
(1915) 07 BOM CK 0010
In the Bombay High Court
Case No : O.C.J. Suit No. 1168 of 1914

Giovani Gorio

APPELLANT

Vs

Vallabhdas Kalianji

RESPONDENT

Date of Decision : 17-07-1915

Acts Referred:

Contract Act, 1872 — Section 264

Citation : AIR 1915 Bom 209 : (1915) 17 BOMLR 762 : 30 Ind. Cas. 864

Hon'ble Judges : Beaman, J

Bench : Single Bench

Judgement

Beaman, J.—This suit is brought by Messrs. B.G. Gorio & Co., a firm, against the three defendants, Vallabhdas Kalianji, Manilal Premchand and Dwarkadas Naranji, as members constituting the firm of Lakhmidas Vallabhdas and Co., to recover the losses on certain indent dealings. Defendants 1 and 2 appear and admit the plaintiffs' claim in full.

2. The only question which I have been asked to try so far in this Court is, whether defendant No. 3, Dwarkadas Naranji, was a partner in the firm of Lakhmidas Vallabhdas, and, as such, was, and still is, liable to the plaintiffs.

3. We start from the admitted proposition that defendant No. 3 was a partner of the firm up to the 9th of November 1912 I say that this is admitted because there is nothing in the written statement to suggest the contrary and the fact has been explicitly admitted by defendant No. 3 in his own correspondence exhibited in the suit. It is true that at the trial his counsel sought to start an entirely new defence, namely, that he never was at any time a partner in this firm. I cannot encourage a deliberate falsehood of this kind, nor can I allow pleadings to be so far extended as to embrace an entirely new, and, on the face of it, an entirely false, defence. I, therefore, confined defendant No. 3 strictly to his pleadings and his admissions. In my opinion, the written statement itself could mean nothing else than that defendant No. 3 had never thought of denying that he had been a partner in Messrs. Lakhmidas Vallabhdas & Co., and that construction is amply

borne out by the admissions contained in his letters, notably the letter of the 19th November 1914. When he decided to contest the suit, he evidently relied upon the special doctrine of the English law, namely, that, as a sleeping partner, of whose existence no indication was given by the name of the firm, he would not fall within the scope of Section 264 of the Indian Contract Act; and so advised he framed and limited his defence. Coming to trial, I suppose, after the usual consultations, his legal advisers probably thought that defence was not so sound as it might be, and, therefore, wished to supplement it by striking out an entirely new line and putting the plaintiffs to the proof of the fact that defendant No. 3 had at any time been a partner in the firm of Lakhmidas Vallabhdas.

4. Now, the present dealings, out of which the firm's indebtedness arose, commenced on the 20th November 1914; and the plaintiffs have sought to strengthen their case by alleging and proving that defendant No. 3 was not only a partner in the firm of Lakhmidas Vallabhdas up to the 9th November 1912, but continued to be so at all times material to the fixing of the liability in this suit. To that end witnesses have been examined: Vallabhdas and Manilal, the two admitted partners in the firm, and one Morarji Keshavji, who prove that defendant No. 3 continued to be a partner in this firm of Lakhmidas and Vallabhdas long after the completion of the indent contract with the plaintiff firm. The evidence of Morarji, as being that of a disinterested outsider, is of special value. He swears that his firm had dealings with Lakhmidas Vallabhdas and Co. at about the same time as the dealings in suit and that the indebtedness therein incurred by the firm of Lakhmidas Vallabhdas was settled in 1913 by defendant No. 3, Dwarkadas Naranji, at his own house and after the intervention of his brother, Lalji Naranji. If that story be true, it would certainly go far to prove that the defendants' present case is untrue. Then, there is the direct and positive evidence of Vallabhdas and Manilal, which may be to some extent interested and therefore open to suspicion. It is certainly very direct and positive evidence, and I think it is a great deal better than the single unsupported word of defendant No. 3 to the contrary. I should, therefore, have very little hesitation in holding, if material, that the alleged dissolution of partnership and the consequent withdrawal from any further connection with the firm on the part of defendant No. 3 which is the sole basis of his defence have been disproved and that, as a fact, he remained a partner at all times material to the present litigation. But I should be equally confident, had that finding been the other way, that he is still liable to the plaintiffs' claim. The plaintiffs were persons dealing with the firm within the meaning of Section 264. Their dealings began in June 1912 and the business continued when, and during the time, the present contracts were entered into and carried through, that is to say, the settlements of the contracts made in June were not completed until December 1912 or January 1913. Therefore, for all the purposes of applying Section 264, the plaintiffs were certainly persons dealing with the firm of Lakhmidas Vallabhdas; and the defendant No. 3 was admittedly a partner of that firm at the time the dealings commenced and were in progress. Now, Section 264 of the Indian Contract Act is

one of the simplest and plainest sections to be found in our statutes. It runs:

Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given unless they themselves had notice of such dissolution.

