

(1954) 11 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal No"s. 275 and 276 of 1952

Dr. V.S. Bahal

APPELLANT

Vs

S.L. Kapur and Co.
 S.L. Kapur and Co. Vs Dr. V.S.
Bahal

RESPONDENT

Date of Decision : 16-11-1954

Acts Referred:

Partnership Act, 1932 — Section 63, 69, 69(2)

Citation : AIR 1956 P&H 24

Hon'ble Judges : Bhandari, C.J;Falshaw, J

Bench : Division Bench

Advocate : S.N. Chopra, for the Appellant; Har Dayal Hardy, for the Respondent

Final Decision : Allowed

Judgement

Falshaw, J.—The circumstances giving rise to these two second appeals (Regular Second Appeals Nos. 275 and 276 of 1952) are as follows. Separate suits were instituted by a firm named Messrs. S.L. Kapur and Co., through Maharaj Narain managing partner against Bhagwan Das and Dr. V. S. Bahal appellants for Rs. 3,500/- and for Rs. 1,319/15/-respectively. In both the cases the sums were claimed as arrears due from the defendants as occupants over a long period of certain rooms in the Coronation Hotel at Delhi which is run by the plaintiff firm.

The suits were contested by the defendants on all possible grounds but both the suits were decreed by the trial Court, and the appeals of both the defendants were dismissed by the 1st Additional District Judge except to the extent that the decree against Dr. V. S. Bahal was reduced from Rs. 3,500/- to Rs. 3,000/-. The defendants have filed these second appeals.

2. The only point now raised in the appeals is whether the suits could proceed in view of the provisions of Section 69(2), Indian Partnership Act, which reads:

"69(2) -- No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is

registered and the persons suing are or have been shown in Register of Firms as partners in the firm"

3. The facts relevant for the decision of this point are as follows: The firm S.L. Kapur and Co., was originally registered under the Act on 5-4-1940 when Maharaj Narain through whom the present suits have been instituted was shown as a partner along with Harjas Rai and Feroze Din. In 1942 Harjas Rai ceased to be a partner. The resolutions of the partners of the firm dated 6-9-1942 Ex. "A" and 24-10-1942 Ex. "B" show that in fact the partnership was dissolved and that Harjas Rai ceased to have anything to do with the business of the firm at Delhi including the Coronation Hotel, and accounts were settled between them, and it also appears that out of the liquor licences in the name of the partners the one at Delhi was henceforth taken in the name of Maharaj Narian and Feroze Din, while the licence at Kanpur was thereafter in the name of Harjas Rai alone, who was to carry on his own business there.

Copies of these resolutions were sent to the Registrar of Partnerships in November 1942 u/s 63 with an intimation that Harjas Rai had ceased to be a partner. Thereafter in 1946 Maharaj Narian and Feroze Din joined one Sultan Ahmad with them as a partner. This change in the constitution of the firm, however, was only notified to the Registrar in July 1951, the present suits having been instituted about a year before that in July 1950.

4. Both the defendants raised the plea that the plaintiff firm was not a registered firm and that Maharaj Narian was not shown in the Register as a partner in the firm and, therefore, the suit could not proceed u/s 69 of the Act. The issue was framed in each case.

"Is the plaintiff firm a registered firm? If not, to what effect?"

The trial Court found that the firm had been duly registered in the year 1940 and the only aspect of the matter which it considered was the effect of the withdrawal of Harjas Rai in 1942, regarding which it was held that this did not affect the plaintiff's right to bring the suits.

5. The matter was more exhaustively considered by the lower appellate Court, which agreed with the trial Court regarding the effect of the withdrawal of Harjas Rai, but also went into the question of the effect of the fact that in 1946 Maharaj Narian and Feroze Din had joined with them Sultan Ahmad as a partner and had not notified the Registrar of the change in the constitution of the firm u/s 63 of the Act until after the suit had been pending for a year or so.

It seems that in fact the details regarding the joining of Sultan Ahmad as a partner and the notification of this fact to the Registrar in July 1951 were only brought out in certain evidence which was led before the lower appellate Court. It was, however, held that this was not a defect in the form of the suit.

6. Two points thus arise for consideration in the appeals, firstly whether the so-called retirement of Harjas Rai in 1942 amounted to a dissolution of the firm S.L.

Kapur and Co., which necessitated a fresh registration of the re-constituted firm, and secondly, even if no fresh registration of the firm was necessary after the withdrawal of Harjas Rai, the suit could be filed on behalf of the firm in view of the fact that a third partner had subsequently been added whose name was only communicated to the Registrar during the pendency of the suit.

