

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.1740 OF 2008

P.R. SARIN & ANR.

... Appellant(s)

Versus

HARBANS LAL SACHDEVA & ORS.

... Respondent(s)

ORDER

The respondent No.1 has died. An application for substitution of the names of the legal representatives has been filed. The names of the legal representatives are mentioned in the application. The prayer is allowed. The legal representatives, as mentioned in the application are ordered to be brought on record. They shall be impleaded as respondents (ii) to (vi). Legal representative at Sl.No.(i) is already on record as respondent No.2.

This appeal is directed against the judgment and order dated 30th November, 2004, passed by the Madhya Pradesh High Court, Jabalpur Bench, disposing of the Writ Petition filed under Article 227 of the Constitution of India.

Counsel appearing for the appellants submits before us that in a suit for dissolution of the partnership, a preliminary decree already stands passed by the court

of Additional Judge, District Court, Gwalior in Case No.7-A 78 C.S. The said order was passed in the suit filed by the appellant herein as plaintiffs seeking for a decree of dissolution of partnership and for transaction accounts of the partnership. In the said suit, a preliminary decree was passed on 10th October, 1979, declaring that the partnership firm would be deemed to have been dissolved from 15/02/1975 and that an advertisement be taken out regarding the aforesaid dissolution. Our attention is drawn to the orders of the dissolution made by the Trial Court in the said preliminary decree, particularly, to the following order as appearing in paragraph 3:-

“All the transactions of the accounts between the plaintiffs & defendants be sought for. It is also to be observed. It is also to be observed in this regard that by the order dated 01.2.77 of the Hon'ble Supreme Court, the defendants No. 1 & 2 had paid the plaintiffs on dated 05.2.77 and 08.2.77 Rs.1,46,513.60 through this Court. In this regard it is also to be observed that according to the order dated 24.8.79 passed by the Hon'ble High Court, M.P. Bench, at Gwalior, the defendant No.1 present Receiver, who is maintaining the accounts and submitting in this court, and for auditing of all such accounts Shri P.D. Garg & Co. Patankar Bazar, Lashkar is appointed Auditor and he is instructed to submit his report by 15.11.79.”

It is pointed out by the counsel for the appellants that the Receiver, who was appointed by the court has since died and he has not been replaced till date. It is also submitted by the counsel appearing for the appellants that the Receiver was required to maintain accounts and submit the same in the court, which was to be audited by

Shri P.D. Garg & Co., who was appointed as the Auditor by the court and the said report was required to be filed expeditiously.

Having heard the learned counsel appearing for the appellants as also the senior counsel appearing for the respondents, we find that the dispute revolves around within a very narrow compass. The appellants are before this Court for proper implementation of the preliminary decree which is passed, particularly, for implementation of the directions contained in paragraph 3, which are extracted above. We are also of the considered opinion that since the Receiver appointed by the court has died in the meantime, it would be necessary for the trial court to pass appropriate orders appointing a new Receiver in place of the deceased Receiver. Such an order of appointment/substitution shall be passed as expeditiously as possible, preferably within a period of two months from today by the trial court. After the Receiver is so appointed, he shall be given the custody of all the records and the accounts of the Company, as as to enable him to place the same before the Auditor for the purpose of auditing of all such accounts in terms of the orders passed in the preliminary decree dated 15/10/1979. The report shall be submitted by the Auditor as expeditiously as possible so as to enable the Trial Court to pass the final decree in accordance with law and after hearing the counsel appearing for the parties.

The parties shall now appear before the Trial Court for further orders on 28/05/2009. Appropriate orders shall be passed by the Trial Court in terms of the observations made herein.

Mr. Amlan Kumar Ghosh, counsel appearing for the appellants, however, has submitted at this stage that the Trial Court is wrong in saying that the accounts be submitted by the receiver with a report by 15.11.1979 and then the same should have been recorded as upto 15.11.1979. We express no opinion on the same as it is the order of the Trial Court. He may, however, approach the Trial Court with a proper application in that regard in accordance with law.

The appeal stands disposed of in terms of the order.

The records of the trial court, which were called for and are available with us, are also to be send back immediately, so as to made available with the trial court on or before the next date.

.....J.
(Dr. MUKUNDAKAM SHARMA)

.....J.
(Dr. B.S. CHAUHAN)

New Delhi,
May 20, 2009.