

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Lalit Kumar and ors. Vs. Municipal Corporation of Delhi and anr.

Lalit Kumar and ors. Vs. Municipal Corporation of Delhi and anr.

SooperKanoon Citation : sooperkanoon.com/693486

Court : Delhi

Decided On : Sep-19-1994

Reported in : 1994IVAD(Delhi)169; 56(1994)DLT123; 1994(31)DRJ481

Judge : Vijender Jain, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 9; [Partition Act, 1893](#) - Sections 69(2)

Appeal No. : Interim Application Nos. 1314 and 7999 of 1994

Appellant : Lalit Kumar and ors.

Respondent : Municipal Corporation of Delhi and anr.

Advocate for Pet/Ap. : Ravinder Sethi,; Sumeet Bansal,; K.K. Buchar,;

Judgement :

Vijender Jain, J.

(1) This is a suit filed by plaintiffs, who entered into a partnership agreement, on 4.2.94. The partnership was to start the business in the name and style of M/s.Komal Circus. Thereafter an application was filed by the said M/s.Komal Circus with the Municipal Corporation of Delhi (MCD) inter alias seeking permission to participate in allotment of land which is being done by defendant No.1-MCD for staging circus show. Mr.Sethi, learned counsel for the plaintiffs, has

argued that the firm of plaintiffs was issued a certificate by General Secretary of defendant No.2 informing him that the plaintiff was made a member vide letter dated 17.4.94. This letter Was written by Mr.Vinod Sabharwal. In the said letter, it has been mentioned that M/s.Komal Circus is one of the members of India Circus Federation (Registered). Mr.Sethi has argued that M/s.Komal Circus, the partnership concern of the plaintiffs, was given a certificate that it is a member of defendant No.2. Mr.Sethi has further argued that subsequently a letter was received on 20.5.94 written by the Treasurer of defendant No.2 that in the Executive Committee meeting, the Federation expressed its inability to enlist M/s.Komal Circus as member on the ground that M/s.Komal Circus has yet to take birth and they also mentioned in the said letter that as and when M/s.Komal Circus starts, its application will be considered. Learned counsel for the plaintiffs has argued that once a certificate of membership was issued in the name of M/s.Komal Circus, the defendants, in. an unilaterally manner and without adhering to the principles of natural justice, could not have revoked the membership of the plaintiff. Mr.Sethi has also filed newspaper cuttings as well as a copy of the invitation card inter alias showing that M/s.Komal Circus has come into existence and as a matter of fact has been performing at Samand Ludhiana in Punjab. Mr.Sethi has argued that the action of the Mcd not to allow the plaintiffs to participate in the draw of lots with the other members of defendant No.2 is illegal, he has prayed that plaintiffs should be allowed to participate in the tender for which his application is pending with defendant No.1-MCD. On the other hand, Mr.Bhucher, learned counsel for defendant No.1-MCD, has pointed out that in terms of allotment rules of municipal ground for circus, Mcd has framed certain norms pursuant to which it is the policy of the Mcd that ground for circus will be flowed to bona fide circus units affiliated to the Indian Circus Federation. He has pointed out that list of such units is formulated by the Department of Youth Affairs and Sports, Ministry of Human Resources Development, Govt. of India. Mr.Sethi contends that no such list is formulated by the said Ministry. Mr.Bhucher says that as a representation was received from defendant No.2 that the plaintiffs are not the members of defendant No.2 and on the basis of the rules framed in this regard, Mcd cannot Consider the application of the plaintiffs.

(2) Mr. Swatanter Kumar, learned counsel for defendant No.2, has drawn my attention to rules and regulations of Indian Circus Federation. Particularly he laid emphasis on Rule-3 which reads as under :- 'Any person who is connected with the Circus firms or concerns in his capacity either as founder or as proprietor or as a partners is eligible to become a member of the Federation. Every such member shall pay an admission fee RS.1000.00 .'

