(1987) 03 MAD CK 0038

In the Madras High Court

Case No : O.S.A.No.260 of 1986

J. Prasanna Chandrasekaran — APPELLANT

Vs

M/s. Mohan Steel Corporation and 3 others — RESPONDENT

Date of Decision : 16-03-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 30 Rule 1, Order 30 Rule 30
Contract Act, 1872 — Section 45
Presidency Towns Insolvency Act, 1909 — Section 108, 99

Citation : (1987) 03 MAD CK 0038

Hon'ble Judges : V. Ramaswami, J;Bellie, J

Bench : Division Bench

Advocate : R. Sukuntha Raj, for the Appellant; G. Nandalal, for the Respondent

Judgement

1. I.P.No.5 of 1984 was filed by three different creditors under S.108 of the Presidency Towns Insolvency Act, praying for an order for administration of the estate of one deceased Ramalingam. The first-petitioner is a partnership firm; the second-petitioner is a private limited company and the third-petitioner is again a partnership firm. The respondent is stated to be the grandson of the late Ramalingam, in respect of whose estate, the order of administration is prayed for. The first-petitioner-partnership is described as M/s. Mohan Steel Corporation by its partner Kailash Chand Gagoria, No.4 Ellava Mudali Street, Madras-600 081. In the first paragraph of the petition itself it is stated that Mohan Steel Corporation is a registered partnership concern and the firm is carrying on as dealers in old iron and steel scrap. It is further stated that Kailash Chand Gagoria was a partner and the other partners of the firm are (1) Baburam Gagoria (2) Momochand Gagoria and (3) Subesh Chand Gagoria, all sons of N. Gagoria. When the matter was pending Kailash Chand Gagoria, the partner who was shown as representing the partnership, who is also the son of S. Gagoria, died. On the assumption that the other partners, whose names had already been disclosed in the Petition, should be brought in as representing the first-petitioner-partnership firm, Application No. 240 of 1986 was filed for permitting to amend

the cause title by substituting the names of the three other partners, referred to above, as representing Mohan Steel Corporation, in the place of Kailash Chand Gagoria. A counter-affidavit was filed by the respondent-appellant herein contending that the Application was not maintainable under S. 99 of the Presidency Town Insolvency Act. This contention was overruled by the learned Judge and the Application was ordered. It is against this order of the learned Single Judge the present Appeal has been filed. The learned counsel for the appellant contended that the first petitioner was not properly represented even at the time when originally I.P.No.45 of 1984 was filed. That is when there are two or more partners in firm, all the partners should have figured as representing the partnership and the petition filed as if it could be represented by one partner itself was not in order and non maintainable. In any case, it is not possible now to substitute in their place, the other three partners and that therefore the Petition, so far as the first-petitioner is concerned, should have been dismissed. In this connection, the learned counsel referred to S. 99 of the Presidency Towns Insolvency Act as also 0.30 R.1 of the CPC and 0.5 of the Rules framed under the Presidency Towns Insolvency Act. S. 99 of the Presidency Towns Insolvency Act reads as follows:

Proceedings in Partnership name: (1) Any two or more persons, being partners, or any person carrying on business under a partnership name; may take proceedings or be proceeded against under this Act in the name of the firm: provided that in that case the Court may on application by any person interested, order the names of the person who are partners in the firm, or the name of the person carrying on business under a partnership-name, to be disclosed in such manner and verified on oath or otherwise, as the Court may direct.

Clause (2) of that provision is not relevant for our purpose. 0,30 R.1 of the CPC reads as follows:

1. Suing of partners in name of firm: (1) Any two or more persons claiming or being liable as partners and carrying on business in India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any Party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued as partners in the name of the firm tinder sub-R.(1), it shall, be in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

According to the learned counsel, Mohan Steel Corporation, the partnership firm consisted of four partners. Therefore, in terms of S. 99 and 0.30 R.1 any two or more persons should have been shown as representing the firm when the original petition was filed and the firm shown as represented by Kailash Chand Gagoria, one of the partners alone; was not valid. We have no doubt that the learned counsel for the appellant is not well founded in this contention. As may be seen from the provisions of O.30, R. 1 of the Code of Civil Procedure, in the case of any two or more person claiming to be partners and carrying on business in India they may sue in the name of the firm of which such persons are partners. Sub-Clause (2) of this Rule only requires where the persons sue as partners in the name of their firm the pleadings or other documents required under the Code to be signed, verified and certified by the plaintiff, could be signed, verified or certified by any one of the partners. On a plain reading of this provision therefore, the suit could be filed in this case by Mohan Steel Corporation, describing it as a partnership firm carrying on business at Ellaya Mudali Street, Madras-600 081. In fact, appendix :A'' to the Code, which gives the forms relating to description of parties in particular cases, after having stated as to how in other cases it is to be done. In the case of a partnership firm it states that it should be described as ''AB a firm carrying on business in partnership at... (Place),'' Thus, the normal way of describing a firm, when it files a suit under 0.30 R.1 of the CPC is merely to give the name of the firm and describe it carrying on business in partnership at a particular place. Though we do not consider it necessary to refer to any authority for this purpose, as on a plain reading of the provision that is very clear, we may notice a few of the decisions reported in Schanlal Pachisia and Co. v. Bilasray Khemani and others AIR 1954 Calcutta 179 M/s. Bholalbai Bhogilal v. Rattan Chand and others AIR 1958 Punjab 260 M/s. Ram Kumar Ram Chandra v. The Dominion of India AIR 1952 Allahabad 695 and Mohammadali Kunju Ahammed Kunju v. Abraham George and others where AIR 1953 Travancore-Cochin 209 this point was dealt with. In Solanlal Pachisit and Co. v. Bilasrey Khemani and others AIR 1954 Calcutta 179 relying on an earlier decision of that Court, as also the decision of Nagpore High Court and Rengoon High Court, Bose, I. held that the correct way of bringing a suit under R.1 of O.30 of the CPC is to bring it in the name of the firm as plaintiff and no other name should be mentioned as plaintiff at the head of the plaint, but in the signature and verification of the plaint, the persons signing and verifying should describe himself as one of the partners of the firm which brings the suit. A Division Bench of the Punjab High Court in the decision reported in M/s. Bholabhi Bhogilal v. Rattan Chand and others AIR 1958 Punjab 260 after noting that 0.30 was introduced to the Code as an exception to the provisions of S. 45 of the Indian Contract Act and it is an enabling provision providing that a suit could be brought in the name of a firm held that what is contemplated by 0.30 R. 1 is that two or more persons under a firm may sue without mentioning the names of the individuals and the correct way of bringing a suit under O.30 R.1 was to bring it in the name of the firm as plaintiff, and no other name need be mentioned, as plaintiff, at the head of the plaint, but in the signature and verification of the plaint the persons signing and verifying should describe himself as one of the partners of the firm which brings the suit. In the other two decisions, namely, M/s. Ram Kumar Ram Chandra v. The Dominion of