5. The only possible opening for an ingenious construction and interpretation of this section appears to me to lie in the words "persons dealing with;" and I have no doubt whatever that those words mean "persons who have been in the habit of dealing with, and at the time of the dissolution were contemplating further dealing with the firm, on the faith of the firm remaining the same as that with which their dealings commenced". Now, that being so, it is perfectly clear that such persons cannot be affected by any dissolution of which public notice had not been given unless they have had actual notice. It is admitted that defendant 3 gave no public notice and no attempt has been made to prove that the plaintiff firm had actual notice of the alleged dissolution. The defendants' case is that the old firm was dissolved on the 9th of November and that on and from the 10th of November a new firm under the same name, style and title, but consisting of Vallabhdas and Manilal, carried on the business, in other words, that the only moneyed man in the firm, Dwarkadas Naranji, defendant No. 3, surreptitiously and covertly withdrew, leaving all those who had been dealing with the firm and contemplated further dealing with the firm, in the belief that no change whatever had been made in the firm. Such persons are surely not to be affected by the fact, if it be a fact, that such a change had occurred, and that a firm bearing a definite name, and having a certain constitution, which continues under that name, has, in fact, been dissolved without public notice being given and without actual notice being had. Where that occurs, it makes no difference whether the fact be as alleged or not; for the liabilities of the original members constituting the firm must remain the same since the persons dealing with that firm are not to be affected by the dissolution. I am unable to agree with the decision of Tyabji J. in the case of Greaves v. Purshotam (1903) 5 Bom. L.R. 366 to which my attention was invited. That learned Judge appears to have had no difficulty in holding that Section 264 did not override the special rule of the English law in respect to dormant partners. That rule is founded on very good reasons and is specially referable to the principles of estoppel, but Section 264 of the Indian Contract Act has been conceived in a much wider spirit and has a much wider scope. Where its language is perfectly plain and covers every case quite irrespective of special deductions to be drawn from the principles of estoppel, I do not feel, as a Judge, I ought to exercise my ingenuity over cases which plainly fall within it, in endeavouring to put limitations and interpretations upon its language with the effect of making the Legislature say one thing and mean quite another. Moreover, I conceive that this section has been framed designedly in this comprehensive way to strike at a very wide and well-recognized evil that infects commercial dealings in this country. It is true that the English rule arises in this way. Old customers, it is said, who had dealt with the firm on the faith of its constitution being of a certain quality, could not be deprived of the security given

them by that peculiar constitution, as a result of any private breaking-up or dissolution of the firm unless special notice had been given to each of them. Public notice was generally considered sufficient for the casual, or merely intending, customer. Underlying all this is clearly the principle of estoppel, viz., that the firm, holding itself out to consist of several individuals, in any one or more of whom, persons dealing with the firm have peculiar faith, cannot make any change in the constitution of the firm, while dealings with them still continue, to the detriment of those persons, without giving any notice that such a change has been made. And out of this, the special rule applied to dormant partners naturally evolves; for it is said that where the name of the firm gives no indication of the inclusion among its members of a certain person (that person being no more than a sleeping partner taking no active part in the business) then the old customers, or the public in general, dealing with the firm cannot be influenced in giving the firm their business by any considerations peculiar to the presence of the partner thus totally unknown to them. So that in the event of such a person being withdrawn from the firm no notice, either public or actual, is required. But had it been the intention of the Legislature in India to enforce such a rule in this country, nothing could have been easier than to say so by adding a few words to Section 264. In this country, however, where firms are very often of an extremely complex character and there is no law as there certainly ought to be, compelling the registration of partnerships; and where such firms are constituted without any writing and appear to be in a constant process of change, partners retiring and partners being added without any dissolution, what the Legislature aims at preventing is the establishment of firms on an originally sound basis and the subsequent secret withdrawal of that basis. When firms are established in this way and customers' transactions are referable to the continuance of the old firm, from which the only member who ever possessed any money secretly withdraws, it is not necessary in applying Section 264 to have recourse to any principles of estoppel. There is not a single word in the section to suggest that the persons or the public dealing with the firm should have any knowledge of its actual constitution or should have been influenced by the fact that the particular individual was a partner in it; and that too for a very good reason that the names of the firms in this country hardly ever do indicate who are the actual partners. But when a firm is started, if it is ever to have any career at all, it is almost certain that some one in the partnership must have a certain amount of capital. The firm then gradually establishes itself on a real solid money basis, and, being so established, the only member of the firm who really possesses capital, secretly withdraws, leaving the firm under the same name and, to all outward appearances, the same, to trade on its reputation with the public, although now it is nothing but a shell and a sham. The public cannot always be inquiring as to the changes going on in the constitution of these Indian firms, and, therefore, our statute leaves it always to be a question of fact, who were, or were not, partners at the time the persons dealing with the firm commenced and carried on their dealings and directs that Courts shall adjudge their claims against the firm which seeks to evade them on the ground that the

