

**A.F.R.**  
**RESERVED**

**Case :- WRIT - C No. - 25126 of 2012**

**Petitioner :- M/S Shiva Enterprises And Another**

**Respondent :- Union Of India Thru Secy. And Others**

**Counsel for Petitioner :- R.D. Tiwari, Arun Kumar Singh, M.D. Singh Shekhar**

**Counsel for Respondent :- A.S.G.I., S.C., Sudha Pandey**

**Hon'ble Suneet Kumar, J.**

**Hon'ble Rajendra Kumar-IV, J.**

**Per: Suneet Kumar, J.**

1. Heard Sri M.D. Singh Shekhar and Sri M.C. Chaturvedi, learned Senior Counsels assisted by Shri R.D. Tiwari and Shri Arun Kumar, learned counsels for the petitioners, and Sri Narendra Kumar Pandey and Ms. Sudha Pandey, learned counsel for respondent Bank.

2. The first petitioner i.e. M/s Shiva Enterprises, is a proprietorship firm, second petitioner is the proprietor of the firm. The firm is engaged in the business of construction. Initially, petitioner-firm was a partnership firm which was subsequently dissolved in 2008, thereafter, became a sole proprietorship firm. The firm has a current account, with overdraft facility, being Account No. 1886009300021932, with Panjab National Bank, Branch Kidwai Nagar, Kanpur Nagar.

3. On 9 July 2009, partnership firm in the name and style M/s Maa Gayatri Construction was constituted, wherein, one Ranveer Singh and second petitioner were partners. The firm was having facility of current account being Account No. 1886002100023313 in the same branch of the respondent-bank. On 11 July 2011, one of the partner of M/s Maa Gayatri Construction filed an application with the fourth respondent

stating therein that the partnership firm has since been dissolved and second partner i.e. second petitioner, henceforth, has no concern with the affairs of the firm. In other words, Ranveer Singh informed the Bank that the firm (M/s Maa Gayatri Construction) has been reconstituted as proprietorship firm of the same name and Ranveer Singh is the sole proprietor. Thereafter, on 12 July 2011, second petitioner being the outgoing partner of the dissolved firm filed an application before the fourth respondent informing that he is no more the partner of M/s Maa Gayatri Construction, with a further request that the account of the firm i.e. A/c No. 1886002100023313, having 'zero' balance, be closed upon dissolution of the firm. The statement of account dated 4 July 2011 has been filed (at Annexure-5) to the writ petition to substantiate that on the date when the application was moved by the second petitioner informing the fourth respondent that second petitioner is no longer partner, the outstanding balance in the aforementioned account of the dissolved firm was 'zero'.

**4.** It appears that on 21 July 2011, Ranveer Singh, sole proprietor of the reconstituted firm, i.e., M/s Maa Gayatri Construction placed a cheque, bearing No. FAQ 237452 dated 20 July 2011, for an amount at Rs.55,11,000/- in the account of the dissolved firm (A/c No. 1886002100023313). The amount was credited in the bank account which was later transferred by Ranveer Singh to one Prashant Shukla having account in Indus Bank, Swaroop Nagar, Kanpur Nagar, the deposited money was subsequently withdrawn by Prashant Shukla. It subsequently surfaced that the aforementioned amount at Rs.55,11,000/- was debited from the account of Meerut Institute of Engineering and Technology (A/c No. 2159000100049043). On receiving telephonic information from Chief Manager, Punjab National Bank, Branch Sports Complex, Meerut, that the original Cheque No. FAQ 237452 is with the issuing party, the fourth respondent lodged an FIR being Case Crime No. 676 of 2011, under Sections 419, 420 IPC, Police Station Naubasta, District Kanpur Nagar, alleging the fraud.

In other words, the cheque deposited by Ranveer Singh in the account of his firm (M/s Maa Gayatri Construction) was forged and manufactured document. The Bank suffered loss due to the fraud.

5. During investigation, name of Ranveer Singh, Arvind Verma and Adhyant Tiwari surfaced, subsequently, they came to be arrested. Prashant Shukla was absconding. The charge-sheet was submitted against the accused persons, including, Ranveer Singh, sole proprietor of M/s Maa Gayatri Construction on 11 September 2011. The accused including Ranveer Singh came to be convicted under Sections 420, 467, 468, 471 read with 120-B IPC, Police Station Naubasta, District Kanpur Nagar, and sentenced to 5 years simple imprisonment and fine at Rs.10,000/- each, by the Additional Chief Metropolitan Magistrate-I, Kanpur Nagar, vide order dated 11 December 2017, in Criminal Case No. 6350 of 2011, State vs. Ranveer Singh and others.

