

(1995) 04 MAD CK 0107
In the Madras High Court
Case No : Appeal No. 219 of 1985

M/s. Vaiyapuri Mudaliar and Sons, Avanashi and others	APPELLANT
Vs	
M/s. Sri Arunodhaya textiles, Erode and others	RESPONDENT

Date of Decision : 06-04-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148(A)
Evidence Act, 1872 — Section 114, 115
Partnership Act, 1932 — Section 32(1), 43(1)

Citation : AIR 1996 Mad 19 : (1995) 2 LW 891

Hon'ble Judges : Ar. Lakshmanan, J; Abdul Hadi, J

Bench : Division Bench

Judgement

Ar. Lakshmanan, J.—The unsuccessful plaintiffs are the appellants in this appeal. The 1st plaintiff is a firm carrying on a rice mill business at Avanashi. Plaintiffs 2 to 6 are the partners of the said firm, being the sons and grandsons of one V. S. Vaiyapuri Mudaliar. The 1st defendant is a firm carrying on a wholesale cloth business at Erode. The same was started during 1968. The partners of the said firm were composed of the family members of V. S. Viyapuri Mudaliar and T. R. Arthanari Mudaliar. On 7-5-1979, T.R. Arthanari Mudaliar's widow the 5th defendant and his last son the 6th defendant have been taken as partners. The 1st defendant firm was managed by T. R. Arthanari Mudaliar and A. Balasundaram till the former's death on 7-5-1979 and thereafter by defendants 2 to 6.

2. According to the plaintiffs, the profits and other sums due by the 1st defendant firm to plaintiffs 2 to 6 used to be credited from time to time in the 1st defendant's firm's accounts in the firm name of M/s. Vaiyapuri Mudaliar & Sons, the 1st plaintiff, since plaintiffs 2 to 6 have been carrying on business in partnership in the said firm name instead of in the individual names. The same procedure and practice was also adopted in the books of the 1st plaintiff's firm for the sake of convenience and pursuant to the Understanding between the parties. It is the case of the plaintiffs that plaintiffs 2 to 6 retired from the 1 st

defendant firm with effect from 13-4-1979 and a sum of Rs. 3,06,973.40 was found owing by the 1st defendant firm to plaintiffs 2 to 6 towards the share of their profits together with interest on the same, besides a sum of Rs. 52,627.30 towards their share capital. The said two sums were also shown as outstandings in the 1st plaintiffs accounts as being due by the 1st defendant firm. T. R. Arthanari Mudaliar who was in the management of the firm, undertook to pay the said sum together with interest at 15% on the same and also the share capital of Rs. 52,627.30 to plaintiffs 2 to 6 as early as possible. Unfortunately, he died on 7-5-1979 and the 1st defendant firm was reconstituted with defendants 2 to 6 as its partners, who also agreed to discharge the suit liabilities.

3. It is the further case of the plaintiffs, that pursuant to the undertaking, the 1st defendant has been remitting into the accounts of the 1st plaintiff firm, for and on behalf of plaintiffs 2 to 6 amounts from time to time by means of cash, cheques and drafts in liquidation of their liability. Further, the defendants have also got to pay a sum of Rs. 52,627.30 towards refund of share capital to plaintiffs 2 to 6 together with interest at 15% per annum. In spite of repeated requests, the defendants did not pay the amounts outstanding. The plaintiffs issued a registered lawyer's notice dated 15-12-1981 to defendants 2 to 6 calling upon them to pay the aforesaid sums. The 2nd defendant alone sent a reply dated 5-2-1982. The plaintiffs prayed for a decree directing the defendants to pay plaintiffs 2 to 6 the suit claim of rupees 2,85,610.14 together with interest at 15% per annum on the sum of Rs. 2,85,610.14 from the date of suit till date of payment together with costs.

