

MHAH050010002020



Order passed below Exh.5 in RCS No. 179/2020
(D.S. Bhosale Partnership through its partner Smt. Sudhatai
Dattatrya Bhosale Vs. Pratap Sakhahari Bhosale and others)

1. The suit is filed for perpetual injunction and declaration against defendant No.1 and 2.
2. I heard learned advocate Shri. U.D. Latmale for plaintiff.
3. It is contention of plaintiff that, plaintiff is registered partnership firm vide register no. 51594 dated 07-03-1978. She further contended that, she is having right to institute the present suit on behalf of said partnership firm. She further contended that, after the death of her husband namely Dattatrya Sakhahari Bhosale, her name was included as a partner in the said partnership firm. She further contended that, other partners in regard to said partnership firm have been retired by executing necessary documents. After retirement of other partners the said partnership firm was reconstituted. She further contended that, at present she is only a partner in the said partnership firm.
4. She further contended that, being a partner of said firm, she sent a proposal to defendant no.2. She has complied all necessary formalities for the same. Thereafter, defendant no.2 company has published public notice, thereafter other partners of the partnership firm and their legal heirs have not raised any objection for constituting proprietary firm in the name of plaintiff. However, defendant no.1 has raised objection to that effect. Accordingly on 23-03-2020 defendant no.2 company sent notice to plaintiff and thereby directed that *“all partners are adviced to submit undertaking from the dealership confirming to resolve the dispute within six months and resubmit the application. During the dispute period, dealership may be operated by the partners, legal heirs,*

family members as per the share out of existing partners. If the dispute remains unresolved, then the dealership may placed under “Holiday Scheme”, giving the parties reasonable time to settle their dispute and revert back to the dealership”.

5. She further contended that, defendant no.1 is not partner in respect of said partnership firm, as he retired from said partnership firm by executing necessary documents. The petrol pump of said partnership firm is highest seller in the district. As “Holiday Scheme” can be implemented where there is no business of petroleum products. She further contended that, if defendant no.2 succeeded in placing petrol pump of the said partnership firm under these “Holiday Scheme”, it would cause great loss to her firm. Hence, she prayed that, her petrol pump of partnership firm shall not be placed under “Holiday Scheme”. Hence, the present application is filed.

6. I perused entire documents filed vide list at Exh.3. It prima facie shows that, husband of plaintiff was one of the partner in the earlier partnership firm. After his death the plaintiff became partner in the partnership firm. It also prima facie appears that, the name of partnership firm has been changed and it is named as D.S. Bhosale Partnership Firm. Upon perusal of documents it also shows that other partners have been retired from the said partnership firm. However, it shows that defendant no.2 is still claiming as a partner in the said partnership firm. Per contra it appears that, plaintiff is denying the status of defendant no.1 as a partner in the said firm. I perused documents of retirement of partners, it prima facie shows that defendant no.1 also retired from the said partnership firm. Therefore, the plaintiff has sent proposal to defendant no.2 company for inclusion of her name as sole proprietor in the said firm. Thereafter, defendant no.2 company

published public notice to that effect, accordingly other partners and their legal heirs have not raised any objection to include her name in the record of defendant no.2 company. However, defendant no.1 has raised objection to that effect, but he was found absent on assigned date before the authority of defendant no.2. At this stage it also appears that, no documentary evidence had been filed by defendant no.1 before the authority of defendant no.2. Despite the said fact, defendant no.2 issued notice on 23-03-2020 to the plaintiff and thereby stated that all partners should resolved their dispute within six months failing which the dealership of said firm be placed under “Holiday Scheme”.

7. Considering facts and circumstances, if at this stage ad interim injunction relief is not granted in favour of plaintiff, it would cause great loss to her firm. Moreover, it prima facie shows that, all partners in respect of said firm have been retired, documentary evidence placed on record to that effect. It also prima facie shows that, if defendant no.2 company placed the dealership of said firm under the “Holiday Scheme” it would frustrate the very purpose of filing of the present suit. In this background I find substance in the application of the plaintiff. In the result I pass following order :

ORDER

1. Defendant no. 2 is directed to maintain status quo in respect of notice issued by them dated 23-03-2020 till appearance of defendants.
2. Plaintiff is directed to comply as per order 39 rule 3 of the code of Civil Procedure.
3. E.P. and S.B. allowed if necessary.

Date : 16.09.2020.

(B.G.Pawar)
3rd Jt. Civil Judge, Jr. Divn.,
Shrirampur.