

(1941) 07 BOM CK 0004
In the Bombay High Court
Case No : O.C.J. Suit No. 431 of 1935

Krishnaji Bharmalji and Co.

APPELLANT

Vs

Abdulrazak Ahmedbhoy

RESPONDENT

Date of Decision : 07-07-1941

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16
Partnership Act, 1932 — Section 19(2)(c)

Citation : (1941) 43 BOMLR 888

Hon'ble Judges : Kania, J

Bench : Single Bench

Judgement

Kania, J.—This is an application by the assignee of a decree under Order XXI, Rule 16, Civil Procedure Code, 1908. The suit was filed by the plaintiffs who were moneylenders against the defendants. They obtained a decree for Rs. 4,519-9-0, interest and costs, on January 24, 1936. It is alleged that the plaintiff firm has assigned this decree by a writing dated May 7, 1941. The consideration therein recited is Rs. 2,000. The defendants' objections are two: (1) that the assignment is executed only by Seremal Krishnaji and u/s 19, Sub-section (2), Clause (c), of the Indian Partnership Act, 1932, one partner in the plaintiff firm had no authority to do so; and (2) that there was an agreement between the plaintiff firm and the defendants which prevented the enforcement of the claim against defendant No. 1. This second contention need not be gone into at this stage as the application is only under Order XXI, Rule 16.

2. The assignee contends that a partner in a firm has implied authority to transfer a debt due to the firm and the present transaction amounts to nothing more than that. In his affidavit Seremal contends that he had express authority to enter into this transaction. That is based on two grounds: (1) that Marwadi moneylenders' firms have such authority; and (2) in this particular case his partners had expressly authorised him. As regards this last contention I must hold against the assignee. With regard to the implied authority of a partner in Marwadi moneylending firms the contention raises a question of custom. There is

no affidavit, except the statement of Seremal, in support of it, and a custom of this far-reaching effect cannot be established by the bare word of an interested party only. In his affidavit Seremal has made two statements on oath. The first is that he himself had signed the plaint, and, secondly, that he himself had made the application for execution. He has contended that this was done because each partner in his firm had authority to do all acts. On looking at the two documents it is clear that these statements are untrue. In view of these statements of Seremal I am unable to accept his statement about the existence of a custom either in his firm or the Marwari moneylending firms. I am unable to rely on his statement about his other partners giving him express authority. It may be noted that although this matter has been pending for many days, none of the other partners, whose names are mentioned in the affidavit, has stated that Seremal had express authority to execute the assignment in question. There is no document to show such express authority.

3. This leaves the question of implied authority. It cannot be disputed that a partner in a trading firm has a right to assign a debt. This is an ordinary function of a partner and a transaction in the ordinary course of business of a partnership firm. But as a matter of policy the legislature has enacted that a partner has no implied authority to compromise or relinquish any claim or a portion of a claim by the firm. The effect of the assignment of May 7, 1941, is that the claim of the plaintiffs against the defendants for Rs. 4,519-9-0 is assigned to the applicant for Rs. 2,000. It is true that the defendants continue to be liable for the full amount of the decree to the assignee under the assignment. The fact, however, remains that a portion of the claim of the plaintiff firm against the defendants, viz. the difference between Rs. 4,519-9-0 with interest and costs and Rs. 2,000, is relinquished by the plaintiff firm. To that extent the plaintiff firm has suffered a loss and it appears to me clear that having regard to the words used in Section 19(2)(c) a partner has no implied authority to do so. *Nagappa v. Bhagawanji Rasaji Firm* (1936) ILR 59 Mad. 1036 deals with this question amongst others. It is there pointed out that an assignment of this nature, which involves the inclusion of a third party, does not alter the nature of the transaction, and it still continues to be a compromise or relinquishment of a portion of the claim by the assignor firm against the debtor.

4. In my opinion this notice therefore fails and is dismissed with costs. Counsel certified. Two sets of costs allowed.