

(1939) 09 AHC CK 0036
In the Allahabad High Court

Firm Mahadeo Prasad-Vaidnath Prasad and Another	APPELLANT
Vs	
Firm Kunjilal Vidyaram and Another	RESPONDENT

Date of Decision : 28-09-1939

Acts Referred:

Citation : AIR 1940 All 81

Hon'ble Judges : Allsop, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Allsop, J.—The plaintiffs in the suit which has given rise to this appeal were a Firm Kunji Lal Vidya Ram. The defendants were a Firm Mahadeo Prasad Vaid Nath Prasad, one of its partners, Parshotam Lal, and one Sewa Lal, son of Mahadeo Prasad, another partner. Mahadeo Prasad and Vaid Nath Prasad were themselves partners in the firm. The suit was one for the recovery of a sum of money which was decreed in part. The plaintiffs in the trial Court had asked that notices of the suit as against the firm should be served upon Parshotam Lal. Some of the partners were dissatisfied with the decision and appealed to the District Judge. The appeal was filed through a vakil or a pleader in the name of Messrs. Mahadeo Prasad Vaid Nath Prasad, sons of Parshottam Das, and Sewa Lal. The respondents were the plaintiffs, Kunji Lal Vidya Ram, and Parshotam Lal, who was apparently not willing to join in the appeal. The learned Judge found that the decree should be reduced by a sum of Rs. 156-8-0 but he refused to pass any order in favour of the appellants because he considered that the appeal was not properly filed on behalf of the firm. His impression was that Mahadeo Prasad and Vaid Nath Prasad were purporting to act in their individual capacity and not as members of the firm and he pointed out that Vaid Nath Prasad had not personally signed the vakalatnama. It appears to me that this argument overlooks the fact that a firm is not a legal entity. The result of the decree against the firm was that the decree-holders were entitled to recover the amount jointly or severally from the individuals, Mahadeo Prasad, Vaid Nath Prasad and

Parshotam, who were the members of the firm. As between themselves any of these persons who paid up the amount decreed might have charged it against the partnership accounts. In these circumstances, I do not see why any member of the firm should not appeal against the decree as against the firm. Each member was personally liable either to pay the amount himself or to pay his share of it, if it was paid by some other member. As a matter of fact, the vakalatnama was signed by Mahadeo Prasad on behalf of Mahadeo Prasad Vaid Nath Prasad and I have no doubt that the real intention was to appeal against the decree on behalf of the firm. It does not however seem to me to matter a great deal because any individual member can object to a decree against the firm when he is, in his personal capacity, liable to pay the amount decreed. I hold therefore that the sum of Rs. 156-8-0 must be reduced from the amount of the decree. Learned counsel for the respondents does not question the finding of the learned District Judge because it is one of fact.

2. The other point argued is one about an item of Rs. 162. Mahadeo Prasad Vaid Nath Prasad obtained a contract from a railway company to remove cinders and under the terms of the contract they were to supply coal or coke to the railway partly without charge and partly at certain rates of payment. They entered into a sub-contract with the plaintiffs and the plaintiffs acted in accordance with this contract for some months. It appears that the railway was not satisfied with the way they were conducting the business and they complained to their contractors, Mahadeo Prasad Vaid Nath Prasad, who eventually terminated the sub-contract. There was a dispute between the contractors and the sub-contractors over this matter and the latter instituted a suit in order to obtain an injunction to prevent the contractors from interfering with them. This suit was referred to arbitration and the arbitrators decided that the sub-contractors should continue acting up to a certain date. On that date the sub-contractors, who had agreed to pay a monthly sum to Mahadeo Prasad Vaid Nath Prasad, owed them Rs. 3015. The arbitrators had asked the plaintiffs to deposit certain sums of money with them. They did deposit Rs. 2494 and two further sums of Rs. 323 and Rs. 26. The sum of Rs. 2494 was deposited on account of payment of the monthly sums due. The arbitrators decided that this sum should go to Mahadeo Prasad Vaid Nath Prasad. It does not appear from the record what they decided about the other two sums of Rs. 323 and Rs. 26. Mahadeo Prasad Vaid Nath Prasad had in their turn deposited a sum of Rs. 162 which they said they had received from the railway on account of payment for coal or coke supplied by the sub-contractors to the railway under the terms of that contract. The difference between Rs. 3015 and Rs. 2494 is Rs. 521. I am told that Mahadeo Prasad Vaid Nath Prasad have instituted a suit in a Court of Small Causes to recover this sum.

3. In the present appeal their argument is, that the decree against them should be reduced by a further sum of Rs. 162 because the suit was for the recovery of money paid to them on account of coke or coal supplied by the plaintiffs to the railway. Their argument is that they have already put this sum at the disposal of the plaintiffs. I do not think that it can really be argued that the sum of Rs. 162

has been paid to the plaintiffs because it has been deposited with the arbitrators. It is, of course, obvious that Mahadeo Prasad Vaid Nath Prasad should not be asked to pay this sum twice over. If it was paid to the arbitrators on account of sums due and claimed in this suit, then Mahadeo Prasad Vaid Nath Prasad will be able to recover the money from the arbitrators. Learned counsel for the respondents says that he is not aware of the nature of the suit in the Court of Small Causes and it may be that this sum of Rs. 162 is in some way in dispute in that Court. If it is, nothing that I have said in this judgment can, of course, affect the dispute at all. Learned counsel for the appellants has stated, as I have already said, that the suit in the Court of Small Causes is only for the recovery of the difference between Rs. 3015 and Rs. 2494. If that is so, this sum of Rs. 162 does not appear to enter into the dispute. I am not however aware whether learned Counsel for the appellants has been rightly instructed upon this point. I reduce the decree by a sum of Rs. 156-8-0. Interests will be reduced proportionately. The parties will get their proportionate costs in this Court. The order for costs in the Court below will stand, but as the order is for proportionate costs, the amount will have to be recalculated.