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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 6<sup>th</sup> September, 2024  
Pronounced on : 07<sup>th</sup> January, 2025*

+ CS(COMM) 607/2023 & I.As. 16578/2023, 8413/2024, 10059/2024,  
33645/2024, 36987/2024

RAJINDER KUMAR .....Plaintiff

Through: Mr. Tanmay Mehta, Mr. Rajeev  
Aggarwal, Mr. Ankit Gupta and Mr.  
Mayank Kamra, Advocates

versus

SUNITA GUPTA & ORS. ....Defendants

Through: Mr. Sanjoy Ghose, Sr. Advocate with  
Mr. Mohit Garg, Advocate for D-1  
Dr. Amit George, Mr. Arkaneil  
Bhaumik and Mr. Adhishwar Suri,  
Advocates for D-2  
Mr. Manish Vashisht, Sr. Advocate  
with Mr. Manish Paliwal, Mr. Sameer  
Vashisht, Mr. Vedansh Vashisht and  
Ms. Megha, Advocates for D-3

**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

### **J U D G M E N T**

**MANMEET PRITAM SINGH ARORA, J:**

**I.A. 31197/2024** (under Section 151 CPC seeking a direction to the Receiver to release Rs. 76 lakhs to defendant no. 2 from the bank account of the partnership firm)

1. The captioned application has been filed by the defendant no. 2, son of late Sh. Gopal Krishan Gupta, who was the erstwhile partner of the

partnership firm namely M/s Capital Metal industries. defendant no. 2, seeking directions to the Court Receiver appointed vide Order date 21.12.2023 to repay the unsecured loan of Rs. 76 lakhs advanced by the applicant/defendant no. 2 to the partnership firm.

2. Dr. Amit George, the learned counsel for the applicant/defendant no. 2 submits that on account of death of late Sh. Gopal Krishan Gupta on 09.06.2022 the partnership firm stood dissolved, however, the plaintiff who is the surviving partner of the firm continued the operations of the firm on the pretext of winding up the partnership firm under Section 47 of the Indian Partnership Act 1932 ('Act of 1932') and during this period the plaintiff also cleared the debts of the partnership firm.

2.1 He stated that the unsecured loan advanced by the applicant/defendant no. 2 is undisputed and is duly reflected in the audited balance sheet of the partnership firm for the financial year ('FY') 2022-23 under the head of 'Unsecured Loans' of the firm. The said balance sheet has been filed by the plaintiff with the present suit and is thus, an undisputed document.

2.2 He stated that during the period of winding up of the firm i.e. from 09.06.2022 to 31.03.2023, plaintiff has cleared the debt of almost 90% creditors of the firm including his close relatives, however, despite the knowledge of the debt owed to the applicant/defendant no. 2, the plaintiff with a mala fide intent has elected not to repay the applicant/defendant no. 2's debt of Rs. 76 lakhs.

3. Mr. Tanmay Mehta, the learned counsel for the plaintiff submits that the applicant/defendant no. 2 has been arrayed as a party in the present suit as one of the legal heirs of late Sh. Gopal Krishan Gupta; and not as a

creditor of the dissolved firm. He stated that the application filed by applicant/defendant no. 2 in his capacity as a creditor is thus, not maintainable.

3.1 He stated that at the time when the partnership stood dissolved, the firm was a going concern having around 80-90 labourer/employees working for manufacturing and administration of the firm. There were pending orders from the clients of the firm and other obligations were pending to be complied with, like payment of Taxes, GST, Bank Loan, Unsecured Loans, Salaries, etc. Therefore, on legal advice and as per Section 47 of the Act of 1932, the plaintiff was constrained to continue the business activities of the firm as was permissible under law, which were necessary in the course of winding up and to complete transactions pending at the time of deemed dissolution of the firm.

3.2 He stated that as far as the settlement of debts of certain creditors other than applicant/defendant no. 2 is concerned, it has been done to protect the interest of the firm as all the debts settled by the plaintiffs during this period, were interest bearing debts.

3.3 He stated that at this stage when the applicant/defendant no. 2 has not filed any counter-claim with respect of his outstanding credit qua the partnership firm, the applicant cannot convert the present suit into a recovery suit without paying proper court fee and by filing the present application.

