

(1980) 01 P&H CK 0079
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 319 of 1980

Gupta Steel Industries and Others	Vs	APPELLANT
Balbir Kumar and Others		RESPONDENT

Date of Decision : 01-01-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 11, Order 26 Rule 12, 151
Partnership Act, 1932 — Section 46, 47, 48

Citation : AIR 1980 P&H 215 : (1981) 1 ILR (P&H) 103

Hon'ble Judges : Sukhdev Singh Kang, J

Bench : Single Bench

Judgement

1. M/s. Gupta Steel Industries and others, have through this regular second appeal. assailed the judgment and decree, passed by the Additional District Judge, Jullundur, whereby he modified the judgment and decree passed by the trial Court to the effect that the Local Commissioner, appointed to take accounts, was directed to take control and apply the assets of the firm.

2. Brief facts of the case am that Balbir Kumar and Ranjit Kumar filed a suit against M/s. Gupta Steel Industries and others for dissolution of the partnership and rendition of accounts. Their case was that the parties to the suit entered into a partnership on 22nd of May, 1970. The share of the plaintiffs was 44 per cent. The plaintiffs were minors and the business of the firm was being carried on by defendants 2 to 4. They alleged that these defendants had misappropriated the funds of the partnership business and had closed the factory. Since the defendants had refused to render the accounts of the partnership business, a suit was filed against them. The trial Court passed a preliminary decree and ordered that the partnership shall stand dissolved as from 2nd of May, 1978 and appointed Mr. J. S. Uppal, Advocate as Local Commissioner to take the accounts. The plaintiffs were not satisfied with the judgment and decree of the trial Court and filed an appeal. The learned Additional District Judge, upheld the preliminary decree and modified it to the extent that the Local Commissioner shall take control and apply the assets of the firm. The defendant-respondents have filed

this regular second appeal against the judgment and decree of the learned District Judge.

3. It has been argued on behalf of the appellants that during the pendency of the suit in the trial Court, the plaintiffs made application for appointment of a receiver, the same was declined. During the pendency of the appeal, they moved another application for appointment of the receiver, this was also rejected by the lower Appellate Court, The prayer for appointment of a receiver having been declined, the lower Appellate Court directed the Local Commissioner to take control of the assets of the partnership and apply the same in accordance with the provisions of Section 48 of the Indian Partnership Act (hereinafter called the Act). These are the functions of a receiver and not of a Local Commissioner. The Local Commissioner can only take accounts and he cannot take possession of the assets of the partnership and apply them in accordance with the provisions of the Partnership Act. In support of this, the learned counsel has relied on a decision of the Supreme Court in *Padam Sen and Another Vs. The State of Uttar Pradesh*, , wherein it has been held as under:--

"Court has no inherent powers u/s 151 to appoint a Commissioner to seize account books in the possession of the plaintiff, upon an application by the defendant that he has apprehension that they would be tampered with."

4. On the other hand Mr. H. L. Sarin, teamed counsel for the respondents, has argued that the partnership stood dissolved from 2nd of May, 1978. After this date the defendant-appellants had no right to manage the affairs of the partnership. They could not deal with the assets of the firm. In view of the provisions of Sections 46, 47 and 48 of the Act, after the dissolution of the firm, however, a partner has a right to have the property of the firm applied in the payment of debts and liabilities of the firm and to have the surplus distributed amongst the partners. After the dissolution, the partners can bind others only to the extent it is necessary to wind up the affairs of the firm and to complete the unfinished transactions. The mode for settling the accounts, after the dissolution, has also been given. He has also placed strong reliance on the language of Form 21 in Appendix D to the Civil P. C. It has been specifically given in this form that while passing a preliminary decree, the Court shall order that the person named therein shall be the Receiver of the partnership estate and effects in the suit and do get in all the outstanding book-debts and claims of the partnership. According to the learned counsel, this shows that after the dissolution of the partnership, the assets have to be taken over by a Receiver. According to Mr. Sarin, in the present case, the word "Local Commissioner" has inadvertently been used. The learned lower Appellate Court in fact had meant to use the word "Receiver". In any case this did not make any difference. The Local Commissioner could be ordered to take over the assets of the firm. The provisions of Rr. 11 and 12 of Order 26 of the Civil P, C. do not in any way suggest that the Local Commissioner is only to take over the accounts. In fact under Rule 11, the Court can issue a commission to make examination of the accounts or adjustment thereof. The

adjustment of the accounts can be made effectively after taking into possession the assets of the dissolved partnership. When the partnership has been dissolved, the persons in possession of its assets have no right to retain them, These have to be applied in accordance with Section 46 of the Act and only a Receiver or Local Commissioner appointed by the Court can perform these functions. He has also contended that the decision in Padam Sen's case (supra) is not applicable to the facts and circumstances of the present case.

5. I have given my thoughtful consideration to the rival contentions made by the learned counsel for the parties, A combined reading of Sections 46 and 48 of the Act shows that after dissolution of the partnership, the partners cannot manage its affairs. One partner cannot bind the others. The assets have to be applied in the discharge of debts etc, and the residue, if any, has to be distributed amongst the partners, In accordance with the provisions of Section 48 of the Act, only a Receiver or a Local Commissioner appointed by the Court can perform these functions. This role can be played only by disinterested neutral persons. The partners in control of the assets of the dissolved partnership cannot perform this role. This policy has been expressed clearly in form 21 Appendix D to the Code of Civil Procedure. Undoubtedly this form is not mandatory, it is only directory. This is a model form and cannot be termed to be statutory in the strict sense, However, this gives an indication as to what steps should be taken while passing a preliminary decree. The learned Additional District Judge has acted in conformity with the intentions of the Legislature expressed in Form 21 of Appendix D to the Civil P. C. Even if this form is to be taken to be directory and is the Court acts in accordance with this form, the decision cannot be questioned. It cannot be said that the decision in such a case will be against law. The powers of a Commissioner given in Order 26 of the Civil P. C., are not exhaustive. The Court can direct the Commission to discharge the functions prescribed by Section 48 of the Act.

6. The fact that the applications for appointment of a Receiver were dismissed by the trial Court and by the lower appellate Court is of no consequence. Those applications were for appointment of a Receiver during the pendency of the suit and the appeal respectively. However, the directions to the Local Commissioner to take control of the assets of the partnership, have been given after the passing of the preliminary decree. The order had been passed to meet the entirely different situation.

7. The ratio of decision in Padam Sen and Another Vs. The State of Uttar Pradesh, does not help the appellants. Their Lordships were dealing with the inherent powers of the Courts u/s 151 of the Civil P. C. to appoint Commissioners. However, in the present case, the impugned direction is given in conformity with form 21 of Appendix D, prescribed by the Civil P. C. itself.

8. For the foregoing reasons, I do not find any merit in this appeal and dismiss the same with no order as to costs.

9. Appeal dismissed.