4. Defendants 1 and 3 to 6 filed a common written statement. According to them, plaintiffs 2 to 6 did not retire from the 1st defendant firm. The 1st defendant firm is a partnership at Will. Section 32 of the Indian Partnership Act, 1932 (hereinafter referred to as the Act) inter alia interdicts that any partner of a firm at Will can retire from the firm giving notice in writing to all the other partners of the firm of his intention to retire. No such notice was ever given nor even claimed to have been given by plaintiffs 2 to 6. There is no legal, factual or valid retirement of plaintiffs 2 to 6 from the 1st defendant firm.

The death of T. R. Arthahari Mudaliar also did not dissolve the firm in law, nor plaintiffs 2 to 6 ceased to be the partners of the 1st defendant firm. Plaintiffs 2 to 6 were receiving the payments only on account expressing their commitments and urgent need. There was no agreement to pay compound interest.

The interest claimed at 15% at compound rate is unconscionable and not enforceable in a court of law.

5. The 2nd defendant adopted the written statement filed by the other defendants.

6. The 5th plaintiff filed a reply statement on 4-11-1983 reiterating the contentions raised in the plaint. It is stated therein that the plaintiffs 2 to 6 retired from the partnership with effect from 13-4-1979, corresponding to the

Tamil New Year, by common consent between the partners and pursuant to an agreement and undertaking on the part of T. R. Arthanari Mudaliar and his group to pay the plaintiffs" due towards their profits and share capital as early as possible. It is also significant to mention that the defendants have been making payments from time to time in liquidation of their liabilities. The 5th plaintiff also filed another reply statement on 20-7-1984 stating that by and on behalf of defendants 2 to 6, oral and documentary admissions have been made admitting and acknowledging retirement of plaintiffs 2 to 6 from the 1st defendant firm on and from 13-4-1979, and the defendants, after the said retirement, have reconstituted the 1st defendant firm. By their admissions and conduct, defendants 2 to 6 have accepted and acknowledged the retirement of plaintiffs 2 to 6 from the 1st defendant firm. Therefore, they are estopped in law from now denying the retirement of plaintiffs 2 to 6 from the 1st defendant firm.

6A. On the basis of the above pleadings, the learned Additional Subordinate Judge, Erode, framed the necessary issues for trial. On behalf of the plaintiffs, Exs. A.1 to A.72 were marked and on the side of the defendants, Exs. B.1 to B.25 were marked. Plaintiffs 2 and 5 examined themselves as P.Ws. 1 and 2 and the 3rd defendant as D.W. 1. The learned Subordinate Judge by his judgment dated 31-8-1984, dismissed the suit. Aggrieved against the judgment and decree of the court below, the plaintiffs have filed the present appeal.

7. We have heard Mr. G. Masilamani, learned Senior Counsel for the appellants and Mr. V. Srinivasan learned Counsel for the respondents. We have been taken through the entire pleadings and the evidence, both oral and documentary. On a perusal of the pleadings, etc., and of the arguments of the respective counsel, the following three points would arise for our decision in this appeal :

1. Whether plaintiffs 2 to 6 had retired from the 1st defendant firm with effect from 13-4-1979?
2. Whether plaintiffs 2 to 6 are entitled to the amounts prayed for in the plaint ?
3. Whether, the plaintiffs are entitled to interest and if so, for what period and at what rate?

8. Point No. 1 :-- Section 32 of the Act provides for the methods of retirement of partners. It runs as follows :

"32, Retirement of a partner : (1) A partner may retire.

(a) with the consent of all the other partners.

(b) in accordance with an express agreement by the partners, or

(c) where the partnership is at Will, by; giving notice in writing to all the other partners of his intention to retire."

9. The plaintiffs" case was that plaintiffs 2 to 5 retired from the 1st defendant firm with effect from 13-4-1979 with the consent of all the partners. According to

Mr. G. Masila-mani, learned Senior Counsel for the appellants/plaintiffs, the plaintiff's case is covered by Section 32(1)(a) of the Act. In support of his contention Mr. G. Masilamani invited our attention to Exs. A-1, A-2, A-45, A-47, A-44, A-72, A-17, A-69 and A-70.

