

M/S Divhya Marble Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Oct-04-2012

Appellant : M/S Divhya Marble

Respondent : The State of Madhya Pradesh

Judgement :

1 W.P No.11556/2006 HIGH COURT OF MADHYA PRADESH AT JABALPUR
WRIT PETITION NO.11556/2006 PETITIONER : M/S DIVYA MARBLE Vs.
RESPONDENTS : STATE OF M.P. AND OTHERS.

----- For the petitioner
: Shri Kishore Shrivastava, Senior Counsel with Shri Kunal Thakre, Advocate. For
the respondents : Shri B. P. Pandey, Dy. Govt. Advocate Present : Hon'ble Shri
Justice R.S. Jha.

ORDER

(04/10/2012) The petitioner has filed this petition being aggrieved by order dated 28.8.2004 passed by the Assistant Registrar, Firms and Societies, Jabalpur Division, Jabalpur, whereby the application, filed by the petitioner seeking amendment of the entries in the register regarding principal place of business, has been rejected on the ground that the principal place of business of the petitioner is situated beyond the territorial jurisdiction of the Registrar concerned and, therefore, the change sought to be made in the entries is beyond his territorial jurisdiction and against the provisions of Section 58 of the Indian Partnership Act, 1932 (hereinafter referred to as 'the Act'). 2 W.P No.11556/2006 2. The brief facts,

leading to the filing of the present petition, are that the petitioner is a Partnership Firm which is carrying out business of mining, cutting and polishing of marbles at Katni. Initially the petitioner Firm filed an application seeking registration under the provisions of the Indian Partnership Act before the Registrar, Firms and Societies, Jabalpur, in which it was shown that the petitioner was doing business of cutting and polishing marbles at 24, Adarsh Nagar Colony, Katni and accordingly the petitioner's Firm was registered by the Registrar under the provisions of Section 58 of the Act in the year 2002. Subsequently, as one of the partner retired and one Shri Shanti Lal Singhvi was made the Managing Partner of the Firm, therefore, the partnership deed was reconstituted by the petitioner on 30.9.2003 wherein it was provided that the principal place of business of the petitioner Firm would not be Room No.1, 32/379 Opposite Gogunda House, L. N. Mishra Marg (Detya Magri) Udaipur, Rajasthan, instead of 24, Adarsh Nagar Colony, Katni, M.P. Pursuant to the aforesaid change, the petitioner filed an application on 30.12.2003 in Form-II prescribed by Rule 31 of the rules framed in this regard before the 3 W.P No.11556/2006 Registrar, Firms and Societies, Jabalpur, for alteration in the principal place of business, under Section 60 of the Act. The aforesaid application, filed by the petitioner, has been rejected by the impugned order dated 28.8.2004 on the ground that as the changed principal place of business falls outside the territorial jurisdiction of the Registrar concerned, i.e. Assistant Registrar, Firms and Societies, Jabalpur, therefore, the application for change is not in accordance with the provisions of Section 58 of the Act. The petitioner, being aggrieved, has filed the present petition.

3. It is contended by the learned Senior Counsel for the petitioner that the provisions of Section 58 of the Act, provides for registration of a Firm at any of its place of business and it is not necessary or mandatory that the registration of the Firm can be made only at the place of its principal place of business. It is submitted that the petitioner had initially applied for registration and was duly registered under the provisions of Section 58 of the Act by the Registrar, Firms and Societies, Jabalpur, as at that point of time the petitioner Firm was operating from 24, Adarsh Nagar Colony, Katni. However, subsequently, on account of the change of one of its managing partner, 4 W.P No.11556/2006 as the said partner resides and operates from Udaipur (Rajasthan), therefore, the principal place of

business of the Firm was changed by a deed of reconstitution signed by the partners on 30.9.2003 and accordingly, the petitioner filed an application on 30.9.2003 under section 60 of the Act, which provides for applying to the Registrar bringing to his notice the alteration in the location of business requesting him to change the entries made in respect of the principal place of business recorded under section 58(1)(b) of the Act, which has wrongly been rejected by the authority on the ground of territorial jurisdiction.

4. It is submitted that the Act does not restrict or limit the power of the Registrar to make an entry in the register only in respect of firms whose principal place of business is within his territorial jurisdiction but permits registration of firms at any of its place of business and in such circumstances the impugned order, being contrary to law, deserved to be quashed. It is further submitted that once an entry under section 58 of the Act has been made then a change sought to be made under section 60 of the Act cannot be rejected on the ground of territorial jurisdiction. The learned Senior Counsel has relied upon the statement of objects and reasons for 5 W.P No.11556/2006 amending and incorporating section 58 of the Act in support of his submission.

5. The learned Govt. Advocate appearing for the respondent/State per contra, submits that a Registrar, who is required to make entries in the Register of Firms under Section 58 of the Act, can only do so in case the principal place of business of a firm concerned is situated within his territorial jurisdiction. It is submitted that in the instant case, as the petitioner seeks to change its principal place of business to Udaipur which is beyond the territorial jurisdiction of the Registrar at Jabalpur, therefore, no fault can be found with the impugned order dated 28.8.2004 rejecting the petitioner's application for altering the entries made by the Registrar, Firms and Societies while registering the firm under sections 58 and 59 of the Act.

