

MISC. (J) 54/2013

29.03.14

Today is fixed for passing order on petition filed by the plaintiff u/o 39 rule 1 and 2 read with section 151 of C.P.C. with a prayer to pass an injunction restraining the O.Ps from running the institution i.e. Balya Niketan, a private school, and from collecting fee from the student till disposal of the suit.

The petitioner/plaintiff's case is that the petitioner is the co-partner of registered partnership deed executed to establish a private school by the name 'Balya Niketan' Titabor. That the petitioner and O.P No. 1, 2 started the said school at Bebejia Gaon, Titabor and agreed to share equally the loss and profits following the terms and condition of the deed. Accordingly, the school was started and it began to run smoothly and earned profit. But after a few months, the O.P. No. 1 restrained the petitioner/plaintiff from participating in the works of the school and has not paid any share of profit to the petitioner during this period. The O.P. No. 1 and 2 enjoyed the entire profit themselves and also kept the books of account of the school in their custody. The petitioner states that she has a prima facie case, balance of inconvenience in her favour and will suffer irreparable loss if the O.Ps. are not restrained from collecting fee from the students of the said institution. The petitioner prays for temporary injunction restraining O.Ps. from running the institution and collecting fee from the students till the disposal of the case.

O.P. No. 1, 2 and 4 have filed written objection to the petition and stated that the petitioner has not invested any amount for establishment of Balya Niketan and no partnership firm was formed with petitioner to run it. The O.P. stated that the petitioner is a Govt. Employee and a partnership firm could not be registered with her and that Balya Niketan is not a partnership firm. That Balya Niketan was established as per decision in the public meeting held on 5/12/07 under the Presidentship of Sri Prabin Handique and a 'Parichalana Samiti' of 11 members was formed. In the said public meeting, O.P. 1 Ranjan Handique was elected as Secretary and O.P No. 2 was elected as President of 'Parichalna Samiti'. At the time of establishment of the said institution, the petitioner was neither present in the public meeting nor she was elected for any post of the said institution. That except O.P 1 & 2, other defendants/O.Ps are not share holders or members of the governing body and they are wrongly impleaded in this suit. That the petitioner has failed to establish the three golden principles of injunction in their favour and this petition is filed with malafide intention only to harass the O.Ps. as such it is liable to be dismissed with cost.

O.P. No. 5, in his written objection stated that he is no way connected with the management of the institution namely Balya Niketan, that he is neither proprietor nor a partner. He further stated that petitioner is a govt. employee and she has not invested any amount in establishing the institution in question.

Likewise, O.P. No. 6 in his written objection has also stated that he is in no way connected with the Managing committee of the school and he was wrongly impleaded in the suit.

Perused the petition, written objection in Misc (j) 54/13 as well as the pleadings in T.S 64/13 and other materials on record. The perusal of the documents prima-facie reveals that, there is a partnership deed amongst the petitioner, O.P. No 2 and one Sri Ranjan Hazarika. The said deed was executed to establish a private school in the name and style BALYA NIKETAN, Titabar. From the submission of the Ld counsels of the parties and also from record, it prima-facie reveals that although the deed was executed to establish private school and it was agreed to share equally the profit and loss of the firm, i.e. the school but the said firm is not a registered one. There is neither any submission that the school has been registered nor there is any document to prove the registration.

As per section 69 of Indian Partnership Act, 1932, no suit to enforce a right arising from a contract or conferred by this act shall be instituted in any court by or on behalf of any person suing as partner in a firm against the firm or against any person alleged to be or have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the registers of firm as partner in the firm.

Situated thus, it prima-facie appears that Petitioner claiming to be a partner of O.P. No. 3, in establishing the school, hereinafter referred as firm in terms of Indian Partnership Act can't sue his co-partners as the firm i.e. the school prima-facie appears to be an unregistered one. Therefore, I am of the considered opinion that plaintiff failed to show prima facie case in her favour.

Plaint and petition further reveals that that the petitioner/plaintiff is aggrieved on the fact that she is restrained from participating in the works of the school as well as the O.Ps. are enjoying the entire profit made from the school themselves. But this grievance of the petitioner can be compensated in terms of money and as such the petitioner cannot claim that she will suffer irreparable loss if the injunction is not granted.

The petitioner prays that injunction should be granted restraining the O.Ps. from running the institution and collecting fee from students. School is a social institution which build the future of the students and as such restraining the running of a school is against public policy. A private school is run by the fee collected from the students and if the O.Ps. are restrained from collecting fee from the students, it will ultimately act as restraining them from running the school. So such injunction restraining the O.P from running the school and collecting fee from students will be against public policy.

Since the petitioner failed to show that she will suffer inconvenience and irreparable loss if injunction is not granted and that granting injunction restraining the O.Ps. from running the school and collecting fee from students will be against public policy injunction petition is rejected.

Petition of the plaintiff/petitioner is rejected. The Misc. case is disposed off on contest with cost.

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