10. Ex. A.1 is a letter from the 2nd, plaintiff to T. R. Arthanari Mudaliar, expressing the desire of the first group to retire from the 1st defendant firm with effect from 13-4-1979. This letter is dated 9-3-1979 and signed by the 2nd plaintiff. Ex. A.2 is the reply from T. R Arthanari Mudaliar to the 2nd plaintiff accepting to take over the 1st defendant firm with effect from 13-4-1979 and to pay the amounts due to the plaintiffs from the firm. It was further stated in that letter that the date of payment could be settled by a personal discussion. It is not out of place to mention that the date of payment decided before the end of December, 1979, as disclosed in Ex. A.46 dated 24-6-1979. Ex. A.45 is the letter by the 3rd defendant to the 5th plaintiff requesting for time for payment and also requesting the plaintiffs to bear with them for the delay in making the full payment.

11. Ex. A.46 is a letter sent by Registered Post with Acknowledgment Due dated 24-8-1979 by the 3rd defendant to the 5th plaintiff expressing regret for the inability to pay the amount as undertaken and pleading for more time for making full payment. Along with Ex. A.46, a sum of Rs. 50,000/- was sent by the 3rd defendant to the 5th plaintiff under Demand Draft No. 871711 dated 24-8-1979 drawn on State Bank of India. Ex. A.47 is by the 3rd defendant to the 5th plaintiff dated 21-7-1980 expressing regret for the delay in making payment and also undertaking to pay the amount as early as possible and requesting for adjustment and co-operation. Ex. A.44 dated 5-10-1981 is the plaint in O.S. No. 3033 of 1981 on the file of the District Munsif, Erode. That suit was filed by the 2nd defendant herein as plaintiff against defendants 1 and 3 to 6 herein, as defendants. That suit was filed for taking true and proper accounts of the 1st defendant firm and for directing the defendants therein to pay the 1st defendant herein his share as may be ascertained by court. The 2nd defendant herein as plaintiff has admitted categorically the retirement of plaintiffs 2 to 5 herein from the 1st defendant firm in paragraph 3 of the plaint.

12. Ex. A.72 is dated 3-4-1980. It is an application for registration of the firm for the purpose of the Income Tax Act, 1961, to the Income Tax Officer, Circle I, Erode. The application was made by the 1st defendant wherein the particulars of the firm as constituted on the date of the said application, share of the partners in the income or loss of the firm have been furnished in Column "A" to the schedule. In Column "B" of the Schedule, particulars of the apportionment of the income or loss of the firm for the relevant previous years between the partners, who in that previous year were entitled to such income or loss, have been mentioned. In Column B of the Schedule, the names of the plaintiffs 2 to 6 and their shares were also mentioned. Likewise, the names of T. R. Arthanari, and defendants 2 to 4 have also been mentioned. This document would clearly show

that the defendants have constituted their own firm, only with the defendants and continued the business.

13. Ex. A. 17 is a caveat filed by the 3rd defendant herein in the Sub-Court, Erode. Likewise, Ex. A.69 is the caveat filed in the District Munsif Court, Erode. Ex. A.70 is another caveat filed by the defendants in the Sub-Court, Erode. It is seen from Ex. A.17 filed by the 3rd defendant herein as a partner of the 1st defendant firm, that the same was filed against plaintiff's 2 to 5 herein. Paragraph 4 of Ex. A.17 is very relevant to be noticed for the purpose of this case. It reads as follows :

"The partnership business was running smoothly for some time from the date of commencement on 14-4-1975. On 13-4-1979, the respondents herein have retired from the partnership and the firm Sri Arunodhaya Textiles was reconstituted with induction of a new partner and there was a death of another partner by name Arthanari Mudaliar, father of applicant. Though the respondents have retired from the partnership after settlement, the applicant apprehends that at the instigation of one T. R. Sellamuthu, the respondents may file any suit for alleged dissolution of partnership or for rendition of accounts of a dissolved firm and may seek interim orders to harass and humiliate the applicant and his brothers. Hence the applicant is filing this application invoking the provisions of Section 148(A) of C.P.C."

