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**Sheikh Dost Mohammad and ors. Vs. Sheikh Ghos Mohammad and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/690041](http://sooperkanoon.com/690041)

**Court :** Delhi

**Decided On :** Mar-28-2001

**Reported in :** 2001IVAD(Delhi)523; 92(2001)DLT420; 2001(59)DRJ702

**Judge :** Mr. J.D. Kapoor, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 53 - Order 39, Rules 1 and 2 - Order 40

**Appeal No. :** IA 4710/2000 in Suit No. 1702/1999

**Appellant :** Sheikh Dost Mohammad and ors.

**Respondent :** Sheikh Ghos Mohammad and ors.

**Advocate for Def. :** Mr. Vishnu Mehra and ; Mr. Janjan Mukherjee, Advs.

**Advocate for Pet/Ap. :** Mr. A.S. Chandiok,; Mr. Rajiv Nayyar, Sr. Advs.,; Mr. C. Mu

**Judgement :**

ORDER

J.D.Kapoor.J.

1. Through this application the appointment of receiver has been sought as the plaintiffs apprehend that the entire assets would be frittered away and he would be only saddled with the liabilities and not with the profits being earned by the

defendants by way of production.

2. The facts relevant for the decision of the application are as under:

Plaintiffs 1 to 6 and defendants 1 and 2 became partners for carrying out leather business and constituted a firm under the name and style of B. Shahabuddin & Co. The partnership deed provided that the partnership shall come to an end by 31st of March 1999. In the name of the partnership firm a number of assets including the factory, office premises etc. were purchased and vested. The differences started when the plaintiffs received a letter dated 8th November 1998 addressed by defendant No.1 enclosing a copy of trial balance for the period from 1st April to 31st September 1998. The plaintiffs were called upon to pay an amount of Rs.1.65 crores to various alleged creditors including about Rs.1.10 crores to G.F. Leathers, a firm held by defendants 3 and 4.

3. The instant suit was filed on 4th of August 1999 seeking cancellation of the agreement between the plaintiffs firm and G.F. Leathers and rendition of accounts of all work undertaken by G.F. Leather utilising the assets, moveable and immovable property and manpower of the plaintiffs company as also restraining defendants 1 to 4 from utilising or causing to be utilised any assets of the plaintiff firm and an ad interim ex parte injunction was granted vide order dated 6.8.1999 with the observations that the defendants shall not be permitted to use any assets of the erstwhile partnership firm B. Shahabuddin & Co. without the consent of the other partners, who had much larger share in the erstwhile partnership than the defendants 1 and 2. However, in order to ascertain whether assets were being utilised by the defendants or not a local commissioner was appointed on 18th February 2000. His report showed that the factory floor which was quite big was in perfect working condition and the production was being carried out on large scale. He also prepared the inventory of the plant and machinery and the stocks. It was represented by the defendants that no records of defendants 3 and 4 were available but two statements were handed over which were kept separately. So much so all the electricity bills, water and telephone, etc. were duly signed by the local commissioner and complete set of documents which was produced showed that the defendants were still continuing with the production work without obtaining

the consent of the plaintiff.

4. As is apparent the partners who are though related to each other parted their company long back and they are now at daggers drawn. Since the defendants were permitted to continue with the production only with the consent of the plaintiffs in terms of prayers 1 and 4 of application under order 39 Rule 1 & 2 CPC to allow the defendants to continue the production would create more bad blood between the parties as the plaintiffs who were having 75% share will be deprived of the profits and suffer the liabilities and in the past they were also directed to pay an amount of Rs. 1.65 crores. It is contended by the learned counsel for the plaintiff that in such a situation no other option remains open to the court than to appoint a receiver for taking over possession of the property belonging to the erstwhile firm and to prevent the defendants from utilising the assets of the said firm in any manner including the job works being done by G.F.Leathers i.e. defendants 3 and 4.

5. However, on the contrary reliance has been placed upon Brig. Sawai Bhawani Singh Vs . Indian Hotels Co. Ltd. & others : AIR 1997 SC2183 , wherein pursuant to an agreement the respondents had come into possession of the suit property for running the business of a hotel and the appellants were unlawfully interfering with the position of the business. It was under these circumstances that a view was taken that the respondents should be allowed to continue the business as custodia legis i.e. Receiver pending the suit.