only solvent partner ceased to be a partner during the continuance of the dealings, as though such partners had not been secretly withdrawn. Here, we have a typical instance. The name of the firm indicates the name of one person, and one person only, Vallabhdas. The firm, appears to have established itself for a short period, owing, no doubt, to the private inquiries made by those who dealt with it and the ascertainment by them of the fact that one of the partners was Dwarkadas Naranji—so establishes itself, I say, for a short period, under a decent appearance in the local market. Then, when it had business relations on a large scale with reputable firms like the plaintiffs, Dwarkadas Naranji, the 3rd defendant, the only man in the firm with any capital at all, covertly withdraws, and the plaintiffs are left to risk their money upon an adventure, which, should it turn out disastrously, would leave them creditors of a sham bankrupt firm. The firm, on the other hand, has everything to gain and nothing to lose. If the adventure turns out well, the firm makes its profits and all the partners come in for a share of these profits. Now, this is precisely the evil which Section 264 of the Indian Contract Act is intended to correct. I can see no advantage whatever in excluding from its operation cases which might be excluded in England from the general principles governing the rights and liabilities of dissolved firms in respect to their old customers and the public generally. I do not admit that the section requires any interpretation whatever. I know that, as far back as 1882, it was critically considered in Calcutta in the case of *Chundee Churn Dutt v. Eduljee Cowasjee Bijnee* ILR (1882) Cal. 678 and its interpretation in that Court was governed largely, if not exclusively, by reference to the English law, but there the point was only whether this section puts old customers in a worse position than they would be under the English law; and no question ever was made, unless indeed the judgment of Tyabji J. were taken to be an exception, that customers of a firm were to be damnified by a dissolution without either a public or an actual notice. In the present case, we have the plaintiffs fulfilling all the requirements of that section being persons dealing with the firm at the time defendant No. 3 was a partner. According to defendant No. 3 the firm dissolved during the progress of those dealings and at a time when the plaintiff firm was giving very large credit to Lakhmidas Vallabhdas on the faith of the original dealings and the information obtained in the inquiries they had instituted. It is a clear case, then, of a firm being dissolved with the intention of damnifying persons dealing with it at the time. Those persons claim the protection of Section 264 of the Indian Contract Act. It is admitted that no notice was given to them, and they had no notice in fact, of the alleged dissolution. They appear to me to be entitled to the fullest protection of that section. Therefore, quite apart from the further fact that defendant No. 3 is shown not to have ceased to be a partner at any time material to the present suit, his liability in law would, in my opinion, be as clearly and firmly established. On this point, therefore, I must find that the defence of defendant No. 3 entirely fails, that for all the purposes of this suit he is a partner of the firm of Lakhmidas Vallabhdas, and equally liable with the other partners for the indebtedness of that firm to the plaintiffs.

6. [Order of Davar J. authorising the sale, etc., put in Further argument of counsel.]

7. There will be a decree for the plaintiffs against all three defendants for the amount claimed unless after fulfilling the conditions next hereinafter specified there is valid cause shown to the Court for doubting the correctness of the plaintiffs' account, with all costs of the suit.

8. As to the account, it ought, in view of the Judge's order authorizing the sale, to be a simple matter of arithmetic, and the attorneys on both sides are to go over the accounts together, and the matter to be mentioned here today fortnight, when the money value of the decree can be declared.