6. It is admitted that second petitioner was neither named in the FIR, nor, was he charge-sheeted. Application under Section 319 of the Code of Criminal Procedure, 1973<sup>1</sup>, was filed by the prosecution during trial seeking to summon the second petitioner to face trial along with other co-accused. The application was rejected. The order was not challenged, consequently, attained finality.

7. In the intervening period, the fourth respondent seized the bank account of M/s Shiva Enterprises of the second petitioner to satisfy the loss caused to the Bank by the sole proprietor of M/s Maa Gayatri Construction. Probably for the reason that second petitioner earlier was a partner of the firm M/s Maa Gayatri Construction. The second petitioner, thereafter, made several representations to the bank to permit the petitioner to operate the bank account of his firm

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<sup>1</sup> CrPC

M/s Shiva Enterprises, but in vain. It is submitted that the respondent-bank did not respond to the applications, consequently, petitioner was not permitted to operate the bank account (A/c No. 1886009300021932), thereafter, on 21 December 2012, the fourth respondent seized the Fixed Deposit Receipts<sup>2</sup> of the second petitioner, which had no concern with the account and the affairs of M/s Maa Gayatri Construction. It is submitted that seizure order was passed behind the back of the petitioner without affording an opportunity of hearing to the petitioner.

**8.** Petitioners have challenged the seizure order dated 21 December 2012, through an amendment application, and the order dated 31 October 2011, directing the second petitioner being jointly and severally liable to make good the loss caused to the bank, so as to enable the bank to permit the second petitioner to operate the bank account of M/s Shiva Enterprises.

**9.** In the afore-noted factual backdrop, the short question that arises for determination is as to whether the respondent bank was justified in seizing the bank account and F.D.Rs. of the petitioner firm (M/s Shiva Enterprises) to satisfy the loss caused to the bank by a third firm (M/s Maa Gayatri Construction) after the petitioner ceased to be a partner.

**10.** The facts, inter se, parties are not in dispute.

**11.** The Indian Partnership Act, 1932<sup>3</sup>, defines dissolution of firm and liability for acts of partners done after dissolution. Section 39 & 40 is extracted:

“39. Dissolution of a firm.— The dissolution of a partnership between all the partners of a firm is called the ‘dissolution of the firm’.

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<sup>2</sup> F.D.Rs.

<sup>3</sup> Act

40. Dissolution by agreement.— A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.”

**12.** As per the provisions of the Act, dissolution of the firm can be brought about on consent of the partners or by an agreement. Notwithstanding the dissolution of a firm the partners continue to be liable as such to third parties of any act done by any of them before the dissolution. A partner who retires from the firm is not liable to third parties for the acts done by any of the partners of a firm. After dissolution of a firm, partners are bound during the winding up of the firm to complete the transactions begun but unfinished.

**13.** If the firm has been dissolved but no notice to the creditors or public notice of such a dissolution is given, the act of a partner shall bind the other partners even after dissolution, as if, the act was done before the dissolution.

**14.** In case of dissolution, after the notice to the creditors or the public notice of the dissolution is given the acknowledgement given by one partner cannot bind the other partners. In other words, after the dissolution of the firm the outgoing partner would not be liable either to a third party or upon reconstitution of the firm for the act of the firm/partner until public notice is given to the creditor.

**15.** Section 45 of the Act provides for the liability of acts of partners after dissolution. Section 45 is extracted:

“45. Liability for acts of partners done after dissolution.—

(1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm, if done before the dissolution, until public notice is given of the dissolution :

Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section

for acts done after the date on which he ceases to be a partner.

(2) Notices under sub-section (1) may be given by any partner.”

**16.** As per Section 45, it therefore follows, that even after the dissolution of a firm, partners continue to be liable as such to third parties for any act done by them which would have been an act of the firm if done before the dissolution until public notice is given of the dissolution. Thus, till the time public notice of the dissolution is given, other partners will continue to remain liable for the act of one partner, as if, such an act was done in a continuing partnership. Thus the principle of presumed continuance of "mutual agency" underlines the rule which is subject to the exception provided in the proviso to Section 45. However, in case the creditor had notice of dissolution of the partnership that would not bind the other partner. (Refer: **Malayandi v. Narayanan**<sup>4</sup>, and **Muthuswami v. Sankaralingam**<sup>5</sup>)

**17.** Section 45, therefore, mandates that notwithstanding the dissolution of the firm, the partners continue to be liable to third party for any act done by any of the partners until notice is given of the dissolution. Public notice would include personal information or knowledge of such dissolution to the third party. The third party cannot take a plea of lack of information for want of public notice, where, the third party was informed or had knowledge of the dissolution.

