

GIB/KL/JOSHI JOHN/26.04.2021/HC-187

High Court Category : Registration

State : Kerala

Order No.: GIB/KL/JOSHI JOHN/26.04.2021/HC-187

Name of Entry :
JOSHI JOHN

Date : 26-04-2021

Breif Issue :

FACTS OF THE CASE:

The petitioner Joshi john is a Chartered Accountant and he proposed to register “Joshi John & Co.” as a sole proprietorship firm. The petitioner was the working partner of a three-member partnership firm namely ‘R Menon and Associates’. According to the petitioner respondents 2 and 3 were not taking active role in running the partnership.

The petitioner filed an application to ICAI online to dissolve the partners but the provisional body insisted OTP confirmation by other partners. Another application filed by the petitioner to register a new partnership was also not allowed citing the reason that he was in charge of the other partnership. His attempt to register his firm as a sole proprietorship was also denied for the same reason.

ISSUE OF THE CASE:

Whether the 1st respondent-Institute for Chartered Accountants of India can force a Chartered Accountant to continue in a partnership of Chartered Accountants even after dissolution of the Partnership Firm or retirement of the Chartered Accountant, by retaining such unwilling partner in the Partnership Firm, in the register of partnerships maintained by the 1st respondent?

Decision of Advance Ruling Authority :

DECISION:

In spite of retirement from 'M/s. R. Menon and Associates', the petitioner is shown as the Chartered Accountant having charge of the said Firm. The petitioner has now started a proprietary firm 'Joshi John & Co.', of which also he is in charge. As per Section 27 of the Act, 1949 where a Chartered Accountant has more than one office in India, each one of such

offices shall be in the separate charge of a member.

The decision of the 1st respondent-Institute not to recognise and record the retirement of the petitioner from 'M/s. R. Menon and Associates' will therefore cause unnecessary and unwarranted hindrance to the professional advancement of the petitioner. It will offend the fundamental right of the petitioner to practice a profession freely, guaranteed to him under Article 19(1)(g) of the Constitution of India. The petitioner is therefore entitled to reliefs, in this writ petition.

The writ petition is therefore allowed. The 1st respondent is directed to recognise the retirement of the petitioner from the Firm 'M/s. R. Menon and Associates'. The 1st respondent shall remove the name of the petitioner from the list of partners of 'M/s. R. Menon and Associates' maintained under Regulation 190 of the Chartered Accountants Regulations, 1988. The 1st respondent may permit the respondents 2 and 3 to re-constitute the Firm, if they so desire and are eligible. These directions are without prejudice to the right of the petitioner and respondents 2 and 3 to get their claims in respect of the partnership, adjudicated through appropriate legal proceedings.