14. Mr. V. Srinivasan, learned Counsel for the respondents/defendants contended that under a partnership at Will like the 1st defendant firm, Section 32(1)(c) alone shall apply. According to him, the retirement is possible only as provided under Sec. 32(1)(c) of the Act. Section 32(1)(a) and (b) of the Act, according to Mr. V. Srinivasan, do not apply to the case on hand and that the same will apply to all the other partnerships other than the partnership at Will. The language of Section 32(1)(c) of the Act will be different if Section 32(1)(a) and (b) of the Act are available even for the partnership at Will. According to Mr. V. Srinivasan, Sec. 32(1)(c) of the Act would have specifically stated that it would apply as an additional provision in respect of the partnership at Will also. The language would have been "where the partnership at Will, in addition to the above modes, by giving notice in writing, etc." The words "in addition to above modes are not available or found in Section 32(1)(c) of the Act and accordingly, the said section is the only provision available to in respect of partnership at Will. Therefore, Mr. V. Srinivasan contended that there is no need to go into the question whether Section 32(1)(b) of the Act will apply or not. He would further state that there is no plea that the plaintiffs have retired by consent of all the partners. He also cited the decision reported in Banwari Lal Vs. Roop Kishore and Another, , in support of his contention.

15. On the facts, Mr. V. Srinivasan, learned Counsel for the defendants submitted that Ex. A.1 letter dated 29-3-1979 written by the 2nd plaintiff to T. R. Arthanari Mudaliar contains only the intention or desire to retire and not a notice of retirement. In that letter, the 2nd plaintiff does not say as to who are the

persons proposing to retire and that Ex. A.1 has been sent on their behalf. The other partners also have not given any such notice. This notice is not addressed or sent to any of the other partners. It is written only to T. R. Arthanari Mudaliar. Section 32(1)(c) of the Act contemplates notice being given in writing to the retiring partner to all the other partners. No such notice has been given by all the partners who wanted to retire. Ex. A.1 also is not a notice addressed to or sent to all the parties. Further, according to Mr. V. Srinivasan, there is no unconditional retirement. It is only a desire to retire and not an intimation that as and from a particular date that partners would be unconditionally retiring.

16. Referring to Ex. A-2 which is a reply to Ex. A.1, Mr. V. Srinivasan would submit that there is no unconditional acceptance of the retirement from 13-4-1979. T. R. Arthanari Mudaliar had only agreed that they are willing to take the responsibility entirely. Nowhere it is stated that there is to be retirement of other partners. It is further argued that Ex. A.1 is only a conditional letter and there has been admittedly no meeting between T. R. Arthanari Mudaliar or the other partners and plaintiffs 2 to 6 at any time. Therefore, T. R. Arthanari Mudaliar, who is only one of the partners, is not authorised to give any such letter authorising the acceptance of the retirement on behalf of the other partners. T. R. Arthanari Mudaliar does not also purport to state that he is acting with the consent or on behalf of the other partners. There was no plea that he was ever authorised to act on behalf of the other partners. Further, accounts have also not been settled and or the mode of settlement has not been agreed.

17. It was pointed out by Mr. V. Srinivasan that even in the entire evidence there is no reference to other partners having agreed to pay the amount standing to the credit at any time or agreeing for retirement. So, the question of factual consent by the other partners of the retirement of plaintiffs 2 to 6 does not arise. It was also argued that it is highly improbable for plaintiffs 2 to 6 to have met T. R. Arthanari Mudaliar or his having agreed or undertaken to pay the alleged balance to the credit of plaintiffs 2 to 6 in the accounts of the 1st defendant or his agreeing to retirement of the partners. Further, it is contended that T. R. Arthanari Mudaliar is; not competent or authorised to accept or in fact accepted the retirement of other partners. Mr. V. Srinivasan also cited the decision reported in Banarsi Das Vs. Seth Kanshi Ram and Others, . We are unable to accept the contention of Mr. V. Srinivasan. His contention was that to a partnership at Will like the 1st defendant, Section 32(1)(c) of the Act alone shall apply. This argument, in our opinion, is without any force or substance, since, if this argument is upheld, (a) Section 32(1)(a) of the Act shall become inoperative and otiose, and (b) in all cases of partnership at Will, the partners cannot retire even with the consent of the other partners.

