

(1960) 12 MAD CK 0033
In the Madras High Court
Case No : C.C.C. Appeal No. 50 of 1957

P. Chandriah Chetti and Another	Vs	APPELLANT
Valchi Madhavia Chetty and Others		RESPONDENT

Date of Decision : 13-12-1960

Acts Referred:

Partnership Act, 1932 — Section 13, 48

Citation : AIR 1961 Mad 478 : (1961) 74 LW 256 : (1961) 2 MLJ 67

Hon'ble Judges : P.V. Rajamannar, C.J.; Venkatadri, J

Bench : Division Bench

Advocate : A. Durairaj, C. Vasudevan and P. Venkataswami, for the Appellant; A. Sundaresan, G. Ramakrishna Iyer and P. Ramanujam Chetty, for the Respondent

Judgement

Venkatadri, J.—This appeal is against the revised final decree passed by the first Assistant Judge, City Civil Court, Madras, in a suit for taking of accounts of a dissolved partnership. Some facts are necessary to show why there was a revised final decree in the City Civil Court, Madras.

2. Originally there was a partnership under the name and style of Messrs. Voora Sriramulu Chetti and Co. The partners of the said firm were three in number, Voora Sriramulu Chetti, Valchi Madhavia Chetti, the first defendant in the suit, and Voora Seetharama who died on 26-4-1933, leaving behind his widow who was added as the 2nd defendant in the suit. Pending the suit she also died and defendants 4 to 6 were brought on record as her legal representatives. Voora Sriramulu Chetti had a share of five annas, the first defendant a share of nine annas and Seetharama Chetti a share of two annas in the rupee. Sriramulu Chetti died on 16-1-1941.

The plaintiffs as representing the estate of the late Voora Sriramulu Chetti filed the suit for taking of accounts of the partnership, which became dissolved on 31st March 1941. A Preliminary decree was passed on 20-3-1945 for taking of accounts and in pursuance thereof a Commissioner was appointed and thereafter an auditor and after considering their reports a final decree was passed on

14-4-1949, directing the first defendant and the estate of the second defendant's husband in the hands of her executors defendants 4 to 6 to pay the plaintiffs a total sum of about Rs. 37000 with interest thereon from 1-4-1941 till realisation.

3. Defendants 4 and 5 preferred an appeal against the said preliminary decree. In the appeal the main point that was argued was about a debit entry of Rs. 28000 against Voora Sriramulu Chetti found in the ledger of the firm for the year 1938-39. The plaintiffs attacked this entry as false and as having been fraudulently interpolated after the death of Voora Sriramulu Chetti. It was held that the debit was properly made and that the finding of the learned trial Judge that the debit entry of Rs. 28000 could not be true and that it was fraudulently interpolated after the death of Voora Sriramulu Chetti was not right. In the end, the appeal preferred by defendants 4 and 5 was allowed and the case was remanded to the trial Judge for passing a fresh final decree.

4. While remanding the matter to the City Civil Court, further directions were given that none of the partners will be entitled to or liable for interest in respect of the credits or debits before 1-4-1939, but that, on and after that date, all the partners will be entitled to and liable for interest at 6 per cent per annum in respect of the credits or debits. The appellate court also gave a finding in regard to the stock of the firm valued at Rs. 2180-1-6 that it would belong to the firm and not to any one of the partners of the firm and that this amount will be an item divisible among the partners according to their shares. The third matter was in regard to the omission to debit a sum of Rs. 4000 odd against Voora Sriramulu Chetti which was directed to be taken into consideration at the time of the passing of the revised final decree.

5. In these circumstances, the above suit after remand came before the learned City Civil Judge, for passing a revised final decree. Once again the respective parties began to advance arguments and canvass the correctness of the accounts maintained by the first defendant and the reports of: the Commissioner and the auditor. It was not open to the plaintiffs to attack the entries in the books of accounts as they themselves admitted in the plaint that the dispute was only in regard to the debit entry subsequent to the death of Coora Sriramulu.