**18.** In the given facts at hand, M/s Maa Gayatri Construction, a partnership firm came to be dissolved as agreed between the partners and a proprietorship firm with the same name was immediately thereafter reconstituted with Ranveer Singh as the sole partner. The second partner i.e. the second petitioner ceased to be the partner of of M/s Maa Gayatri Construction upon dissolution. Both the partners informed the respondent-Bank of the dissolution of the firm and its subsequent

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4 36 IC 225

5 2 LW 823

reconstitution in the same name. The relevant documents have been brought on record. In view of Section 45 of the Act the second petitioner would not be liable for any act of the proprietorship firm after the dissolution of the earlier partnership firm from the date of notice/ information to the bank.

**19.** The stand of the respondent-bank in the counter affidavit is that the bank was not informed of the dissolution of the firm, consequently, the second petitioner would 'jointly and severally' be liable for the fraud and loss caused to the bank by the first partner i.e. Ranveer Singh. The bank, therefore, was justified in seizing and freezing the bank account/F.D.Rs. of M/s Shiva Enterprises for the loss caused by the erstwhile partner of M/s Maa Gayatri Construction.

**20.** The term or phrase, 'jointly and severally', is a legal term used to describe a partnership whereby each party or member holds equal responsibility for liability. A common term for 'jointly and severally' is 'joint and several liability'. In a legally binding document, the term jointly and severally clarifies the responsibility that is shared by each party to an agreement. Essentially, it states that all of those named are obligated to perform all of the actions required under the agreement. For example, if a bank lends Rs.100,000 to two people jointly and severally, both of those people are equally responsible for making sure that the total amount of the loan is repaid to the bank. If the loan is in default, the bank may choose to pursue either for repayment of the entire outstanding balance. In such cases, the person who is forced to repay the loan will have same legal recourse against the other person named in the agreement, but only after the bank is repaid in full.

**21.** In this backdrop, the question that arises for determination is as to whether the second petitioner would be held 'jointly and severally' liable for the fraud committed by Ranveer Singh, sole partner of the reconstituted proprietorship

firm or in the alternative as to whether the bank had notice/information of the dissolution of the firm.

**22.** The partnership firm i.e. M/s Maa Gayatri Constructions came to be reconstituted on 10 July 2011. On 11 July 2011, an application was filed before the fourth respondent informing that the second partner i.e. second petitioner is no longer the partner and Ranveer Singh is the sole proprietor of the reconstituted firm by the same name. The fraud was committed by Ranveer Singh, thereafter, on 21 July 2011 i.e. eleven days after the dissolution of the partnership firm. On 22 July 2011, an FIR came to be lodged by the bank against one Prashant Shukla. The second petitioner was not named in the F.I.R.

**23.** The respondent-Bank in para 25 and 26 of the counter affidavit, has categorically pleaded that dissolution of the partnership firm M/s Maa Gayatri Constructions was neither served upon the respondent-bank, nor, the same is on the bank's record. It has been denied that the alleged communication dated 11 July 2011 and 12 July 2011, written by Ranveer Singh, and the second petitioner respectively was received with the bank.

**24.** The 'act of a firm' is an act omission of the partner and binds the other partner(s) of the firm. In other words, a partner commits fraud and thereby causes loss to the bank, the partners would be liable to make good the loss caused to the bank under the principle 'jointly and severally'. The bank in that event would be justified in seizing the bank account/FDRs of the other partners of the firm to satisfy its loss. But in the given facts of the case, it would be otherwise if the bank had notice/information of the dissolution of the firm. In that event the outgoing partner would not be liable for the fraud committed by the reconstituted proprietorship firm in view of Section 45 of the Act.

**25.** The petitioner has taken a categorical stand that the bank was informed of the dissolution of the partnership firm and the



reconstitution of proprietorship firm with the same name and title. The second petitioner ceased to be the partner. The fraud was committed with the bank several days thereafter. It is not the case of the bank that after dissolution of the firm the second petitioner continued to act or present himself as a partner of the dissolved firm. Further, it is not denied by the bank that the then officers of the bank were not aware of the dissolution/reconstitution of the firm. A feeble stand taken by the bank is that they have no information of dissolution or reconstitution of the firm. The affidavit has been sworn by the present officer of the bank on personal knowledge. It is to be noted that it is not the affidavit of the then officer of the bank. Further, the stand of the bank cannot be taken on face value for the reason that fraud was committed immediately after dissolution of the firm. The balance in the bank account of the firm on the date of dissolution admittedly was 'zero'. There was no occasion for the outgoing partner, not informing about his status that he ceased to be the partner. The involvement of the bank officials in commission of the fraud cannot be ruled out in view of the trial court judgment. All the accused came to be convicted in the criminal trial. It appears that the bank in order to protect and cover-up the acts of its officer seized the bank account and FDRs of the second petitioner in retaliation. It is not the case of the bank that the then officers (on date of dissolution of the firm) had no knowledge, and/or, were not aware of the dissolution of the firm and reconstitution of the proprietorship firm by the same name.

