

IN THE COURT OF KALEEM ULLAH, AD&SJ-X, MARDAN

Civil Revision Petition No. 1/CR of 2024

Abdullah s/o Saeed Ullah r/o Babu Mohallah Bari Cham, Tehsil & District Mardan.....(*Petitioner*)

VERSUS

Inam Ullah s/o Muhammad Nazir & 05 Others (*Respondents*)

Date of Institution 28.02.2024
Date of Transfer In..... 22.06.2024
Date of Decision..... 11.07.2024

JUDGMENT

11.07.2024

1- By way of the instant Civil Revision Petition under Section 115 CPC as amended upto date, the petitioners have called in question the order dated 04.01.2024 of the Court of learned Civil Judge-XIV, Mardan whereby the application of the petitioner/defendant (hereinafter called petitioner) for rejection of plaint in the Suit No. 413/1 of 2023 was turned down.

FACTS:

2- The respondent No.1/plaintiff (hereinafter call the respondent) brought Civil Suit bearing No. 413/1 of 2023 against present petitioner/defendant (hereinafter call the petitioner) for dissolution of partnership, rendition of accounts and perpetual injunction against the petitioner and other respondents. Contention of the respondent # 01 in the plaint is that he and petitioner/defendant vide oral partnership agreement dated 20.08.2022 agreed to start

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an educational institute and for that purpose they got a plot on lease from defendant/respondents No. 02 to 06 vide agreement dated 30.09.2022 on monthly rent of Rs. 1,20,000/- and amount of Rs. 500,000/- were also paid in advance at the time of scribing of the above mentioned deed. That both parties jointly started construction of the building, whereby grey structure has been completed but now the present petitioner/defendant is not interested in the construction of remaining building and is not providing any capital for the rest of the construction; therefore, the respondent/plaintiff has prayed for dissolution of the partnership and rendition of account etc.

- 3- When summoned by learned Trial Court, the petitioner and other respondents turned up and submitted his written statement on 21.10.2023 wherein he raised various legal and factual objections including lacks of jurisdiction, cause of action, suit being time barred, non-joinder and mis-joinder, estoppel and non-existence of any relation of partners etc. On 21.10.2023, the petitioner submitted application for rejection of plaint under Order-07 Rule-11 CPC repeating the same stance to which the replication followed, arguments were heard and vide order impugned herein dated 04.01.2024, the said application was dismissed.
- 4- When summoned by this Court, Respondent/plaintiff turned up and put up contest.

- 5- Arguments heard and record perused.
- 6- Learned counsel for the petitioner argued that the petitioner/defendant never enter into partnership agreement with the respondent # 01 nor any relation of partner exist between petitioner and respondent # 01. He further argued that the assertion of the respondent # 01 with regard to oral partnership is totally baseless against facts and law, hence, having no support in law the same oral agreement cannot be look by the learned trial court, therefore, the suit of the petitioner /respondent # 01 is bad in law, hence, the same need to be summarily rejected under Order-07, Rule-11 CPC. He further argued that the property in dispute was lease out to the petitioner by the respondents # 02 to 06. Further asserted by the learned counsel for the petitioner that the role of the respondent # 01 is only of a mediator. The learned counsel for the petitioner further argued that the respondent # 01 as per his plaint alleged oral partnership between the petitioner and respondent # 01, hence, the same matter is out of the preview of the partnership Act-1932, therefore, the Civil Court laves jurisdiction to entertain the present suit. He further contended that for partnership there must be written instrument, between the parties which must conclusively determine the rights, liabilities of the parties, interest, investment, profit and gain etc in the joint venture, further there must be specification with regard to the joint venture like, name etc. He further argued that as per section 02-b

of the partnership Act of 1932, which provides detail/definition of business which includes trade occupation and profession, since the respondent alleged the partnership, between the petitioner and respondent # 01 with regard to establishment of educational institution, hence, the said venture is out of the preview of above said provision. He further argued that the impugned order dated 04.01.2024 of the learned Civil Judge-XIV, Mardan is against law, facts, fanciful, arbitrary. Hence, he requested for the acceptance of the instant revision petition and prayed for the rejection of the plaint.

- 7- On the other hand, learned counsel for the respondent # 01 argued that the suit has rightly been filed and the civil court being the court of plenary jurisdiction to entertain the instant suit. Learned counsel further argued that the relation of partnership between the parties is duly established from the deed dated 30.09.2022 and the stance of the respondent # 01 is also admitted by the respondents # 02 to 06 in their written statement. He further argued that as per section-69 (3) clause (a) the suit of the plaintiff/respondent has rightly been filed and the civil court has got the jurisdiction to entertain the present suit. The learned counsel contended that as per section 69 (3) Clause-A the suit with regard to dissolution of firm or for account of a dissolved firm or any right or power to release the property of a dissolved firm can be instituted in Civil Court and the civil court has got the jurisdiction to entertained the