In effect, the plaintiffs as the executors of the late Voora Sriramulu Chetti conceded that the accounts maintained by the first defendant were kept in the regular course of business, but they only disputed as an interpolation the debit entry after the death of Voora Sriramulu Chetti. In the prior appeal the finding was that the debit entry of Rs. 28000 was not fraudulently interpolated after the death of Voora Sriramulu Chetti. The plaintiffs as the Executors of the estate of the late Voora Sriramulu Chetti could not once again dispute the correctness of the debit entry of Rs. 28000.

6. At the time of the passing of the final decree, the learned City Civil Judge had necessarily to take into consideration the debit entry of Rs. 28000. Statement of

the accounts of the respective partners were elaborately compiled by the learned counsel appearing for defendants 4 to 6. Schedule A gives the amounts overdrawn by the respective partners upto 31-3-1941. Schedule B gives the total assets available for division and the respective shares of the partners. Schedule C gives the particular of the amount to be brought in by the plaintiffs for distribution amongst the other partners. It is common ground that the late Voora Sriramulu had advanced a sum of Rs. 50000 as capital. But it is clear from the accounts and there is no dispute about it -- that Sriramulu had not only drawn every pie of this amount by 14-11-1937, but had overdrawn to the extent of Rs. 1000.

Now, as per the directions of the High Court, he had to be credited or debited with interest on the sums deposited or drawn out at the rate of 6 per cent per annum. On the revised statement filed by the learned counsel for defendants 4 to 6, the learned Judge gave a finding that a sum of Rs. 23,238-5-0 was the total overdrawings of the late Voora Sriramulu Chetti upto 31-3-1941, and that in regard to the total assets of the firm as on 1-4-1941, the late Voora Sriramulu Chetti will be entitled to a sum of Rs. 18,188-1-7. After adjusting the assets and liabilities of the late Voora Sriramulu Chetti, it was found that the plaintiffs-representing the estate of Voora Sriramulu Chelti had to bring back to the firm for distribution among other partners a sum of Rs. 5050-3-5.

7. It was not disputed that the plaintiffs received a sum of Rs. 9964-12-3 on 12-8-1942, before the institution of the suit. This sum was received by the plaintiffs from the defendants when they were called upon to pay to the estate of the said Voora Sriramulu Chetti i.e., monies due on account of capital, interest thereon and profits. Now as it is found that the executors of the late Voora Sriramulu Chetti have to bring back large sums of money to the dissolved firm, they should return this sum of Rs. 9964-12-3. Thus, in all the plaintiffs-executors of the late Voora Sriramulu Chetti were liable to bring back a total sum of Rs. 15428-3-8 as on 13-8-1942. This amount would be available for distribution among the other partners.

8. The learned City Civil Judge while passing the decree awarded interest at 6 per cent on the principal sum of Rs. 15428 from 12-8-1942 upto the date of the passing of the final decree on 11-11-55. The interest comes to Rs. 11932-2-7. The total sum thus found due and payable by the estate of the late Voora Sriramulu is about Rs. 27360-6-3 and the plaintiffs were directed to bring back this sum and put it into the hands of the defendants so as to be available for the division among the other partners, defendants 4 and 5. We are not concerned in this appeal as to what the respective shares of the defendants 4 and 5 are in that amount.

9. It is under these circumstances the plaintiffs have filed the above appeal against the judgment and decree of the learned City Civil Judge. The main contention of the appellants in the appeal is that the learned City Civil Judge committed an error in allowing interest for the sums due and payable by the

executors of the late Voora Sriramulu Chetti from 1942 upto the date of the passing of the final decree.

The effect of the decree passed by the learned Judge is that the executors should pay a large amount of interest, viz, about Rs. 11932-2-7 from the date of dissolution of Partnership upto the date of the passing of the final decree. The question that now arises for our consideration is whether the learned City Civil Judge is right in directing the plaintiffs to pay interest for any period subsequent to 12-8-1942. The learned advocate for the plaintiffs Mr. K. Krishnaswami Ayyangar contended that the plaintiffs are not liable to pay interest subsequent to the dissolution of the partnership.

