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

\+ CS(COMM) 561/2023 & I.A. 12088/2025

MRS KANIKA GAUTAM .....Plaintiff

Through: Mr. Deepak K. Sharma and Mr. Ashish Sharma, Advs.

versus

M/S FLASH CLOUD CONSULTING & ORS. .....Defendants

Through: Mr. Ashwini Kumar Gupta, Mr. Pankaj Bhagat and Mr. Sadre Alam, Advs. for D-2 with D-2 in person.

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% 13.05.2025

REVIEW PET. 299/2025

1. This is a petition filed by defendant no. 2 seeking review of the order dated 24.04.2025 ('order') passed by this Court.

Submissions on behalf of the Applicant/defendant no. 2

2. Mr. A.K. Gupta, Advocate instructed by Mr. Pankaj Bhagat, Advocate appears on behalf of the review petitioner [defendant no. 2].

2.1. He states that though at paragraph 5.3 of the order the Court had recorded the submissions of defendant no. 2 that it shall file its reply to the application [i.e. I.A. 3462/2025], however, no formal order granting permission to file the reply was passed.

2.2. He states that defendant no. 2 seeks one (1) weeks' time to file reply to I.A. 3462/2025.

2.3. He states that while defendant no. 2 reiterates that it can have no objection to any forensic audit of the accounts carried out by defendant no. 1 firm since defendant no. 2 has nothing to withhold, however, the submission should not be construed as a consent for carrying out the forensic audit. He states that the submission set out at paragraph 5.3 of the order dated 24.04.2025 recording no objection of defendant no. 2 is incorrect.

2.4. He states that at paragraph 7(ii) of order, the Court has directed that defendant no. 2 will provide all explanation, information sought for by the Chartered Accountant appointed by this Court, while carrying out an audit. He states that the documents already stand filed and defendant no. 2 remains ready and willing to provide further copies of the said documents to the Chartered Accountant; he states however, defendant no. 2 is unwilling to provide any further explanation or information sought for by the Chartered Accountant.

2.5. He states that the reason that defendant no. 2 is unwilling to provide any explanation or information to the Chartered Accountant is due to the reason that it would be beyond the scope of I.A. 3462/2025 and it would also amount to collection of evidence by the plaintiff through the process of Court.

2.6. He states that the application I.A. 3462/2025 is premature and would tantamount to prayer clauses (b) and (f) of the plaint being granted. He states that the reliefs granted by the order dated 24.04.2025 is in the nature of the execution of a decree of rendition of accounts.

Submission on behalf of the non-applicant/plaintiff

3. In reply, learned counsel for the non-applicant/plaintiff states that the subject matter of the audit is the entries of the bank accounts of defendant

no. 1 firm. He states that the subject matter of the audit is not the personal accounts of defendant no. 2.

3.1. He states that it is the case of the plaintiff that defendant no. 2 has siphoned away funds of defendant no. 1 firm and operated the bank accounts of the firm by transferring monies without any justification to third-parties which are shell companies controlled by defendant no. 2. He states that therefore, defendant no. 2 cannot deny furnishing explanation or information sought for by the Court appointed Chartered Accountant.

3.2. He states that the plaintiff has not operated the bank accounts of defendant no. 1 firm. He states that the said accounts have only been operated by defendant no. 2.

Response by Applicant/defendant no. 2

4. In response, learned counsel for the defendant no. 2 has confirmed from defendant no. 2 (who is present in Court) that defendant no. 2 was operating the bank accounts of defendant no. 1 firm. He states that as per defendant no. 2, the plaintiff was also operating the bank accounts along with defendant no. 2 of defendant no. 1 firm.

Findings

5. This Court has considered the submissions of the parties.

6. The defendant no. 1 firm is a partnership firm and operation of the bank accounts of the said firm by defendant no. 2 is undisputed and admitted.

7. In the considered opinion of this Court, since the operation of bank accounts of a partnership firm by either partner is to be carried out truthfully and faithfully; the plaintiff's request for audit by an independent and neutral Chartered Accountant of the transactions carried out through the bank

accounts does not cause prejudice to either party. The audit has been directed only of the bank accounts of partnership firm. The pleas raised by defendant no. 2 by way of this review petition do not persuade this Court to recall the order. A partner is statutorily obliged to observe good faith in his dealings with the other partner. (**Section 9 of the Indian Partnership Act, 1932** ['Act of 1932']**)**.

8. The submission of the learned counsel for defendant no. 2 that his submissions at paragraph 5.3 are incorrectly recorded is also not correct. Defendant no. 2 had not opposed the appointment of the Chartered Accountant on the said date of hearing, however, the defendant no. 2 had opposed the allegations made by the plaintiff in the application.

9. In the considered opinion of this Court, the appointment of the Chartered Accountant would only help in narrowing down the scope of the controversy and since it is the case of defendant no. 2 that there has been no siphoning of funds there can be no ground for defendant no. 2 to oppose an independent audit by a Chartered Accountant. The liability of defendant no. 2 to render true accounts to the plaintiff is statutorily provided under Section 9 of the Act of 1932 and does not require a finding of siphoning by Court against defendant no. 2 before directing a forensic audit. Defendant no. 2 cannot deny furnishing information to the Chartered Accountant as directed in paragraph no. 7(ii) of the order dated 24.04.2025. In this regard it would be apposite to refer to judgment of Supreme Court in **Prem Ballabh Khulbe v. Mathura Datt Bhatt**[1]

> "A partner must observe the utmost good faith in his dealings with the other partners. partners. He is bound to render accounts

[1] 1966 SCC OnLine SC 268

of the partnership assets in his hands."

10. Since the scope of enquiry is limited to the entries in the bank accounts of the partnership firm, the limits of the enquiry are established.

11. Since defendant no. 2 has operated the bank accounts, defendant no. 2 is better acquainted with the transactions carried out by him and therefore defendant no. 2 cannot deny furnishing the information to his knowledge.

12. Accordingly, the application is without any merit and the same is dismissed. However, the right of defendant no. 2 to file a reply to IA. 3462/2025 remains open and he may file its reply within one (1) week.

13. For the same reasons, I.A. 12088/2025 is also dismissed.

14. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

CS(COMM) 561/2023

15. List on 21.08.2025, the date already fixed.

MANMEET PRITAM SINGH ARORA, J

MAY 13, 2025/msh/ms

Click here to check corrigendum, if any