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suit. He further contended that with regard to enforcement of any other right the civil court can only take cognizance of the suit of such like nature where the firm is registered under the law but the suit of the present respondent falls in the exception as provided in the Section 69 (3) Clause-A and therefor oral partnership can be dissolved through civil suit and rendition of account can also be seek in the such like situation. With regard to existence of the relation of partnership between the parties, the learned counsel for the respondent No. 01 contended that such question pertains to factual controversy which could and should be resolved after recoding pro and contra evidence and such question does not falls within ambit of Order-7 Rule-11 of CPC. He further contended that the deeds annexed by the petitioner with the application dated 22.06.2024 specifically provide for establishment of the education institution. He further contended that the details about the investment, interest, profit and loss etc were verbally settled between the parties, the learned counsel contended that as per para No. 01 Paragraph No. 02 in the written statement of petitioner impliedly the relation of partners have been admitted by the petitioner, in such like situation such matters pertain to factual controversy; therefor, for the determination of which pro and contra evidence is necessary. In support of his stance, the respondent No. 01 relied upon provision of Section 69 (3) Clause-A and judgments delivered by Hon'ble Apex Courts: ***1966 PTD***

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Page-396, 1966 PLD Page-328 (Supreme Court), 2016 CLD Page-338 (Supreme Court) and 2016 PLD Page-214 (Supreme Court).

- 8- The learned counsel for the respondents No. 02 to 06 also contended that they are the actual owner of the property in dispute which is evident from the pleading of the petitioner as well as respondent No. 01. He further contended that the property in question is in their possession and the respondent No. 02 to 06 have paid respective shares in shape of cash payment to the petitioner and respondent No. 01 for the recovery of possession to the petitioner and respondent No. 01. Hence, the petitioner and the respondent No. 01 have no concerned with the property in question anymore.
- 9- Upon perusal of record the respondent No. 01 filed the suit with regard to dissolution of oral partnership. He also seeks rendition of account etc and the stance of the respondent No. 01 is also fortified by the statement in the shape of written statement of the respondent No. 02 to 06 that the property in question was lease out to the petitioner and respondent No. 01 for construction of educational institution and in this regard a gray structure was constructed. Perusal of the deed dated 30.09.2022 make it clear that respondent # 01 namely Inam Ullah is duly party in the column of second party alongwith the present petitioner, whereas

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the respondents # 02 to 06 stands as first party to the said deed. Furthermore, the written statement submitted by the respondents # 02 to 06 also admit the fact that the deed dated 30.09.2022 was executed between the parties regarding construction of educational institution, hence, from above facts the question of the existence of relation of partnership is a factual controversy between parties for which recording of pro and contra evidence is very much necessary as per dictum of Hon'ble Apex Court and in such like situation plaintiff cannot be knocked out under Order-07 Rule-11 of CPC; whereas with regard to dissolution of partnership suit of non-registered partnership, the law provided in section 69 of the partnership Act is very much clear: For ready reference:-

"69. 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 of any person suing as 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 in the firm.*
- (2)- *No suit 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.*
- (3)- *The provisions of subsections (1) and (2) shall apply also to a claim of set-off or other proceedings to enforce a right arising from a contract, but shall not effect-*

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- (a) *the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to release the property of a dissolved firm, or.*

Further, this view was also fortified by the judgment of the apex courts reported in *1966 PTD Page-396, 1966 PLD Page-328 (Supreme Court), 2016 CLD Page-338 (Supreme Court) and 2016 PLD Page-214 (Supreme Court)* where in the honorable view of the apex courts is that when the suit is for the dissolution of firm and rendition of accounts etc then civil court can take cognizance even though the partnership deed is unregistered. In this regard, view of the Hon'ble Supreme Court of Pakistan reported 1966 page-396 and 1966 PLD Page 328; *“Partnership Act, 1932 S 4 read with S.69 Act does not provide any special mode for creation of partnership oral agreement non-registration under S. 69 does not affect validity of partnership or bar suit for dissolution, accounts, or for realization of property of dissolved firm”*.

- 10- Even otherwise law favour the adjudication of the cases on merits, rather on technicalities. For what has been discussed above, the instant Revision Petition is hereby **DISMISSED** and the impugned order dated 04.01.2024 of the civil court is hereby kept upheld. Whereas, the application of the petitioner dated 22.06.2024 for placing of the document on file in the instant

revision petition is hereby allowed and the document annexed with the said application is hereby deemed part and parcel of the instant revision petition.

- 11- Needless to mention here that the finding recorded by this court is tentative in nature and should not prejudice of the trial court.
- 12- Parties are left to bear their own expenses.
- 13- Copy of this judgment be sent to the learned Trial Court while file of this Court be consigned to the Record Room after its necessary indexing, completion and compilation.

ANNOUNCED

11.07.2024

**Kaleem Ullah
AD&SJ-X, Mardan**

CERTIFICATE

Certified that this judgment consists of (09) pages. Each page has been checked corrected and signed wherever necessary.

**Kaleem Ullah
AD&SJ-X, Mardan**

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Order.....10

11.07.2024

- 1- Contested parties present. Arguments already heard and file perused.
- 2- Vide my detailed judgment of today consisting (09) pages, placed on file, the instant Revision Petition is hereby **DISMISSED** and the impugned order dated 04.01.2024 of the civil court is hereby kept upheld. Whereas, the application of the petitioner dated 22.06.2024 for placing of the document on file in the instant revision petition is hereby allowed and the document annexed with the said application is hereby deem part and parcel of the instant revision petition.
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