India AIR 1952 Allahabad 695 and Mohammadali Kunju v. Abraham George and other AIR 1953 Trav. Cochin 209 the Judges further considered as to the effect of giving the name of the firm describing it as a firm carrying on business in partnership and stating that it is represented by ''X'' a partner. In the first of the decisions, it was held that even though the firm has got no legal entity and a firm it is not entitled to institute a suit, a suit can be filed by the firm in accordance with the provisions contained in 0.30, and when such a suit is instituted by the firm, it is to be described as ''A.B., a firm carrying on business in partnership at...''. Such a suit is really a suit by the partners of the firm collectively and in the other decision in Mohammed-ali Kunju Ahammed Kunju v. Abraham George and others 2, it was held that describing the cause-title of the suit the name of the plaintiff should be the name of the firm only without addition of the name of the partner or manager suing although addition of such a name does not matter in the least and it will not affect the legality of the institution itself. Therefore, in this case the petition No.45 of 1984 filed by Mohan Steel Corporation, a firm of partnership describing it by its partner Kailash Chand Gagoria, Madras-81 was in order. It was also not necessary to have included Kailash Chand Gagoria in cause title and it is enough that he verified the Petition at the end as a partner of the firm.

2. R.4 or 0.30 of the CPC provides that notwithstanding anything contained in S. 45 of the Indian Contract Act, 1872, where two or more persons may sue or be sued in the name of the firm under the provisions of 0.30 and any of such persons dies, it shall not be necessary to join the legal representatives of the deceased as a party to the suit. In this case, there was no need for bringing the other three partners as representing the partnership firm. We may also notice R.2 or 0.30, which requires that where a suit is instituted by partners in the name of their firm, the plaintiff or the pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all persons constituting the firm on whose behalf the suit is instituted. In this case that question does not arise because even in the petition all the four names of the partners, including the one shown in the cause-title, were declared and it was known to the appellant herein. The present Application has been filed only by way of abundant caution bringing in all the names of partners and that therefore no prejudice also could be said to have been caused to the appellant by ordering this Application and showing them as partners of the partnership firm. It may also be mentioned that though 0.30 R.1 is an enabling provision, enabling the partners to file the suit in the name of the partnership without disclosing their name in the cause title itself, it does not prohibit the filing of such application with the names of the partners. If they had disclosed in the cause-title, there would be no need for the respondent or defendant in the Petition to ask for the names of the partners invoking his right under R.2 of 0.33. In this case, the partners wanted to show themselves as partners in the partnership firm in the cause-title itself, which they are entitled to and therefore that could not be denied. The provisions of S. 99 of the Presidency Towns

Insolvency Act is similar to 0.30 R.1 of the CPC and the same interpretation also follows in respect of the same. 0.5 of the Rules framed in the Presidency Towns Insolvency Act in no way provides for any contrary procedure from that provided in 0.30 or S.99. It was next contended by the learned counsel for the petitioner that when a partner dies the partnership itself will get dissolved, unless there is a provision to the contrary in the agreement between the partners and in this case since there is no evidence of any agreement between the partners that the partnership will continue in spite of the death of a partner, the other partners could not be permitted to bring themselves on record and in any case the first-petitioner becomes a dissolved partnership firm and could not pursue this petition. We are unable to agree with this contention of the learned counsel. We have already referred to R.4 of 0.30 of the Code of Civil Procedure. There is no dispute and there could be no dispute that the provisions of 0.30 do apply to the proceedings initiated under the provisions of the Presidency Towns Insolvency Act, and R.4 provides that on the death of a partner it shall not be necessary to join the legal representative of the deceased to the suit. The ratio of this provision itself shows that the fact that the death brings in a dissolution of the partnership itself will not affect the already instituted proceedings in the name of the firm. It will be only considered as a partnership firm if at all dissolved and represented by the erstwhile partners. The debt is not wiped out and the liability of the debtor does not get extinguished by death of a partner and dissolution of the firm as such. In the circumstances, and on this ground we could not say that the Petition is not maintainable. For the foregoing reasons, the Appeal fails and it is accordingly dismissed. But, there will be no order as to costs.