Neelam Kumar Nanda Vs. Satish Kumar Nanda

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SooperKanoon Citation : sooperkanoon.com/692267

Court : Delhi

Decided On : May-22-1998

Reported in : 1998VAD(Delhi)514; 73(1998)DLT604; 1998(46)DRJ178

Judge : J.B. Goel, J.

Acts : Code of Civil Procedure (CPC), 1908 - Order 20, Rule 19 - Order 40, Rule 1

Appeal No. : S.No. 2120 of 1997

Appellant : Neelam Kumar Nanda

Respondent : Satish Kumar Nanda

Advocate for Def. : Mr. Bawa Shiv Charan Singh, Sr. Adv. and ; Mr. R.K. Saini, Adv.

Advocate for Pet/Ap. : Mr. B.B. Gupta, Adv

Judgement :

J.B. Goel, J.

1. This is a suit for dissolution of the partnership and rendition of accounts. The case is that plaintiff and defendant have been carrying on business in radio and electronics under the firm name of M/s. Vijay Radio Corporation in partnership as per terms of the partnership deed dated1.4.1992, that the defendant has been

misutilising the proceeds, benefits and the properties of the partnership firm to his own benefit and to the exclusion and detriment of the plaintiff; accounts are not being rendered and share of the plaintiff in the business has also not been given by the defendant; plaintiff has several times requested the defendant to dissolve the partnership firm, and render true and correct accounts. A notice dated24.4.1996 was also sent to the defendant requiring him to appoint an Arbitrator to adjudicate upon the disputes between the parties as provided in the partnership deed but that also has not been complied with; that the partnership business cannot be carried on; it is just, expedient and equitable that the partnership business cannot be carried on; it is just, expedients and equitable that the partnership is dissolved and the business wound up. The plaintiff has also alleged that several complaints have been filed due to various threats extended by the defendant to him and to his family.

2. The defendant in that written statement has admitted that partnership business has been carried vide partnership deed dated 1.4.1992; when plaintiff had gone to Bangalore the defendant has been managing the business and regular books of accounts were maintained during his absence and now plaintiff is in control of the business, in possession of the business premises ,has refused the defendant to participate in the business and to render its account and is misappropriating the assets of the partnership. The defendant is not liable to render any account or to pay anything; plaintiff has to render the accounts and to pay the defendant the amount due to him, rendition of accounts. Receipt of notice dated 24.4.1996 has been admitted.He also desires that the partnership be dissolved w.e.f. 24.4.1996 when the notice was given by the plaintiff.

3. Defendant has also filed several applications being I.A. 11247/97under Order 39, Rules, 1 and 2 and Order 40, Rule 1 seeking that business premises No. 296, Old Lajpat Rai Market, Delhi which are in the possession of the plaintiff and the assets be taken into possession by a Receiver ;I.A. 11248/97 under Order 12, Rule 6, CPC and is No. 2463/98 seeking a decree of dissolution may be passed by a preliminary decree in terms of Order 20, Rule 15, CPC. Now, another application being I.A. 4575/98 has been filed under Order 40, Rule 1 and Order 39, Rule 7, CPC for appointment of Receiver and to take possession of the stocks

and trade and to seal the premises.

4. Plaintiff has filed copy of partnership deed dated 1.4.1992 and a copy of the notice dated 24.4.1996. Both these documents have been admitted on behalf of the defendant and are Exs. P-1 and P-2.

5. I have heard learned Counsel for the parties. Ex. P-1 is the partnership deed entered into between plaintiff and defendant for doing business in partnership under the name and style of M/s Vijay Radio Corporation; the shares of the two partners both in profit and loss is equal, i.e., 50%each. The partnership is at Will Clause, 16 provided that the disputes among the partners will be resolved through arbitration. Now, both the parties have waived this condition.

6. The partnership is at Will. None of the parties had given notice of dissolution of partnership as contemplated under Section 43 of the Act. Assuch the partnership is to be dissolved by the Court under Section 44 of the Partnership Act. From the pleading of the parties it is clear that the partnership cannot be carried on and must be dissolved.

7. Summons of the suit were served on the defendant on 11.11.97. In myview, it should be the proper date for dissolution of partnership.

8. It is declared that the plaintiff and the defendant are two partnersof the partnership firm; their shares both in profit and loss are equal,i.e. 50% each. It is, accordingly, declared and ordered that the partnership between plaintiff and defendant carried on under the name and style ofM/s. Vijay Radio Corporation at premises No. 296, Old Lajpat Rai Market,Delhi is hereby dissolved w.e.f. 11.11.1997. Preliminary decree is herebypassed for dissolution of the partnership firm w.e.f. 11.11.97. Both plaintiff and defendant shall share the assets and liability of the firm inequal share.

9. Both the parties are accusing each other from excluding the other from the business and enjoyment of the partnership property and profits. In thecircumstances, it is just, convenient and in the interest of justice forpreserving the firm property that a Receiver-cum-Local Commissioner isappointed to take

possession of the property, assets and premises to pre-serve the same from dissipation.

10. I, accordingly, appoint Shri Sandeep Sethi, Advocate, 10, Lawyers'Chambers, Delhi High Court, New Delhi as a Receiver-cum-Local Commissionerto take possession of the partnership premises situated at 296, Old LajpatRai Market, Delhi property, assets and the account books of the partnership. Both the plaintiff and defendant are hereby directed to make discovery on affidavit of all the assets property, goods, money books or otherdocuments of the firm within ten days and hand over the Receiver-cum-LocalCommissioner forthwith. The said Local Commissioner shall exercise thepowers and function as provided under Schedule 1, Appendix 'D' Form 21 ofthe CP for realisation, disposal and distribution of the debts, liabilitiesand assets/property/goodwill of the firm. The plaintiff and the defendantare further directed to render the accounts of the business of the firm tothe Local Commissioner. A decree be drawn as provided under Schedule I,Appendix 'D' Form 21 of the CPC. Costs in the suit will be the costs as maybe determined at the time of passing of the final decree. The Local Commissioner shall submit his report expeditiously and preferably within fourmonths.

11. Fee of the Receiver-cum-Local Commissioner is tentatively fixed at Rs.10,000/- to be paid in equal share by both the parties.

12. In view of this I.As. 11247, 11248/97, 2463/98 & 575/98 also standdisposed of.

13. Case be listed for awaiting the report of the Local Commissioner on.