18. When the partnership itself came into being only by consent of all partners, why then, a partner cannot retire by consent of all other partners? Further, when all partners consent for retirement, there is no need to issue any notice. Notice to consenting partners would be meaningless, wasteful and an exercise in futility.

Consent presupposes not only prior notice and knowledge of retirement but also agreement and willingness of all partners for such retirement. While being so, compulsory written notice to other partners who have notice and knowledge of retirement and who are also agreeable for such retirement, shall serve no useful purpose and shall prove to be an empty formality and waste of time and stationary. Delegation, in our view, should be interpreted in a manner to infuse meaning, logic and usefulness and not to render it meaningless.

19. Section 32(1)(c) of the Act had been enacted to enable a partner of a partnership at Will to retire from the firm when all other partners either do not agree to the retirement of a partner or all the other partners are not readily available to give consent for the retirement. Therefore, the contention of Mr. V. Srinivasan that plaintiffs 2 to 6 can retire only by giving written notice u/s 32(1) (c) of the Act is not tenable and the same is negated and rejected.

20. Mr. V. Srinivasan relied on the decision reported in Banwari Lal Vs. Roop Kishore and Another, , to say that a partner in a partnership at Will cannot retire except by giving a notice in writing u/s 32(1)(c) of the Act. We have gone through the said decision. Even though in that case, Section 32(1)(a), (b) and (c) of the Act was referred to, these provisions were neither considered nor discussed in detail laying down the interpretation of those provisions. A passing reference was made to Sec. 32(1)(c) of the Act. In that case, a retirement of a partner with the consent of all other partners did not come up for consideration and hence Section 32(1)(a) and (c) did not fall for detailed consideration. Therefore, in our opinion, this decision is not helpful to support the contention of the defendants.

21. The decision reported in Banarsi Das Vs. Seth Kanshi Ram and Others, was cited by Mr. V. Srinivasan to say that in the case of a partnership at Will, the mere filing of a suit for dissolution of partnership does not amount to a notice of dissolution of the partnership within the meaning of S. 43(1) of the Act. We have gone through the above judgment and the facts of that case. The above decision arose u/s 43 of the Act for dissolution of a firm. In the present case, plaintiffs 2 to 6 retired from the 1st defendant firm with the consent of all other partners, which is governed by Section 32(1)(a) of the Act. The question raised by the defendants was that in a case of partnership at Will, the partners cannot retire even with the consent of all the other partners and that the only mode of retirement shall be by giving written notice to all other partners under Sec. 32(1) (c) of the Act. Therefore, the above decision relied on by Mr. V. Srinivasan has no application to the facts of this case.

22. We have already considered Exs. A-1, A-2, A-44 to A-47, A-17, A-69, A-70 and A-72 in paragraphs supra. These documents, in our opinion, clearly prove beyond doubt that the retirement of plaintiffs 2 to 6 was with the consent of all other partners. The tenor and language of the letters Exs. A-1, A-2, A-45, A-46 and A-47, the plaint Ex. A-44 and Ex. A-72, application for registration of firm for the purpose of Income Tax Act, clearly prove beyond doubt that plaintiffs 2 to 6

retires from the 1st defendant firm with the consent of all the other partners and therefore, Section 32(1)(a) of the Act alone shall apply to the facts and circumstances of the case.

23. Point No. 2: The next question is, whether the plaintiffs are entitled to the amounts prayed for in the plaint and whether the defendants have agreed to pay or undertaken to pay the balance standing to the credit of plaintiffs 2 to 6 in the books of the 1st defendant firm as on 13-4-1979. The amounts in respect of which a decree is sought for by the plaintiffs are the amounts reflected and borne out in the records and statements of accounts of the 1st defendant firm as seen from Exs. A-40 and A-41. This apart, our attention was also drawn to Exs. A-1, A-2, A-45 and A-46 by Mr. G. Masitamani which would indicate that there was no dispute about the amounts payable to the plaintiffs.

