

(1933) 02 CAL CK 0044
In the Calcutta High Court

Benarasidas Khandelwal and Another	Vs	APPELLANT
Angira Debi and Others		RESPONDENT

Date of Decision : 21-02-1933

Acts Referred:

Citation : AIR 1934 Cal 33

Hon'ble Judges : Rankin, C.J;Pearson, J

Bench : Full Bench

Judgement

Rankin, C.J.—This is an appeal from an order made on 20th July last by my learned brother Ameer Ali, J., restraining the appellants Benarasidas Khandelwal and another from further proceeding with suit No. 2075 of 1923. It appears that the appellants are persons who were doing certain business in partnership with one Raghumull Khandelwal and that Raghumull Khandelwal filed suit No 2075 of 1923 on 12th July 1923 against the appellants asking for partnership accounts. It does not appear that there were any partnership assets which required winding up, but the claim was that a large sum of money would be due to Raghumull from the appellants if the accounts of the partnership transaction were properly taken. Some short time afterwards the appellants began a cross suit against Raghumull Khandelwal at Delhi, but this suit was stayed. Raghumull died on 5th September 1926. I may say here that there is very little doubt that Raghumull died a rich man. He had a number of large assets, but he appointed some five persons to be executors of his will. There was one Gopal-das Modi; there was one Dinonath; there was Hansraj, his son-in-law, being the husband of his daughter Sm. Angira Debi; the widow had power to nominate an executor and she nominated herself; so that, at any rate, there were five executors to administer the estate.

2. In the partnership suit with which we are concerned the executors were substituted for the deceased plaintiff in October 1926 and the suit came on for hearing as long ago as 28th March 1930 when, by an order of Buckland, J., all disputes including the question of costs were referred to the arbitration of Sir

N.N. Sircar and two Attorneys. Sir N.N. Sircar was to be the umpire and, to begin with, he was to decide the terms of the partnership business and all the transactions entered into so that a preliminary decree for accounts might be properly framed, and if there was any difference in the accounts to be taken under the preliminary decree between the Attorneys acting as arbitrators, then also he was to act as umpire. First of all, with regard to the preliminary decree there was an award by Sir N.N. Sircar on 29th May 1930 which on 12th June 1930 was confirmed by the Court which made a preliminary decree in accordance therewith. So this partnership suit had proceeded to a decree for partnership account. Thereafter the arbitrators proceeded with the reference as to accounts. They differed on certain points; the matter was referred to the umpire and the umpire made a second award on 8th December 1930. That award was challenged by litigation on the part of the executors up till March 1931 unsuccessfully. In January 1931 there was a decree passed on the second award. In January 1932 the arbitrators disposed of all the questions remaining on the accounts except one, namely, what should be the basis of interest and the period for which interest was to be allowed.

3. I understand that to mean whether the partners who had moneys belonging to the partnership in their hands in the course of the business were to be charged with interest or not. On that point the arbitrators could not agree and they referred it to the decision of the umpire but I am satisfied from their award that upon the decision of that matter a statement of account could be finally got out without difficulty. The arbitrators made their award stating the single matter which was to go to the umpire. In the meantime since September 1926 much had been happening to the estate of Raghumull, the deceased. Exactly how badly it was managed we do not at the moment know. There is no evidence before us that it will be insolvent in the sense that the creditors of this rich man will be unable to be paid; but the executors having fought considerably among themselves for a long time one is naturally inclined to think that in the end the estate will be insolvent. In any case on 2nd February 1932 a charge of mismanagement by one executor against another was sufficiently serious to result in a decree for administration against the estate. It was made in a suit brought by the executor Gopaldas Modi on 29th July 1929 and soon afterwards on 10th February 1932 judgment in accordance with the award of 29th January was passed in the partnership suit. It seems that the result of the decisions of the umpire and of the arbitrators has been adverse to Raghumull Khandelwal the original plaintiff, and his estate; and it was getting manifest that his partners, the defendants, namely the appellants before us, were going to get the better of the partnership account.