6. I have heard the learned counsel for the parties at length. From a perusal of Section 58 of the Act, it is apparent that an application for registration may be effected by the Registrar of the area in which any place of business of the firm is situated or proposed to be situated. in case a statement in the prescribed form accompanied by the prescribed fee stating; (a) the firm 6 W.P No.11556/2006

name; (b) the place or principal place of business of the firm; (c) the names of any other places where the firm carries on business; (d) the the date when each partner joined the firm; (e) the names in full and permanent address of the partners, and (f) the duration of the firm, is filed before the Registrar concerned. Section 58 of the Act further provides that the statement shall be signed by all the partners, or by their agents specially authorized in this behalf and shall be verified in the manner prescribed.

7. The statement of objects and reasons for incorporating the aforesaid provision is to the following effect (underlying by this Court):- Sub-clause (1) is based on section 3 of the Registration of Business Names Act, 1916 but it reduces the particulars to be furnished to the minimum required for the information and benefit of third parties. Nothing of the internal economy of the firm need be disclosed beyond the mere names of the partners, and the duration of their partnership. Sub-clause (2) is taken from sub-section (3) of section 11 of the Indian Companies Act, 1913.

. Under the original draft of sub-clause (1), the validity of the registration of a firm 7 W.P No.11556/2006 could be disputed, on the ground that its principal place of business does not lie within the area in which it has been registered. To avoid this we propose that registration may be effected in any area in which the firm carries on business. The small amendment in clause (e) will require partners to give their names in full. At the end of sub-clause (1) we have inserted words which will allow partners residing at a distance to give special authority to agents to sign on their behalf applications for registration. This amendment will cover the signing of statements under clause 59.

8. Section 59 of the Act provides that the Registrar, on being satisfied that the provisions of Section 58 of the Act have been duly complied with, shall record an entry of the statement in a register called the Register of Firms and shall file the statement. Section 60 of the Act, makes provision for recording any alteration in the firm name and principal place of business by making a statement to that effect before the Registrar accompanied by the prescribed fee specifying the alteration which is signed and verified in the manner required under section 58 and the

Registrar on being 8 W.P No.11556/2006 satisfied shall amend the entry and shall file it alongwith the statement relating to the firm filed under section 59.

9. From a perusal of sections 58, 59, 60 and the statement of objects and reasons for amending section 58 of the Act, it is abundantly clear that the Act not provides for effecting registration in any area in which the firm carries on business. A bare perusal of section 58 of the Act, also makes this clear as it provides that a Registrar, on receiving a statement in the prescribed form accompanied by the prescribed fee by any firm which has any place of business. under the jurisdiction of the Registrar, may apply for registration. The use of the words any place of business of the firm is situated or proposed to be situated. leaves no manner of doubt as to the interpretation of the section which permits the Registrar to register a firm at any of its places of business and does not make it mandatory for registering the firm only at the place where its principal place of business is situated. The statement of objects and reasons also makes this aspect specifically clear by stating that the amendment in the section is being made to avoid any dispute on the ground that the principal place of business does not lie within the area in which the firm is registered and for that purpose it has No.9 W.P No.11556/2006 been specifically provided that the registration may be effected in any area in which the firm carries on business.

10. It is also observed that section 60 of the Act, specifically requires and provides that a person may apply for making alteration in the location of the principal place of business to the Registrar, Firms and Societies, and in case the application is accompanied by the prescribed fee and is signed and verified in the manner required under section 58 of the Act, the Registrar, on being satisfied, shall amend the entry relating to the firm in the Register of Firms and shall file it alongwith the statement relating to the firm under section 59 of the Act.

11. From a perusal of Section 60 of the Act, it is clear that it does not provide that the initial requirement regarding registration and giving of details as provided under section 58 of the Act, are required to be complied with for considering and allowing an alteration in the principal place of business under section 60 of the Act, as has been held by the Assistant Registrar, Firms and Societies, Jabalpur in the

impugned order. Section 60 of the Act only requires that the application filed under 10 W.P No.11556/2006 section 60 of the Act should be signed and verified in the manner required by section 58 of the Act.

12. In the instant case, the application filed by the petitioner under section 60 of the Act is signed and verified in the manner prescribed under section 58 of the Act as is evident from a perusal of the application and the verification, a copy of which has been filed alongwith the petition as Annexure P-4, and as Katni remains and continues to be one of its place of business, therefore, I am of the considered opinion that the second ground on which the application has been rejected by the Registrar, namely, that it does not fulfill the stipulation contained in section 58 of the Act, is also misconceived contrary to the stipulations of Section 58 and 60 of the Act.

13. In view of the aforesaid analysis of the provisions of Section 58 and 60 of the Act, I am of the considered opinion that the impugned rejection of the petitioner's application under section 60 of the Act, requesting for recording an alteration in the entry regarding principal place of business deserves to be quashed not being in accordance with law.

14. In the light of the above, the petition filed by the petitioner stands allowed and the impugned order dated 11 W.P No.11556/2006 28.8.2004, passed by the Assistant Registrar, Firms and Societies, Jabalpur Division, Jabalpur, is hereby quashed. The Registrar, Firms and Societies, Jabalpur is directed to take up the application filed by the petitioner under section 60 of the Act, again and pass appropriate orders thereon in accordance with the law as laid down in the preceding paragraphs.

15. With the aforesaid direction, the petition filed by the petitioner stands allowed. There shall be no order as to the costs. (R. S. JHA) JUDGE 04 10/2012 mms/-

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