(3) According to submission of learned counsel for defendant No.2, firstly defendant No.2 had no notice of the certificate granted by plaintiff No.2 to himself and plaintiff No.1. He has emphasised that, defendant No.2 only came to know that M/s.Komal Circus was given membership when it was brought to the notice of defendant No.2 by defendant No.1. It is interesting to observe here that at relevant period Mr.Vinod Sabharwal was the General Secretary of defendant No.2. He was controlling the affairs of Indian Circus Federation and the Federation did not know whether a certificate to the effect as has been produced by the plaintiffs dated 17.4.94 was given or not. The stand of defendant No.2 is that they for the first time considered the application of the plaintiffs on 18.5.94 and immediately it was communicated to the plaintiffs that M/s.Komal Circus cannot be a member of the Indian Circus Federation for the reasons stated in the letter dated 20.5.94. The learned counsel for defendant No.2 has also argued that in any event of the matter, it was the Executive Committee pursuant to rules of defendant No.2 which could have granted membership and no such resolution by the Executive Committee was taken in this regard and, therefore, the letter granting membership by Mr.Vinod Sabharwal was not a valid letter conferring membership on the plaintiffs and the same is against the rules and regulations of defendant No.2 - Federation. It is intriguing as to why in the suit plaintiff No.2..has described himself as Vinod Kumar as he is the same person who is Vinod Sabharwal, who issued the certificate while acting as General Secretary of defendant No.2. It is equally amusing that the said Vinod Sabharwal, who is otherwise a member of the Indian Circus Federation has filed another affidavit by the name of Vinod Sabharwal in which it has been described that he is the proprietor of Gemini Circus and he wants to open a new branch namely M/s.Komal Circus in the name of his daughter Ms.Komal Sabharwal and wants to gift certain animals as has been mentioned in the said affidavit. Why the name of vinod Kumar has been used by him to file the

plaint? Why on the one hand he has filed an affidavit of gifting animal to a branch namely M/s.Komal Circus named after his daughter? In the suit the stand of Vinod Sabharwal is that M/s.Komal Circus is a partnership firm of his with plaintiff No.1. Another argument of Mr. Kumar is regarding maintainability of the suit on account of disability of Section 69 of Indian Partnership Act. Mr.Kumar has argued that the partnership firm which came into existence on 4.2.94 between said Lalit Kumar, plaintiff No.1, and Vinod Kumar, plaintiff No.2, could not have instituted the suit as the said firm is unregistered. Even partners of the unregistered firm cannot institute the suit. The firm should have been registered in terms of Section 69 of the Indian Partnership Act and non-registration of the firm is a fatal defect which cannot be otherwise cured.

(4) On the other hand, Mr.Sethi has argued that Section 69 of the Indian Partnership Act is not attracted to the facts of the present case. Section 69 of the Indian Partnership Act reads as under :- '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 to 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 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.'

(5) On the basis of reading of sub-section 2 of Section 69 of the Indian Partnership Act, Mr.Sethi has argued that the bar provided by sub-section 2 of Section 69 is against filing of a suit to enforce a right arising from a contract and in this case no contract has come into force between the parties and, therefore, Section 69 of the said Act..willnot be applicable. It is relevant to examine the prayer of the plaintiffs in the suit. Prayer (a) inter alias reads as under 'A decree for declaration be made in favor of the Plaintiffs and against the Defendant No.2 declaring that the Plaintiffs who are running the business of circus under the name and style of 'M/s.Komal Circus' are members of Defendant No.2 - Federation And in the alternative, a decree may be passed directing the Defendant No.2 to make the

Plaintiff sits member.'

(6) What the plaintiffs are seeking is a declaration that the plaintiffs are members of defendant No.2 - Federation. The whole relief in Prayer (a) is on the basis of a letter which has been addressed by the General Secretary of defendant No.2 making M/s.Komal Circus, whose partners are both the plaintiffs, member of the Indian Circus Federation. The plaintiffs are aggrieved because subsequently defendant No.2 has informed to the Mcd that plaintiffs are not its members and further informed plaintiffs that they cannot become member at this stage. The cause of action have occurred to the plaintiffs on account of letter purported to have been writ ten on behalf of defendant No.2 on 17.4.94. If that letter is not in existence, plaintiffs have no cause of action to file the suit. That letter was written to the partners of the firm as has been borne out from the letter itself which quotes

'THIS is to certify that M/s.Komal Circus is one of the members of the Indian Circus Federation (Regd.) New Delhi.'

(7) And the prayer also seeks M/s.Komal Circus as member of defendant No.2. There is no ambiguity in the relief sought and same is based on the letter which according to the plaintiff has been breached. It is to rectify that contract which according to plaintiffs, defendant No.2 had no authority in law, present suit has been filed. That being the situation registration of firms as contained in Section 69 of the Indian Partnership Act was mandatory and in its absence even the suit cannot be maintained as the same is squarely hit by Section 69 of the Indian Partnership Act. As I am of the considered opinion that suit itself cannot be maintained, I will not go into other aspects of the matter.

(8) In view of the observations made above, I dismiss the application.

(9) In view of the order passed in is No-7999/94, the suit itself is not maintainable and the same is dismissed with no order as to costs.