7. On the first of these points I consider that the decision of the Courts below was correct. Admittedly "inter se" the partners passed resolutions regarding the dissolution of the firm, which appears in fact to have been a division of the business of the firm between them, Maharaj Narian and Feroze Din retaining the business at Delhi while Harjas Rai separately took on the business hitherto carried on by the firm at Kanpur.

However, two of the partners continued to carry on the business of the firm at Delhi in the same name and although the partnership was technically dissolved for the purpose of settling accounts with Harjas Rai and separating a part of the business of the firm outside Delhi for him to carry on, it was a sufficient compliance with the law for them to notify the Registrar u/s 63 that Harjas Rai had ceased to be a partner in the firm and that the partnership would not (sic) continue with only Maharaj Narian and Feroze Din as partners.

8. The second point is more difficult. The point was decided in favour of the plaintiff by the lower appellate Court on the basis that a suit which had been defective u/s 69(2) at the time of its institution could be validated by a rectification of the defect "pendente lite". In deciding the matter in this way the learned Additional District Judge purported to follow the decision of a Full Bench of the Lahore High Court in -- "Nazir Ahmad v. Peoples Bank of Northern India Ltd. AIR 1942 Lah 289 (A), in which the point before the Full Bench which consisted of Tek Chand, Ram Lal and Beckett JJ., was whether when a plaintiff institutes a suit against a company in liquidation without the leave of the Court u/s 171 and subsequently applies for such leave within the period of limitation of the suit and the leave is granted only after the period of limitation has expired, the suit should be dismissed.

In the first place the words of Section 171, Companies Act are not identical with those of Section 69, Partnership Act, and the observation that the proceedings in a suit brought by an unregistered partnership firm are validated by registration of the firm "pendente lite" was simply an "obiter dictum" of Ram Lal, J. which was not endorsed or referred to by either of the other two learned Judges.

This question came up for consideration by Kapur J, and myself in -- " Firm Des Raj Prem Chand and Another Vs. Firm Hira Lal Kali Ram and Another, in which after considering the numerous authorities on the point we came to the conclusion that the view expressed by Ram Lal J. was wrong and, that in order to institute a suit a partnership must be a registered firm on the date on which the suit is instituted and that subsequent registration cannot validate the defect.

9. The question which arises in the present case is whether in order to institute a

suit a partnership firm must not only be a registered firm, but also all the persons who are partners in the firm at the time of the institution of the suit must be or have been shown as such in the Register. This certainly appears to be the plain meaning of the words in Section 69(2) "unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm". It is difficult to imagine what other meaning the words "person suing" are capable of bearing in this context.

There is no doubt that in a sense the firm itself is a person but to my mind there can be no doubt that the words "persons suing" here mean persons in the sense of individuals, and that the only individuals referred to must in my opinion be the partners in the firm. Indeed, Mr. Hardy for the respondent in these appeals was unable to suggest what other meaning there could be in this context. He relied, however, on the decision in -- " AIR 1944 37 (Oudh)

In that case a suit was instituted on behalf of the firm named Sikri Brothers by one N. P. Nag-pal who described himself both in the body of the plaint and in the verification as a partner in the firm. The defendant raised the plea that the suit was not competent as the firm was not a registered partnership. The facts found were that the firm was a registered partnership but that only the names of two partners were entered in the Register, and that before the institution of the suit those two partners had joined N. R. Nagpal with them as a partner. It was held that the suit could proceed on the ground that the real plaintiff was the firm Sikri Brothers and that the mere mention of N. R. Nagpal through whom the suit was brought did not make him the plaintiff.

With the utmost respect I am unable to agree with this decision. I would certainly agree with it to the extent that it was not necessary for the suit to be instituted by the firm through a partner, & the suit could be instituted by the firm of behalf of the partners through a mere employee or attorney, but in my opinion once it was established that N. R. Nagpal was a partner of the firm it ought to have been held that he was one of the persons suing within the meaning of Section 69(2), Partnership Act, and that, therefore, it was necessary, for the suit to be instituted at all, that his name should be shown as a partner in the Register of Firms.

10. In the circumstances although I hesitate to throw out the two apparently well-founded claims of the plaintiff firm on such a technical ground as this, I feel constrained to hold that the suit at the time of its institution suffered from the defect that one of the partners of the firm, who had been a partner for several years, had not at the time of the institution of the suit been shown in the Register of Firms as a partner and in my opinion the same principle which applies to the registration of the firm itself must also be held to apply to the individual partners and a defect of this kind, which , is a bar to the institution of the suit, cannot be removed "pendente lite". I would accordingly accept the appeals and order that the plaintiff's suits be dismissed, but at the same time, in the circumstances order that the parties shall bear their own costs throughout.

Bhandari, C.J.

11. I agree.