6. It is contended by the learned counsel that the refusal of the ex parte injunction in respect of prayers 2 & 3 has the implied effect of allowing the defendants to run the business by way of undertaking the job work from G.F. Leathers and now to seek appointment of the Receiver under Order 40 CPC is to indirectly allow the interim relief sought by the plaintiffs in terms of prayers 2 & 3.

7. Even if it is assumed for the sake of arguments that the business is being run in accordance with the terms and conditions of the partnership which has not come to end by efflux of time still the fact remains that the business is not being run with the consent of majority of the partners.

8. Almost identical situation came up before their lordships for consideration in Smt. Kusuma Gupta and others Vs . Smt. Sarla Devi and others : AIR1988 All154 . Though the question for consideration was whether a temporary injunction should be granted as a matter of course without regard to the consideration of the question of prima facie case, balance of convenience and irreparable injury.

9. In the aforesaid case similar suit was filed for dissolution of a partnership firm as well as for rendering of accounts Along with the application for temporary injunction. By way of an ex parte order the Court below appointed a Receiver. It was held that in each case before granting temporary injunction the Court will have to address itself to the issue of balance of convenience and irreparable injury judged in the totality of the facts obtaining in the case. The injunction which is incorporated in Section 53 of the Partnership Act is based on the principle that the partners intending to continue business should not do any thing which might impede the winding up of the partnership business as the basic idea is to preserve the distributable assets of the firm pending the winding up of the affairs and to ensure that some irreparable injury to the partners applying for the aid the Section 53 may not be caused to them while the winding up of the partnership business is pending or in progress. These conditions necessarily involve enquiry into the question whether the interest of the plaintiff is likely to be jeopardised beyond repair or compensation if temporary injunction is refused.

10. It was observed that the impact on the rights of those engaged in a running business from the closure there of is unpredictable or at any rate difficult to assess in terms of money and, therefore, it is not right and proper to direct the closure of the business which was being admittedly run by the appellants until the grant of injunction by the Court below. However in the said case the plaintiff had only 5% share in the firm to have the assets of the firm preserved and to prevent any irreparable injury being caused to it during the winding up of the affairs of the firm, the loss arising from the disruption of a running business claimed by the defendants under a reconstituted firm would obviously be much greater and indeed unquantifiable or at any rate very difficult to assess.

11. It appears that the major concern of the plaintiff appears to be that he would be saddled with all the liabilities being incurred by the defendants by running the business single-handedly and also by engaging the services of the other defendants of which they themselves happen to be the partners. The plaintiffs also apprehend that the assets of the firm would also be frittered away.

12. The human aspect also been brought to the notice by the Union of the workers that if such a running business which is fending as many as 120 families is brought to an end, it would cause great hardship to the workers and their families.

13. The very fact the plaintiffs were the major partners having 75% share itself shows that their concern and apprehension is not misplaced or unfounded. Again to appoint a Receiver and bring the entire business which is being run for the last 50 years to a grinding halt or to stand-still would be against the principles enshrined in Order, 39 Rule 1 & 2 governing grant or refusal of the temporary injunction.

14. Taking overall view of the matter and examining the prayer from the practical aspect it would be in the fitness of things to appoint Plaintiff No.2-Mohd. Gulzar as Receiver, as suggested by the plaintiffs, with the following directions:-

1. The defendants shall furnish a Bank Guarantee to the extent of the liabilities they have incurred after parting with the plaintiffs within one month.

2. The Receiver shall furnish every month true and accurate accounts of the firm in respect of business which is being carried on to the Court as well as to the defendants by 15th of each succeeding month.

3. The plaintiffs as well as the defendants shall not transfer or otherwise alienate any fixed assets comprising machinery or immovable property of the firm or otherwise create any fresh charge thereon during the pendency of the suit.

15. The plaintiff No.2 shall take over the possession of the assets and the premises for the purpose of running the business and will comply with the aforesaid directions punctiliously.

16. However the Receiver if finds in the interest of the company and of the parties may continue with the arrangement of job work the defendants 3 & 4. However the interest of the business will be the prime consideration of the Receiver. The Receiver may summon the help of the Police in effecting this order. Local Police shall provide all possible help.

The application stands disposed of.

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