24. Ex. A-1 is the letter written by the 2nd plaintiff to T. R. Arthanari Mudaliar on 9-3-1979 wherein the 2nd plaintiff has expressed the reasons for the decision taken by them to retire from the partnership and of their responsibility to the partnership. Likewise, Ex. A-2 dated 11-4-1973, Ex. A-45 dated 17-8-1979 and Ex. A-6 dated 24-8-1979 clearly indicate that there was no dispute about the amounts payable to the plaintiffs and also the sum of Rs. 50,000/- paid on 24-8-1979 by the 3rd defendant to the 5th plaintiff by way of demand draft drawn on State Bank of India. These letters will also disclose the clear and bona fide intention of the defendants to pay the amount to the plaintiffs. Ex. A-46 clearly indicates that during June, 1979, the defendants, particularly the 3rd defendant, had discussed with plaintiffs 1 and 5 and that the defendants assured to complete the payment before December, 1979. If really, as contended by Mr. V. Srinivasan, the exact amount payable to the plaintiffs had not been determined, how then the 3rd defendant would have agreed to pay the entire amount before December, 1979. Therefore, the contention of Mr. V. Srinivasan that the amounts to be paid had not been determined is only an afterthought to postpone the payment and to protract the litigation. We have perused the written statement filed by the 1st defendant firm. The defence taken therein has a flat denial of the retirement of plaintiffs 2 to 6 from the 1st defendant firm and not, even though plaintiffs 2 to 6 retired from the 1st defendant firm, the amounts payable to them had not been determined. Therefore, the contention of Mr. V. Srinivasan has also to be rejected. Further, the amounts claimed in the plaint are exactly the same amount found in the accounts of the 1st defendant firm as due and payable to the plaintiffs. Exs. A-39 to A-41 are copies of statement of accounts signed by the 3rd defendant to the plaintiffs. Ex. A-41 relates to the accounting year 1978-79. Serial Nos. 2 to 6 therein reflect the amounts due to plaintiffs 2 to 6 on account of their share capital amount at Rs. 10,525-46 each. Similarly, serial No. 264 reflects the amount due to the 1st plaintiff.

25. Ex. A-3 is the statement of account for the period from 14-4-1978 to 13-4-1979. The same was signed by the 3rd defendant, partner of the 1st defendant firm. A sum of Rs. 3,06,973-40 was shown as the amount due to the

plaintiffs. Exs. A-1 and A-3, in our view, clearly prove beyond all reasonable doubt, that the amounts claimed in the plaint are indisputable amounts. A faint argument was advanced by Mr. V. Srinivasan that the copy of the account given by the defendants to the plaintiffs bears no date and it was not known as to when it was given and that several signed papers were taken from the defendants and that the defendants have given them to the plaintiffs in trust which have been misused for this case. Likewise, it is contended that Exs. A-46 to A-48 are not admissions of any liability and there is no admission of liability of all agreeing to pay any specific sum. The plaintiffs were paid some amounts pending finalisation of accounts and whatever was paid could not be taken to be due to them and that the same was only subject to the finalisation of accounts, Mr. V. Srinivasan further contended that if there is a settlement or agreement to pay a particular sum, it must be done by all other partners and it cannot be done by any one partner. The settlement of an ex-partner's dues is not a partnership transaction business at all, and such a transaction must be agreed to by all the remaining partners and that is not the case here and there is no evidence or even pleading of the other partners having agreed to pay. When the plaintiffs approached the defendants expressing their need of moneys and also to settle their claim, some amounts were paid since they were pressing for some payments and when the defendants were not able to keep up their promise, necessary letters were written to them to excuse as they were not able to keep up their promise. Therefore, Mr. V. Srinivasan contended that the letters written by the defendants would only show their respect and regard to the plaintiffs since they were elders.