4. On 8th June a notice of motion was taken out by the daughter of Raghumull Khandelwal?Sm. Angira Debi?the wife of Hansraj?one of the persons who had consented to the order made by Buck-land, J., on 28th March 1930, asking that the partnership suit should be stayed altogether. Apparently the intention of the motion was that stay should be made in the partnership suit in order that all the

matters which had been litigated between Raghumull and his partners might be re-opened and dealt with in chambers in the course of the administration suit. The learned Judge has accepted that view and has made the order. He has felt considerable sympathy with the creditors by which he seems to mean the partners, and he says that the partnership suit "has almost reached a conclusion and at the last" moment this application is made. The matter he says is one of principle and the question is whether he ought to make an exception. Accordingly he says that the principle is that "once there is an effective administration decree all the creditors" must come in and establish their rights in the administration:

They must do it much as in a liquidation or in an insolvency. Even if they have a decree they must prove it. If they have not got a decree they should not be allowed to proceed further towards a decree against the executors alone. Whatever steps they take after the preliminary administration decree should be taken vis a vis the body of creditors as a whole.

5. I am afraid I have been too many years in this Court and too few years in the Chancery Division to undertake to explain thoroughly the present Chancery practice in such matters but it is evident enough that when an administration decree is made it is in the power of the Court to transfer to itself any suit that may be outstanding against the deceased's estate. It is further evident enough that in most cases it is better to have all the questions affecting the estate decided in one suit than to have them decided in a number of suits. Also under an administration decree it is possible to allow a creditor to take an effective part in disputing the claim of other persons claiming to be creditors. But if an illustration were required of circumstances in which the principle laid down by the learned Judge would work obvious injustice and fail altogether to produce economy in the administration I think the present case affords it. To begin with, this was not a creditor's suit at all. It was a suit filed by the testator himself, Raghumull Khandelwal. It is quite true that he has got the worst of it and that the appellants before us were more successful on the disputes about the account.

6. But this suit had been going on for three years before Raghumull died. At a time when, so far as we know, all these executors were working together they all agreed that the best way to take these partnership accounts was by a somewhat drastic arrangement for arbitration Under Schedule 2, Civil P. C.?not that the suit was to be stayed but that it was to be proceeded with as regards details in a certain manner. They were all agreed about it. Then the main questions were decided by June 1930 and a preliminary decree disposed of several very important matters. Other important matters were decided and after litigation the umpire's second award was embodied in a decree in January 1931. Since then every matter except the short, and I presume, simple matter of interest in this account, appears to have been cleared up; then because these executors had fought among themselves the Court has thought it necessary to protect the creditors by making an administration decree on 2nd February 1932 since when I may point out, judgment has been obtained in the partnership suit on a certain

number of points. It is said that the Court on principle has no option but to bring these proceedings to an end. The learned Judge has not even made it a condition of his order restraining the defendants from proceeding with the partnership suit that there should be in the administration suit no re-opening of any matter which had been decided in the partnership suit.

7. In my judgment, this is not to be regarded as a matter of principle but as a matter of practice and it is the duty of the Court to see which is the least expensive and the least unfair way of having the issues that remain to be decided in the partnership suit determined. I do not accept any rigid principle as laid down by the learned Judge although they are very good unless for practical purposes. In the present case it seems to me entirely wrong that the benefit of the arbitration machinery should be taken away from these defendants, the partners of Raghunath whom he had sued. It seems to me that it leads to nothing but considerable and unnecessary expense, if any change is to be made in the method by which that partnership suit is to proceed. In my opinion the proper course for us is to allow the matter to come to conclusion very speedily. If judgment is obtained, the person obtaining the judgment would not be able to levy upon the assets in the hands of the Court in the administration suit without leave and without taking proper steps. There is no danger to be apprehended if the partnership suit were allowed to go on to judgment. It appears to me that that would be the proper order.

8. Considering whether the reasonable order would be to stay the partnership suit on terms, that none of the matters which were decided in the partnership suit should be re-opened, so that the little matter about interest should alone be determined in the administration suit, it seems to me that it is inconvenient and unnecessary to do so. In these circumstances, it appears to me that the appeal should be allowed, the order of the learned Judge should be set aside and that the appellants should have their costs in the appeal and also before the learned Judge.

Pearson, J.

9. I agree.