3.4 He stated that any application for interim relief can only be filed if the interim relief so sought is in the aid of final relief and in the present case where the applicant has not prayed for any final relief, the application of

interim could not be allowed, he places reliance on the Judgement of Supreme court in the case of **Bharat Aluminium & Co. v. Kaiser Aluminium Technical Service, Inc.**<sup>1</sup>

3.5 He stated that plaintiff is ready and willing to clear all the dues of the defendants with respect to unsecured debts of applicant/defendant no. 2 as reflected in the balance sheet of the partnership firm and the share of late Sh. Gopal Krishan Gupta, however, it cannot be done in a piecemeal manner. He stated that it should be done through a full and final settlement of the accounts with the legal heirs of late Gopal Krishan Gupta. In this regard plaintiff relies on order dated 08.12.2023 whereby it was recorded in the orders that *“plaintiff has offered to buy the 50% share of the defendants in the aforesaid partnership firm at a valuation of Rs. 20.5 Crores and accordingly offered to pay a sum of Rs.10.25 Crores to the defendants (in addition of Rs. 76,00,000/- payable to the defendant no.2 on account of personal loan stated to have been advanced by defendant no.2 to the firm).”*

3.6 He stated that the valuation of Rs. 20.5 crores put forwarded by the plaintiff matches with the valuation prepared by the Court Receiver and filed with the report dated 18.03.2024 which came out to be around Rs. 20 crores on the basis of following heads :-

- i. Value of Land – 14.40 Crores.
- ii. Plant and machinery – 1.52 Crore.
- iii. Debt recoverable from market – 3 Crores.
- iv. Monies lying in Bank – 2 Crores

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<sup>1</sup> Civil Appeal no. 7019. 2015 (SC) at para 196

3.7 He stated that this offer was acceptable to defendant nos. 1 and 2 however, was rejected by defendant nos. 3 and 4, who assessed a valuation of Rs. 40 crores without any basis. He stated that there are internal inheritance disputes amongst the defendants which have adversely affected the settlement of the accounts of the dissolved firm. He stated that the operation of firm is lying standstill and these piecemeal payouts will benefit the defendant no. 2 and negatively impact the firm.

3.8 He stated that as per Section 48 of the Act of 1932, piecemeal settlement of account of the firm by allowing claims of certain alleged creditors before the final rendition of accounts of the firm is beyond the purview of the Partnership Act. The only mechanism which has been comprehensively laid down under the Act for distribution of the assets after dissolution comes into play after the final determination of its accounts after liquidation of the assets of the firm

3.9 He stated that let the assets of the firm be liquidated as prayed by him para 3(c) of his application i.e., I.A. 25079/2023.

***Analysis and findings***

4. This Court has heard the learned counsel for the parties and perused the record.

5. The application at paragraph 6 sets out the details of the near relatives of the plaintiff who were repaid their debt by the plaintiff after the dissolution of the firm on 09.06.2022. The details read as under:

“... ”

| <b>S. No.</b> | <b>Name of the Creditor</b> | <b>Relationship with the Plaintiff</b> |
|---------------|-----------------------------|--|
|---------------|-----------------------------|--|

|    |   |  |
|----|---|--|
| 1. | Prem Goel   | Plaintiff's Son's Father-in-law.                         |
| 2. | Sunita Gupta<br>[Actual Name Sunita Gupta but incorrectly recorded in the Subject Balance Sheet]. | Plaintiff's Son's Mother-in-Law.                         |
| 3. | Sristhi Goel  | Plaintiff's Son's Sister-in-Law.                         |
| 4. | Amit Agarwal HUF  | Plaintiff's Son.   |
| 5. | Nisha Gupta   | Partnership's Firm's Main Manager's Wife Mr. Adish Gupta |

...”

6. The non-applicant/plaintiff in its reply has admitted the aforesaid repayment and stated that the said payments were made with the bona fide intent to reduce the liabilities of the firm. The plaintiff states that all actions were taken in the best interest of the firm and denies any wrongdoing in the repayment of the interest-bearing loans to the debtors enlisted at paragraph 6 of the application.

