

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A. No.65 of 2013
Javed Ahmed Mir
Versus
Muhammad Afzal and others

Date of Hearing: 02.12.2021
Appellant by: M/s Ghulam Azam Qambrani and Zohaib Hassan Gondal, Advocates.
Respondents by: Mr. Taimoor Aslam Khan, Advocate for respondents No.1.
Mr. Muhammad Akhtar Awan, Advocate for respondent No.4.
Respondents No.2 and 3 *ex-parte*.

MIANGUL HASSAN AURANGZEB, J:- Through the instant regular first appeal the appellant, Javed Ahmed Mir, impugns the order dated 14.03.2013 passed by the Court of the learned Civil Judge, Islamabad, whereby the plaint in his suit for specific performance of agreement to sell dated 07.04.2003, mandatory and permanent injunction, was rejected by invoking the provisions of Order VII, Rule 11 of the Code of Civil Procedure, 1908 (“C.P.C.”). The plaint in the said suit was rejected primarily on the ground that in the said agreement, the buyer was M/s Royal Craft International, whereas the suit was instituted by Javed Ahmed Mir.

2. Learned counsel for the appellant submitted that the learned Court below erred by not appreciating that the appellant / plaintiff (Javed Ahmed Mir) was the sole proprietor of M/s Royal Craft International; that since M/s Royal Craft International was neither a company incorporated under the provisions of the erstwhile Companies Ordinance, 1984 nor a partnership firm registered under the provisions of the Partnership Act, 1932, there was no need for any authorization in favour of Javed Ahmed Mir for the institution of the suit; that it is well settled that a sole proprietorship cannot file a suit, and that a suit on behalf of the sole proprietorship can only be filed by its sole proprietor; and that the impugned order dated 14.03.2013 passed by the learned Court below is contrary to the law laid down by the superior Courts. Learned counsel for the appellant

prayed for the appeal to be allowed and for the impugned order dated 14.03.2013 to be set-aside.

3. On the other hand, learned counsel for respondent No.1 submitted that since the buyer in the agreement was M/s Royal Craft International, no person other than the buyer could have instituted the suit for specific performance of the agreement to sell; that at no material stage did the appellant bring on record any authorization by M/s Royal Craft International in his favour to institute the suit; that another fatal defect from which the suit suffers is that the seller *i.e.*, M/s Air Mech Engineering Industries (Pvt.) Ltd. has not even been impleaded as a defendant in the suit; that the defendants in the suit are the attorneys and / or owners of the said company; and that since the impugned order does not suffer from any legal infirmity, interference with the same is not warranted. Learned counsel for respondent No.1 prayed for the appeal to be dismissed.

4. In rejoinder, learned counsel for the appellant submitted that the appellant had submitted an application for the amendment in the plaint so as to implead M/s Air Mech Engineering Industries (Pvt.) Ltd. as a defendant in the suit; that the said application was filed on 17.12.2012 after an objection was raised by the defendants in the written statement as to the maintainability of the suit; and that the said application had been left undecided by the learned Civil Court.

5. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. The record shows that on 07.04.2003 M/s Air Mech Engineering Industries (Pvt.) Ltd. and M/s. Royal Craft International entered into an agreement whereby the former agreed to sell to the latter Industrial Plot No.218, measuring 300 x 100 feet situated at Industrial Triangle, Kahuta Road, Islamabad for a total sale consideration of Rs.42,00,000/-. Subsequently, disputes arose between the seller and the purchaser. It was not until 04.04.2006 that a suit for specific performance of the said agreement to sell dated 07.04.2003 was instituted by the appellant. The respondents contested the said suit by filing a written statement. The respondents also filed an application under Order VII, Rule 11 C.P.C.

praying for the rejection of the plaint *inter alia* on the ground that since the purchaser of the said property was M/s Royal Craft International, the suit for specific performance could not have been filed by the appellant. Vide order dated 14.03.2013, the said application was allowed by the learned Civil Court and the plaint in the suit was rejected. The said order has been assailed by the appellant in the instant regular first appeal.

7. The sole ground on which the learned Civil Court dismissed the appellant's suit for specific performance of the agreement dated 07.04.2003 was that the same had been filed by the appellant / Javed Ahmed Mir and not by M/s Royal Craft International which, as per the said agreement, was the purchaser of the property which was the subject matter of the said agreement. There is nothing on the record to show that M/s Royal Craft International was either a Company incorporated under the provisions of the erstwhile Companies Ordinance, 1984 or a partnership firm registered under the provisions of the Partnership Act, 1932. Furthermore, in the said agreement to sell, M/s Royal Craft International has not been described as a company or a partnership.

8. The appellant asserts that he is the sole proprietor of M/s Royal Craft International. Learned counsel for respondent No.1 also did not contest the assertion that M/s Royal Craft International is a sole proprietorship, with the appellant as its sole proprietor.

9. A suit or legal proceedings can be filed by a natural person or a juristic person having legal personality. A proprietary concern is not a juristic person and it cannot sue in its name. It is the sole proprietor that can sue. In the instant case as is apparent from the plaint and memo of parties, the suit has been filed by the sole proprietor (Javed Ahmed Mir) of the proprietorship concern (M/s Royal Craft International).

