
(2008) 04 AHC CK 0266
In the Allahabad High Court

Chhagan Lal Gupta

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 10-04-2008

Acts Referred:

Contract Act, 1872 — Section 65
Partnership Act, 1932 — Section 69

Citation : (2008) 3 AWC 2740

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. Both the appeals have been filed by the plaintiff against the judgments and decrees dated 29.8.1977, passed by the District Judge, Banda in Original Suit No. 7 of 1973 (giving rise to First Appeal No. 263 of 1978) and Original Suit No. 8 of 1977 (giving rise to First Appeal No. 264 of 1978). In both the suits appellant was plaintiff and the respondent was defendant. Appellant had filed 3rd suit also against the respondent being Original Suit No. 10 of 1973, which was also decided by same Judge, i.e., District Judge, Banda on the same date, i.e., 29.8.1977. Against the said Judgment and decree the appellant filed First Appeal No. 230 of 1978 which was allowed by this Court in part on 20.3.1995, photostat copy of the certified copy of the said judgment has been supplied.

3. In all the three suits it was pleaded that M/s. Khandelwal construction company Banda, a partnership firm, was granted contract by the Executive Engineer, Irrigation Division, Banda for construction of stilling Basin Lot No. I at Chandrawal Dam (O.S. No. 8 of 1973) and construction of central portion of the crest and piers at Chandrawal dam (O.S. No. 7 of 1973) and for some other work relating to the said Dam (O.S. No. 10 of 1973). The contract was entered into with the State of U.P. through the Executive Engineer. The Job was to be completed within specified time. However it was not completed due to the reason

that the defendant did not provide vacant site for digging and cutting, that defendant illegally terminated the contract on the ground that the plaintiff had not completed the work within the stipulated time. It was also pleaded that the firm M/s. Khandelwal Construction Company, Banda, of which the plaintiff was partner, was later on dissolved and the entire assets and liabilities as well as claim of the firm were given to the plaintiff.

4. Both the suits were decreed only for refund of security. Original Suit No. 8 of 1973 was also decreed for Rs. 500 as payment for bending 20 metric tons of steel.

5. The first point argued in these appeals is regarding the maintainability of the suit as it was admitted to the plaintiff that the firm was not registered. Issue Nos. 1 and 10 in Original Suit No. 7 of 1973 related to the said aspect" of the matter. This point was decided in favour of the plaintiff and against the defendant. However this point was not involved in Original Suit No. 8 of 1973.

6. Learned standing counsel appearing for defendant-respondent urged that in view of Order XLI, Rule 33, C.P.C. he can raise this point even though no cross objections have been filed. I have heard learned Counsel for the parties on this point and proceed to decide the same as the first point.

7. Learned standing counsel has cited the following two authorities in support of his contention:

1. Ram Adhar Vs. Rama Kirat Tiwari, and
2. Loonkaran Sethia v. Ivan E. John and Ors. AIR 1987 SC 336.

In the case of Ram Adhar (supra) it was held that unregistered partnership could not file suit. In the other authority of the Supreme Court in Loonkaran Sethia the Supreme Court in para 21 has held as follows:

...It cannot also be denied that the suit out of which the appeals have arisen was for enforcement of the agreement entered into by the plaintiff as partner of Sethia and Company which was an unregistered firm. That being so, the suit was undoubtedly a suit for the benefit and in the interest of the firm and consequently a suit on behalf of the firm. It is also to be borne in mind that it was never pleaded by the plaintiff, not even in the replication, that he was suing to recover the outstanding of a dissolved firm. Thus, the suit was clearly hit by Section 69 of the Partnership Act and was not maintainable.

(Italics supplied)

8. A bare reading of the above quoted observation of the Supreme Court makes it quite clear that a suit, after dissolution of partnership is maintainable by the partner in whose share on the dissolution of the firm, outstanding dues of unregistered firm have come.

9. Section 69(3) of the Partnership Act, 1932 is relevant and is quoted below:

69. Effect of Non-Registration:

(3) The provisions of subsections (1) and (2) shall apply also to a claim of set off or other proceedings to enforce a right arising from a contract, but shall not affect:

(a) The enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any rights or power to realise the property of a dissolved firm, or

10. It is quite clear that the bar of filing suit on behalf of unregistered firm is not attracted and does not affect a suit for enforcement of any right to realise the property of a dissolved firm. In the following authorities it has been held that if any amount is due to a firm against a third party, then the same is also included in the above provision and after dissolution suit is quite maintainable on behalf of a partner to whom the said property has been given at the time of dissolution of partnership:

1. Lala Ram Kumar Vs. Kishori Lal and Others,

2. AIR 1964 All 50;

3. Bhagwanji Morarji Goculdas Vs. The Alembic Chemical Works Co. Ltd.,

4. Gujarat Water Supply and Sewerage Board, Gandhinagar Vs. Sundardas Hukumatram Shivanani,

Accordingly it is held that the suit by the plaintiff, who was a partner of the dissolved firm, was quite maintainable.

11. In the judgment dated 20.3.1995, passed in First Appeal No. 230 of 1978 an amount of Rs. 7,500 was found admissible and decreed. In para 6 of the said judgment it is mentioned "...for carrying out the work undertaken by the contractor some granite stone boulders were broken at Bhimri hills".

12. In the judgment of Original Suit No. 7 of 1973 the said question is discussed in para 13, the first sentence of which is quoted below:

The next item of claim is of Rs. 7,500 in respect of 5,000 sq. ft. granite stone and boulders which was broken by the plaintiff at Bhimri hills for carrying out the work of the contract....

13. In my opinion the plaintiff is entitled to the damages of Rs. 7,500 as cost for breaking the granite boulders for two reasons, firstly in the connected appeal decided on 20.3.1995 the said amount has been awarded for similar work at another stretch and secondly the learned District Judge was utterly wrong in declining to grant the said claim for the reason that the contractor has not completed the work. In fact, the benefit of this part of the work, i.e., breaking of 5,000 sq. feet granite stone and boulders was taken by the defendants, hence they were liable to pay for the same. Even in the case of void agreements a party who has received some benefit is liable to reimburse the same in view of

Section 65 of the Indian Contract Act.

14. In Original Suit No. 8 of 1973 no amount for breaking granite stone was claimed hence First Appeal No. 264 of 1978 is dismissed.

15. Accordingly First Appeal No. 263 of 1978 is allowed in part. A decree for Rs. 7,500 in addition to the decree of Rs. 2,657 passed by the court below is passed along with interest @ 6 per cent per annum from the date of filing of the suit till the date of payment.

16. There shall be no order as to costs.