26. Explaining the statement made by the 3rd defendant in Ex. A-17 caveat, Mr. V. Srinivasan would submit that the said statement had been made on the basis of mistaken legal position that the plaintiffs have retired, and this will not alter the legal position that there was no retirement in accordance with law. Mr. V. Srinivasan further argued that in the case of retirement of partners, the statement of account will be done only by the ordinary process of dissolution and in taking of accounts, the parties can agree as to what amounts are to be paid. Since no such agreement had been pleaded or proved the rights of the parties cannot be determined at this stage. We are unable to accept the contention of Mr. V. Srinivasan. As already discussed, in the absence of any specific pleadings in the written statement and evidence to the contrary, the amounts disclosed in the accounts of the 1st defendant firm as due and payable to the plaintiffs should be paid to them. In fact, the plaintiffs' counsel in the trial Court issued Ex. A-67 to the defendants' counsel to produce documents and accounts of the 1st defendant firm. But, the defendants wilfully failed and neglected to produce the same, perhaps with a view to suppress the true facts. Hence, we have to necessarily draw an adverse inference against the defendants. The non-production of the accounts of the 1st defendant firm and the non-sending of reply to the said notice Ex. A-9 by defendants 3 to 6 and the admission in the reply Ex. A-15 sent by the 2nd defendant in respect of the retirement of plaintiffs

2 to 6 from the 1st defendant firm with effect from 13-4-1979 would only go to show that the case of the plaintiffs is true and proved beyond doubt. In our view, the defendants had not proved their pleas which are contrary to the voluminous documentary evidence. We, therefore, answer this point in favour of the plaintiffs and against the defendants.

27. Point No. 3: Now we come to the last point for decision, viz., whether the plaintiffs are entitled to interest and if so, for what period and at what rate. It is an admitted fact that even prior to suit, the 1st defendant firm was paying interest at 15% per annum as early as 1978-79. Interest was charged at 15% per annum as could be seen from Ex. A-3 to the amounts lent by the partners viz. plaintiffs and defendants, to the firm. Therefore, in our view, the claim of interest at 15% per annum from the date of retirement is sustainable and justified.

28. The Appeal Examiner of this Court pointed out that Court-fee should be paid from the date of plaint till the date of decree in the memorandum of appeal if interest is claimed for that period also. The counsel for the appellants made an endorsement in the memorandum of appeal to the effect that the appellants restrict the claim for interest till suit for the purpose of payments of Court-fee in the memorandum of appeal. Therefore, the endorsement of the counsel for the appellants shall amount to waiver of interest only for the period from the date of plaint till the date of decree, since; only for that period Court-fee is to be paid on the memorandum of appeal and not for the period subsequent thereto. There was neither need nor necessity for the counsel for the appellants to waive interest for the period to which no Court-fee need be paid. For all the reasons, we are of the view, that the appellants counsel's endorsement amounts to waiver of interest only from the date of plaint i.e. 13-4-1982 to the date of decree of the trial Court viz., 31-8-1984. The contention of Mr. V. Srinivasan to the contrary is untenable in the light of Section 52(3) of the Court-fees Act.

29. We have gone through the judgment of the Court below. In our view, the trial Court has misread the evidence found in Exs. A-1 and A-2 and has observed in paragraph 9 of its judgment that plaintiffs 2 to 6 had not retired from the 1st defendant firm, even though a plain combined reading of Exs. A-2, A-9, A-15, A-44 to A-47 and A-69 to A-72 clearly establish that plaintiffs 2 to 6 had retired from the 1st defendant firm with effect from 13-4-1979. Further, Exs. A-1, A-2, A-34 and A-45 to A-47 coupled with the failure of the defendants to produce the accounts in spite of the plaintiffs' notice of demand under Ex. A-67, and the failure of defendants 3 to 6. to send any reply to the suit notice Ex. A-9, clearly establish that the amounts agreed to be paid to the plaintiffs were the amounts reflected in the books of accounts of the 1st defendant firm as amounts due and payable to plaintiffs 2 to 6.