**26.** It is admitted by the learned counsel for the respondents that para-25, 26 of the counter affidavit has been sworn by the present Senior Manager, Punjab National Bank, Kanpur, on personal knowledge, and not on the basis of record.

**27.** In *Ratanji Bhagwanji & Co. v. Prem Shanker*<sup>6</sup>, Court, recognized that a retiring/outgoing partner could escape liability in respect of transactions entered into by the

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<sup>6</sup> AIR 1938 All 619

continuing partners after his retirement if the third party was aware that the former had ceased to be a partner of the firm. In the opinion of the court the proviso to Section 32(3) and the corresponding provision in Section 45, with its proviso indicate beyond doubt, that only persons who were not aware of the retirement of a particular partner could take advantage of Section 32(3) or Section 45.

**28.** Public notice as contemplated under Section 63 and Section 72, is intended only to serve a purpose, namely, to bring home to the persons concerned the fact of retirement. That purpose will undoubtedly be served in a better way by personal or actual notice. To contend that actual notice cannot take the place of the public notice is to miss the substance of the matter and argue counter to the very principle on which the retiring/outgoing partner's liability is based.

**29.** The transactions pertaining to the partnership firm came to an end with its dissolution. The forming of proprietorship firm was in the same name but was a different and distinct entity. There was neither the extension, nor, the renewal of the partnership. The proprietorship was a unilateral act on the part of its proprietor i.e. Ranveer Singh. The second petitioner had no role in the constitution of the proprietorship firm in the same name.

**30.** The public notice mandated under Section 45, as noted herein above, would include personal notice to the bank with regard to the dissolution of the partnership firm and reconstitution of proprietorship firm with the same name. The respondent-bank has not denied that their officers at the relevant time had no knowledge or information of the dissolution, rather, a vague stand has been taken that the documents with regard to constitution of the partnership firm and the notice served upon the bank is not available on record. This is not sufficient to bind the outgoing partner for the

fraudulent act of the proprietorship firm. Petitioner cannot be bound for the loss for the reason that the fraudulent act was committed after dissolution of the firm and after due information to the respondent-bank. There is no reason to disbelieve that the second petitioner had not given information to the bank for the reason that he was the outgoing partner and would not entail any liability upon himself.

**31.** Further it cannot be ruled out that the officers of the bank were not involved in the fraud by clearing the fake cheque. Merely because they were not charge sheeted, would not mean that the then officials of the bank were not in complicity with Ranveer Singh in commission of the fraud. The trial court has made an observation that the officers of the bank were negligent in clearing the fake cheque. The second petitioner was neither named, nor, charge-sheeted. In any case, the trial court judgement would not have a bearing on the rights/liability of the parties for the loss, including, contract made with the bank. It is not in dispute that the fraud was committed after the dissolution of the partnership firm. The denial of the notice/information by the bank is not emphatic and not by the then officer. The present officers of the bank (and not the then officer) has sworn the paragraphs on personal knowledge. At the most, it can be inferred that the communications by the petitioner and Ranveer Singh is not available in record of the bank, but that would certainly not mean or imply that the then officers had no information/knowledge of the dissolution of the firm.

**32.** In writ jurisdiction, the writ petition is decided on pleadings, affidavits and material placed on record by the respective parties. Having regard to the admitted facts and the stand taken by the bank, the scale of justice considerably tilts in favour of the petitioners. In the circumstances the writ petition is **allowed**.

**33.** The impugned order/communications are accordingly quashed.

**34.** The respondent-bank is directed to release the bank account, F.D.Rs. and any other security asset, seized of the petitioners forthwith from the date of service of this order.

**35.** The petitioners shall be entitled to interest as admissible on the deposits/F.D.Rs. due from time to time till the date of release of the bank account/F.D.Rs. etc.

**36.** It is clarified that no other point or ground was pressed by the learned counsel for the respective parties.

**37.** This order, however, shall not preclude the respondent bank from taking recourse before the appropriate forum/court for recovery of its loss as per law, if so advised.

**Order Date :- 24.02.2023**

Mukesh Kr./Akram

(Rajendra Kumar-IV,J.)

(Suneet Kumar,J.)