

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL
CIVIL REVISION No. 571 OF 2022

BETWEEN:-

**J.K. STHAPAK S/O SHRI BENI PRASAD
STHAPAK, AGED ABOUT 78 YEARS,
OCCUPATION: RETIRED GOVT. SERVANT
A/9 COMFORT LANE SIDE CHALET JANKI
NAGAR CHUNA BHATTI BHOPAL (MADHYA
PRADESH)**

.....APPLICANT

**(BY K.S. WADHWA - ADVOCATE)
AND**

- 1. SATISH KUMAR SAXENA S/O LATE
SHRI P.N. SAXENA, AGED ABOUT 42
YEARS, T-23 KAVERI BLOCK
ULTIMATE COMPLEX,
SHIRDIPURAM KOLAR ROAD M.P.
BHOPAL (MADHYA PRADESH)**
- 2. MANISH SAXENA S/O LATE SHRI
P.N. SAXENA, AGED ABOUT 40
YEARS, R/O T-2, KAVERI BLOCK,
ULTIMATE COMPLEX,
SHIRDIPURAM, KOLAR ROAD,
BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI MUKESH AGRAWAL – ADVOCATE)

RESERVED ON : 23.01.2024

PRONOUNCED ON : 31.01.2024

This revision having been heard and reserved for orders, coming on for pronouncement on this day, the court passed the following:-

ORDER

Petitioner has filed present petition under Section 115 of CPC challenging order dated 05.08.2022 passed in MCANo.80/2019 by 7th District Judge, Bhopal, whereby petitioner's appeal challenging order dated 11.05.2019 passed by 20th Civil Judge, Class-I, Bhopal in Civil Suit No.143-B/17 passed in relation to petitioner's application under Section 8 of Arbitration and Conciliation Act, has been dismissed.

2. Learned counsel for the petitioner, after referring to clause-22 of partnership deed, submits that there is provision for Arbitration, if any dispute or difference arise between the parties, touching the business of the firm or interpretation of any provisions thereof or otherwise, relating to the firm and its business. It is urged that respondent had given three cheques for the amount of Rs.22,00,000/-(Rupees Twenty Two Lakhs). There is no account in the name of partnership firm. Above amount has been given in relation to business of the firm and above amount has been given as per clause-9 of partnership deed.

3. Learned counsel for the petitioner has also urged that learned Court below, have not perused the partnership deed and amount paid to petitioner

was in lieu of the land of the petitioner and his wife which they had pooled in the partnership as their capital. Courts below should have also taken into consideration that petitioner, being a retired Government servant with meager pension, could not have been given a loan of Rs.22,00,000/- by the respondents without any security. This fact go to show that respondents had given petitioner his share in part of the capital invested (the impugned land by the petitioner). As dispute has been raised under Arbitration and Conciliation Act, 1996, the Civil Court had no jurisdiction to entertain the suit. Learned Court below should have allowed the application and directed respondents to take appropriate remedy under Arbitration Act.

4. On above grounds, it is urged that petition be allowed and impugned order be set aside and application filed under Section 8 of Arbitration and Conciliation Act be allowed.

5. Learned counsel for the respondents have submitted that there is nothing on record to show that transaction of Rs.22,00,000/- relates in any way to the business of partnership. *Prima-facie*, there is no evidence on record to show that Rs.22,00,000/- have been given with respect to any business of firm. In this connection, he has also referred to last para of impugned order. On above grounds, it is urged that petition filed by the petitioner be dismissed.

6. I have heard learned counsel for the parties and perused the record of the case.

7. Perusal of last para of impugned order reveals that out of three cheques, two cheques have been issued from account of Ms. Creative Constructions and one cheque has been issued from plaintiff Satish Saxena's account.

8. In last para of impugned award, it is also mentioned that even prima-facie, there is no evidence to show that Rs.22,00,000/- have been given to plaintiff from firms's account. Thus, at this stage, there is nothing on record to show/suggest that Rs.22,00,000/- have been given to respondent/defendant in relation to business of partnership deed. Therefore, clause-22 of partnership deed would not apply.

9. I have also gone through the order passed by the Appellate Court. Perusal of order passed by the Appellate Court reveal that Appellate Court has taken into consideration the submissions of petitioner as well as documents available on record and thereafter, has held that there is no ground to interfere in the impugned order passed by the trial Court. Order passed by the Appellate Court is well reasoned and it has taken into consideration all the fact and documents available on record.

10. In view of discussion in the foregoing paras, in this Court's considered opinion, learned Court below has not committed any illegality or perversity and no grounds for interference is made out in impugned order.

11. Hence, revision filed by the petitioner is dismissed and order passed by the Court below is affirmed.

**(ACHAL KUMAR PALIWAL
JUDGE**

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