10. Order XXX, Rule 10 C.P.C. provides *inter alia* that any person carrying on business in the name or style other than his own name may be sued in such name or style as if it were a firm name. The said provision was interpreted by the Hon'ble High Court of Sindh in the case Ahan Saz Contractors Vs. Pak Chromical Limited (1999 MLD 1781). It was held that the filing of a suit in the name of a proprietary

concern/sole proprietorship was not merely a technical flaw but was a legal defect, and that for such a legal defect the suit was liable to be dismissed. Furthermore, it was held as follows:-

“Another most important aspect of the matter is that the instant suit has been filed by M/s. Ahan Saz Contractors which, admittedly, is a proprietary concern of one Muhammad Riaz Awan. Order 30, C.P.C. deals with the suit filed by or against the firms and persons carrying on business in the names other than their own. Rule 1 of Order 30, C.P.C. provides that any two or more persons claiming or being liable as partners and carrying on business in Pakistan may sue or be sued in the name of the firm, if any, of which such persons were partners at the time of the accruing of the cause of action. Order 30, Rule 10, C.P.C. provides that any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name. Comparative study of Order 30, Rule 1, C.P.C. and Order 30, Rule 10, C.P.C. reveals that Order 30, Rule 1, C.P.C. which deals with suits by a partnership firm permits filing of suits by or against a partnership firm whereas Order 30, Rule 10, C.P.C. which deals with suit in the name of the proprietary concern specifically provides only for filing of suits against a proprietary concern in its name but does not provide for filing of a suit by a proprietary concern as it does not have any legal status/character as distinct from its proprietary. Thus a proprietary concern can be sued in its name but it cannot sue in its own name.”

Law to the said effect has also been laid down in the following cases:-

(a) In the case of Habib Bank Limited Vs. Iqbal I. Chundrigar (1983 CLC 1464), it has been held as follows:-

“As it has been established that Iqbal Chundrigar is the proprietor of Iqbal & Co. the question arises whether they are two different and distinct persons for the purposes of incurring liability. A proprietary firm cannot have any legal status as distinct from its proprietor. It is the proprietor who is the legal person entitled to all the benefits and liable for the liabilities that accrued in that account. In the eye of law the proprietor and proprietary firm are one and the same person. A reference can be made to AIR 1924 Bom. 109 and AIR 1930 Bom. 216. It is well-established that a proprietary firm cannot sue in its own name. It is the proprietor who can sue for claims that may arise in the name of proprietary firm. It is thus established that each and every liability which the proprietary firm incurs is the liability of the proprietor himself. In fact it is the proprietor who is carrying on the business in the name and style of a firm taking upon himself the burdens and benefits.”

(b) In the case of Islamabad Law College Vs. Higher Education Commission (2017 YLR 1399), this Court held that legal proceedings can be instituted by a sole proprietor but not the sole proprietorship.

(c) In the case of P.C. Advertising Vs. Municipal Corporation of Delhi (73 (1998 DLT 259) = (1998 (III SD Delhi 133), it was held as follows:-

“Suit filed in the name of proprietorship firm which was neither a registered company nor joint family nor a partnership firm, in the absence of any prayer to seek amendment to allow sole proprietor to sue in his own name was not maintainable.”

(d) In the case of Miraj Advertising Corporation Vs. Vishaka Engineering (115 (2004) DLT 471), it was held as follows:-

“A proprietorship firm has no legal personality like a registered firm. A suit cannot be instituted in the name of an unregistered proprietorship firm and the said suit is to be instituted in the name of the proprietor.”

(e) In the case of Patodia & Co. Vs. The Bombay Woolen Mills Ltd. (1992 (22) DRJ 611), the Delhi High Court held as follows:-

“Under Order 31 rule 1 Civil Procedure Code it is a partnership which can sue or be sued in the name of the firm. Order 30 rule 10 CPC permits a plaintiff to sue a person carrying on business in the name and style other than his own name i.e. under any assumed name. This rule, however, does not permit a sole proprietor of a firm to file a suit in the assumed trade name under which he carries on business. This proposition of law is well settled. In Samrathrai Khetsidas Vs. Kasturbhai Jagabhai AIR 1930 Bombay 216 it was held that a firm consisting of a sole proprietor cannot bring a suit in the name of the firm but may sue in his own name as the proprietor of the firm. Again in Bhagvan Manaji Marwadi and others Vs. Hiraji Premuji Marwadi AIR 1932 Bombay 516 it was laid down that a single person cannot constitute a firm and a person trading as a firm under an assumed trading name may only be sued in his trade name but he cannot sue in that name. It is not necessary to refer to other decisions on this aspect as the legal position is unexceptional and admits of no doubt whatsoever. As a principle of law it can be safely stated that rules 1 and 10 of Order 30 of the Code of Civil Procedure do not envisage filing of a suit by a sole proprietor of a firm in the trade name under which he carries on business though they permit the business of a sole proprietary firm to be treated as an artificial person for the limited purpose of suing it. Beyond this a sole proprietary concern has no existence at all in the eye of law.”

11. In view of the aforementioned case law, the inevitable inference is that a suit in the name of a sole proprietorship concern, which is not a legal entity, is not maintainable. The contention of the learned counsel for the respondent that the suit should have been filed by the proprietorship concern and not the sole proprietor is not

tenable since a proprietorship concern is not a legal entity which can sue in its own name. In the case at hand, the suit has been correctly filed by the sole proprietor in his name on behalf of his sole proprietorship concern and not in the name of the sole proprietorship concern.

12. The learned counsel for the respondent had also contended that the suit suffers from the fatal defect of non-impleadment of the party, which was the seller under the agreement dated 07.04.2003. Since the plaint in the appellant's suit had not been rejected on this ground and since the appellant's application for the impleadment of M/s Air Mech Engineering Industries (Pvt.) Ltd. has till date not been decided by the learned Civil Court, it would not be appropriate for this Court to express its views on this matter.

13. In view of the above, the instant appeal is allowed; the impugned order dated 14.03.2013 is set aside; and the matter is remanded to the learned Civil Court for further proceedings in the suit. There shall be no order as to costs.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 18.01.2022.

(JUDGE)

(JUDGE)

Ahtesham*

APPROVED FOR REPORTING