30. The Court below instead of drawing an adverse inference against defendants 2 to 6 for their failure to produce the accounts of the 1st defendant firm in spite of Ex. A-67 notice to produce, had thrown the burden of producing the accounts

books of the 1st defendant firm on the shoulders of the plaintiff who had retired from the firm leaving the firm in the hands of defendants 2 to 6 as a running firm. Likewise, the Court below while interpreting Section 32 of the Act, had committed a legal error. In our view, the Court below was not right in holding that in the case of a partnership at will, the only method of retirement of a partner shall be by issuing notice u/s 32(1)(c) of the Act to all the other partners. As discussed in paragraphs supra, such an interpretation is against the plain reading of other provisions of the same section viz., Section 32(1)(a). Such an interpretation cannot be accepted. The discussion of the Court below in paragraph 12 of its judgment is not correct since the amounts claimed were the amounts reflected in books of account of the 1st defendant firm as evidenced by Exs. A-3, A-40 and A-41 and not anything more. The defendants neither pleaded nor adduced any evidence to prove that the amounts mentioned in the books of accounts of the 1st defendant firm showing amounts due to both the plaintiffs and the defendants as false entries and do not reflect the correct state of facts and figures. In the absence of such a stand and proof on the side of the defendants, the accounts of the 1st defendant firm, which are maintained in the ordinary course of business, ought to be accepted as correct and binding on the parties concerned. Consequently, in our view, the defendants shall be estopped from contending otherwise.

31. In this case, the documentary evidence adduced on the side of the plaintiffs clearly proves their case. On the other hand, Exs. B-1 to B-25 filed by the defendants are not at all helpful to disprove or disbelieve the case of the plaintiffs. Exs. B-20 to B-25 are subsequent to the suit. Exs. B-2 to B-19 are not directly germane and relevant to the issues involved in the suit since these documents relate to anterior period to the claim in the suit. On the side of the defendants, the 3rd defendant alone was examined as D.W. 1. He was a party to the document such as Exs. A-3 to A-8, A-45 to A-47, A-60 to A-64 and A-66. These documents clearly prove beyond any semblance of doubt that the 3rd defendant was managing and maintaining the accounts of the 1st defendant firm and hence it does not lie in his mouth to deny or dispute the amounts due and payable to the plaintiffs especially when the amounts claimed were only the amounts found due to the plaintiffs even as per the accounts maintained by them. The said witness D.W. 1 does not inspire confidence and acceptance. The evidence of D.W. 1 that the profit payable to the plaintiffs and the defendants was equal even though the plaintiffs had allegedly drawn out Rs. 3 lakhs from the 1st defendant firm only falsifies the case of the defendants that the plaintiffs had already drawn Rs. 3 lakhs from the 1st defendant firm. The further evidence of D.W. 1 that he gave money on or after 13-4-1979 to the plaintiffs only to help them out of their financial difficulties militates against the tenor of the 3rd defendant's letters Exs. A-45 to A-47. On the other hand, it was the 1st defendant firm managed by the 3rd defendant, after the retirement of plaintiffs 2 to 6, was in financial distress and the 3rd defendant was expressing profound regrets for his inability to pay the amounts due to the plaintiffs as undertaken

and was pleading for more time. It is apparent, that the 3rd defendant would not have used such a language if he was lending money to the plaintiffs as a help or assistance or that the amounts payable to the plaintiffs were not a definite and known sum. When the 3rd defendant was confronted during cross-examination with Exs. A-17, A-69 and A-79 caveats filed by him wherein he has categorically admitted the retirement of (sic) instructions. When three caveats filed in the two different Courts contain such an admission, the 3rd defendant cannot be heard to deny the truth and correctness of the contents of the caveats. From this it is very much evident that the 3rd defendant has no concern or regard for truth and hence, his evidence has to be completely eschewed as unbelievable. We have also gone through the evidence of P.Ws. 1 and 2. They have cogently corroborated their case. Nothing worthwhile was elicited in their cross-examination to discredit their case.

32. For all the foregoing reasons, the judgement and decree of the Court below are set aside and the suit is decreed as prayed for, save interest for the period from 12-4-1982 to 31-8-1984. The appeal is allowed as indicated above with costs throughout.

33. Order accordingly.