

Money Suit 05 of 2022
CNR :WBBD17-000009-2022
Jo Code: WB01311

Order No. 30
Dated – 09/01/2024

This day is fixed for passing order on the application filed by the petitioner, Smt. Vaidhai Agarwal under Order 1 Rule 10 of the Civil Procedure Code being I.A No.09 of 2023 dated 03/08/2023. Whereby prayer has been made for adding the petitioner as a defendant in place of deceased defendant No.3.

At the very outset the Learned Advocate for the petitioner had submitted that inadvertently in the cause title of the application it has been written as an application under Order 1 Rule 10 of the CPC. He submitted that the said application is in essence an application under Order 30 Rule 4 of the CPC and accordingly the present application being I.A No.09 of 2023 dated 03/08/2023 be treated as an application under Order 30 Rule 4 of the CPC. Considering the averments in the petition and also considering the prayer, the application being I.A No.09 of 2023 dated 03/08/2023 is treated to be an application under Order 30 Rule 4 of the CPC. Written objection has been filed to I.A No.09 of 2023 dated 03/08/2023 by the plaintiff.

The plaintiff has filed the instant suit against the defendants praying for money and damages valued at Rs.3,42,74,793.34/-. In the suit M/s Global Construction a partnership firm was arrayed as defendant No. 1. The partners of M/s Global Construction has been impleaded as defendant Nos. 2, 3, 4 & 5 respectively. From the service return (S.R) it appeared that the defendant No.3 Smt. Madhu Devi Kedia one of the partner of the defendant No.1 was already dead when the suit was instituted. On the prayer of the plaintiff the name of defendant No.3 was expunged as according to the plaintiff the legal heirs of defendant No.3 were already on record. Subsequently, the present petitioner filed the instant application claiming that at the time of institution of the

Contd/...(P/2)

Money Suit Case No : 05/2022
[CNR No. WBB17-000009-2022]

suit she was already a partner of the defendant No.1 in place of her deceased mother Madhu Devi Kedia who died on 05/08/2020. In support of her contention that the petitioner was already a partner of the defendant No.1, a copy of the reconstituted partnership deed had been produced. From the reconstituted deed of partnership it appears that the petitioner was inducted as a partner on 12th August, 2020. The suit was filed on 14/02/2022 and admittedly on the date of filing of the suit the mother of the petitioner who was already dead had been impleaded as defendant No.3. It is also an admitted fact that all the partners of the partnership firm has been impleaded as defendants in the suit. If that be so, in my considered view the petitioner who was already a partner on the date of the institution of the suit ought to have been impleaded as a defendant in the suit. The Learned Advocate for the plaintiff had submitted that the suit have been filed primarily against the defendant No.1 a partnership firm, its partners and the petitioner cannot have any interest in the subject matter of the suit and also cannot be considered as a necessary party. It was also submitted that no primary evidence had been produced by the petitioner to show that she was admitted into partnership of the defendant No.1. Such submission has no legs to stand as the petitioner has already produced the copy of the reconstituted partnership deed dated 12th August, 2020 wherefrom it appears that the petitioner was inducted as a partner in place of her deceased mother. The Learned Advocate for the petitioner by producing a certified copy of the deed bearing No.3698 of 2023 submitted that from the deed it appears that the petitioner is not a partner of Global Construction.

On perusal of the deed it appears that certain property has been sold by the defendant Nos.2, 4 & 5 as the partner of defendant No.1. In the sale deed there is no mention of the petitioner as a partner of defendant No.1. However, from the deed it cannot be said with certainty that the petitioner is not a partner of defendant No.1 as the sale might have taken place keeping the petitioner in dark. The defendants in this suit did not deny at the time of hearing that the petitioner is not a partner. That apart the plaintiff also did not produce

Contd/...(P/3)

any other document to show that the reconstituted partnership deed is not genuine. In the absence of any such document this court has no other option but to hold that the petitioner was a partner of defendant No.1 at the time of institution of the suit. When all other partners have been impleaded as a party to the suit this court fails to understand as to why the petitioner cannot be impleaded as a defendant in the suit. That apart Sub Rule 1 of Rule 4 of Order 30 of CPC provides that it is not mandatory to join the legal representatives of a deceased partner as a party to the suit. Sub Rule 2 of Rule 4 of Order 30 of the CPC however lay down that there is no hindrance to any legal representatives of a deceased partner to get himself / herself impleaded if he / she has otherwise any right to do so. Sub Rule 2 is thus an exception to Sub Rule 1 of Rule 4 of Order 30 of CPC. There cannot be any denial that the petitioner being the daughter of defendant No.3 (since deceased) is a legal representative of deceased defendant No. 3. Accordingly the present application being I.A No.09 of 2023 is allowed. The petitioner be made a party to the suit as a defendant. The cause title of the plaint be amended accordingly. I.A No. 09 of 2023 dated 03/08/2023 is disposed of. The plaintiff is directed to serve copy of the plaint with all annexure to the added defendant within a week from date. The added defendant shall file written statement accordingly.

Fix **09/02/2024** for filing written statement by the added defendant and hearing of pending I.A No.08 of 2023 dated 27/04/2023. The plaintiff is directed to serve copy of I.A No.08 of 2023 dated 27/04/2023 to the added defendant within a week from date. The added defendant is at liberty to file objection to I.A No.08 of 2023 dated 27/04/2023.

To date (**09/02/2024**).

D/C by me.

**Judge, Commercial Court
At Asansol**

**Judge, Commercial Court
At Asansol**