7. The applicant/defendant no. 2 has drawn this Court's attention to the balance sheet of the dissolved firm as on 31.03.2023 filed by the plaintiff which acknowledges the outstanding debt due to the applicant. The relevant extract of the balance sheet reads as under:

|     | <u>Particulars</u>                          | As at 9 <sup>th</sup> June 2022 | As at 31 <sup>st</sup> March 2023 | As at 31 March 2022 |
|-----|---|---------------------------------|-----------------------------------|---------------------|
| (a) | <u>Unsecured Term Loans</u><br>from banks:- | -                               | -                                 | -                   |

|     |  |               |               |               |
|-----|--|---------------|---------------|---------------|
|     | Axis Bank                              | 23,410,027.71 |               | 15,353,067.01 |
| (b) | Loans repayable on demand              |               |               |               |
|     | from banks                             | -             | -             | -             |
|     | from other parties                     | -             | -             | -             |
|     | <u>Unsecured Loans</u>                 |               |               |               |
|     | Amit Aggarwal HUF                      | 1,300,000.00  | -             | 1,300,000.00  |
|     | Anju Kohli                             | 1,500,000.00  |               | 1,500,000.00  |
|     | Neha Aggarwal                          | 900,000.00    | 900,000.00    | 900,000.00    |
|     | Nisha Gupta                            | 5,000,000.00  |               | 5,000,000.00  |
|     | Prem Goel                              | 2,500,000.00  |               | 2,500,000.00  |
|     | Shanker Gupta                          | 7,600,000.00  | 7,600,000.00  | 7,600,000.00  |
|     | Sristhi Goel                           | 4,000,000.00  |               | 4,000,000.00  |
|     | Sunita Gupta                           | 3,500,000.00  |               | 3,500,000.00  |
|     | Ved Prakash HUF                        | 400,000.00    | 400,000.00    | 400,000.00    |
|     | Gopal Kishan Gupta (Legal Heir)        | -             | 55,591,162.37 |               |
|     | <u>Advance from customers</u>          |               |               |               |
|     | BM Copper                              | 13,422.00     |               | 28,418.00     |
|     | BNS Handicrafts                        | 102,419.00    |               |               |
|     | Hyderabad Precision Mfg. Co. Pvt. Ltd. | 100,000.00    | 92,074.00     |               |
|     | Metal Indian Corporation               | 67,503.00     |               |               |

|                                |               |               |               |
|--------------------------------|---------------|---------------|---------------|
| R L Enterprises                | 347,520.00    |               | 347,520.00    |
| R.M. Tools & Components        | 40,000.00     |               | 40,000.00     |
| Shri Anand Metal               | 25,000.00     |               |               |
| Tempcon India                  | 100,000.00    |               |               |
| Impact Stickers                | -             | 5,000.00      |               |
| Sai Creations                  | -             | 3,255.00      |               |
| Suraj Mal Garg Private Limited | -             | 1,162.00      |               |
| Total (B)                      | 50,905,891.71 | 64,592,653.37 | 42,469,005.01 |
| Total (A+B)                    | 51,020,176.71 | 64,592,653.37 | 42,955,972.01 |

8. The non-applicant/plaintiff states that in addition to defendant no. 2, debt is also due and payable to Ms. Neha Aggarwal and Ved Prakash HUF. The applicant/defendant no. 2 states that both Ms. Neha Aggarwal and Ved Prakash HUF are near relatives of the plaintiff and he has no objection if in addition to the applicant, Ms. Neha Aggarwal and Ved Prakash HUF are paid off their debt as reflected in the balance sheet.

9. The non-applicant/plaintiff during arguments has not disputed the liability of the dissolved firm to repay the debt amount of Rs. 76 lakhs to the applicant/defendant no. 2. The plaintiff admits that the said amount is due and payable. The limited submission made by the plaintiff is that the directions for release of payment be made in addition to adjudicating on the reliefs sought by the plaintiff for sale of the immovable and movable assets of the dissolved firm so as to wind up the affairs of the firm. The plaintiff also refers to the offer of settlement recorded in the orders dated 04.09.2023 and 08.12.2023.

