in the matter of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, The violation of the provisions of the Rules as alleged was neither pleaded by the Respondent No. 1 before the Registrar nor the order impugned is based on such grounds. Therefore, this Court is not inclined to entertain the submissions made by the learned Counsel for the Respondent No. 1 in this regard.

31. In view of the conclusions arrived at as above, the decision cited by the learned Counsel does not help him in any manner and therefore, the same are not dealt with in the judgment.

32. For, the aforementioned reasons, the writ petition succeeds, it is hereby allowed. Order impugned dated 18.5.09 is quashed and set aside. The alteration with regard to constitution of the firm recorded in the Register of the Firms by the Registrar vide order dated 7.2.05 and 13.10.06 are restored. No order as to

costs.