10. The liability of the dissolved firm to pay Rs. 76 lakhs to the applicant/defendant no. 2 is admitted by the non-applicant/plaintiff even during the arguments. The debt due to defendant no. 2 is duly reflected in the balance sheet and the liability to repay is also recorded in the order dated 08.12.2023 (at paragraph 5 therein).

11. In these admitted facts, the submission of the plaintiff that this repayment to defendant no. 2 ought to be postponed until the final settlement of accounts has no basis in law or facts. The plaintiff while justifying its action in repaying its close relatives (enlisted at paragraph 5 of the application) unilaterally post dissolution referred to Sections 46 and 48 of the Indian Partnership Act, 1932. The said provisions would equally apply for repayment of debt due to the applicant/defendant no. 2 herein. This Court, therefore, finds no justification for postponing the repayment of the debt due to defendant no. 2 and the application is allowed with a direction to the Court Receiver to release a sum of Rs. 76 lakhs to the defendant.

12. As per the Court Receiver's report dated 12.06.2024, a sum of Rs. 2.097 crores (approx.) stands deposited with the registry of this Court w.e.f. 11.06.2024. As per the office noting, the said amount was deposited by the registry in an interest-bearing deposit (FD) w.e.f. 26.07.2024.

13. The applicant/defendant no. 2 has also prayed for grant of interest at 18%. The non-applicant/plaintiff has stated in the reply that no interest has been paid to defendant no. 2 by the firm at any point. The defendant no. 2 has not placed on record any facts or details of rate of interest agreed between the parties; thus, no directions for payment of interest for the period ending 26.07.2024 are being issued. The said issue is kept open to be

determined after better particulars are furnished. And, for this purpose, defendant no. 2 is directed to file a fresh application.

14. However, for the period 26.07.2024 i.e., the date of deposit of the funds received from Axis Bank by the registry in a Fixed Deposit (FD), the registry is directed to release the amount of Rs. 76 lakhs along with interest accrued thereon w.e.f. 26.07.2024 until the date of payment.

15. In addition, in view of the admission of the parties that amounts are also due to Ms. Neha Aggarwal (Rs. 9 lakhs) and Ved Prakash HUF (Rs. 4 lakhs), the Court Receiver is also directed to take appropriate steps with the Court registry for releasing this amount to Ms. Neha Aggarwal and Ved Prakash HUF along with interest accrued thereon w.e.f. 26.07.2024 until the date of payment through demand draft. Since, Mr. Ved Prakash and Ms. Neha Aggarwal are related to the plaintiff, he shall ensure that the said individuals appear before the Court Receiver for receiving the said amounts within four (4) weeks. The plaintiff will render assistance to the Court receiver for having the said amount released from the registry.

16. The aforesaid payments shall be made to defendant no. 2, Ms. Neha Aggarwal and Ved Prakash HUF from the funds deposited with the registry in the aforesaid terms. The said payment shall be released by the registry within two (2) weeks.

17. With the aforesaid directions, the application stands disposed of.

**I.A. No. 36987/2024 (under Section 151 CPC on behalf of defendant no. 3 for seeking four months' time file a reply to the application of Receiver's report)**

18. This is an application filed by defendant no. 3 seeking four (4) months' time to file a reply to the Court Receiver's report. The said application was filed on 08.08.2024.

19. The time sought in the application has already lapsed as on date and therefore, the application has become infructuous.

20. No reply to the Court Receiver's report has been filed till date. This inaction of defendant no. 3 is inexplicable.

21. The defendant no. 3 by way of last opportunity is granted two (2) weeks to file its response to the Court Receiver's report failing which the right shall stand closed.

22. With the aforesaid directions, the application stands disposed of.

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23. The prayer of the plaintiff for issuing directions for sale of the immovable and movable assets of the dissolved firm along with the Court Receiver's report(s) on the valuation including report dated 18.03.2024 will be taken up for consideration on the next date of hearing.

24. It is made clear that no adjournment will be granted to either party on the next date of hearing.

25. List on 13.02.2025, date already fixed before the learned Joint Registrar (J).

26. List before Court on 20.02.2025.

**MANMEET PRITAM SINGH ARORA  
(JUDGE)**

**JANUARY 07, 2025/msh/AKT**