10. It is well settled that it is not the practice of courts to allow interest on monies overdrawn, by partner from partnership funds, unless of course, there is a clear agreement to that effect or there are special circumstances rendering it necessary that interest should be charged. It is also equally well established that where interest on capital is payable between the partners it stops running from the date of dissolution unless otherwise agreed.

So, in taking accounts of the partnership, interest, after the date of dissolution will not generally be allowed to the partners on their respective capital, though interest was allowed by agreement during the partnership with annual rests. Learned counsel for the plaintiffs quoted the leading case on this point viz., AIR 1930 185 (Privy Council) where it was held by their Lordships of the Privy Council that interest in such a case will only be allowed from the date of the final decree and not from the date of dissolution or the filing of the suit. Lord Russell of Killowen delivering the judgment of the Board observed :

"This is not an action to recover some debt, of which it can be said that it was due at the date of the plaint. It is an action to dissolve and wind up the affairs of a partnership; and until the accounts have been taken, it is impossible to say what, if anything, is due from any partner to his co-partners. In their Lordships' opinion interest should only be allowed (there being no agreement to the contrary) to the plaintiffs from the date of the final decree by which the amount if any is found due from the defendants to the plaintiffs."

Long before the judgment was delivered by the Privy Council, in *Umamaheswara Mudaly and Others Vs. Muniswami Mudali and Others*, a Bench of this Court consisting of Crompton J. and Viswanatha Sastri, J., held that it is not the practice to allow interest on money drawn by a partner from the partnership funds -- be it capital or interest -- unless it is so provided in the deed. They also observed that interest cannot be allowed on advances after dissolution of the partnership. Subsequently, in *Palla Veeraswami and Another Vs. Bandaru Chitti Naidu and Others*, Satyanarayana Rao, J., followed the decision in AIR 1930 185 (Privy Council) and held that in a suit for dissolution of an existing partnership and for accounts, the plaintiff is entitled to interest on the amount decreed only from the date of the final decree and not from the date of the plaint. All the

above decisions were based on the principles laid down in some of the leading English cases and also text book writers.

11. In Halsbury Laws of England, Vol. 28 (Lord Simond's Edn.) in paragraph 1043, p. "538, it is stated,

"Except as provided by statute interest between partners is not allowed unless there is express stipulation, or particular course of dealing between partner as shown by the partnership books or a trade custom to the contrary. But the Court allows interest on the restitution of money from the firm which has been expended or withheld by a partner, and on secret Profits made by a partner in breach of good faith towards his partners."

While laying this principle of law on this subject at the footnote the decision in AIR 1930 185 (Privy Council) was referred to, and there is also reference to the two leading cases on this subject, viz., Barfield v. Loughborough, (1872) 8 Ch A 1, and Watney v. Wells, (1867) 2 Ch A 250. In Barfield v. Lough Borough, (1872) 8 Ch A 1, a similar question arose whether the partners are liable to pay interest after dissolution of partnership. At page 7 Lord Selbome L.C., observed,

"For charging interest against either Partner after the dissolution on sums not retained to his own use and not shown to have been received or employed otherwise than in the proper course of the realisation of the assets and liquidation of the concern, I see no ground."

In the second case 1867 2 Ch A 250 , it was held that after the dissolution, interest was no longer payable under the document; and that until division of the proceeds of the sale each Partner would take what was found to be his share, of the capital at the time of the dissolution, with the accumulation thereof, and the residue must be equally divided between them. There is also another English case, viz., Meymott v. Meymott, (1862) 31 Beav 445 . referred by this Court in Umamaheswara Mudaly and Others Vs. Muniswami Mudali and Others, . In that case the Master of the Rolls said:-

"I do not see how I can give interest; there is nothing to that effect in the partnership deed, and I must introduce something into it before I can do so."

In Lindley on Partnership, 11th Edn. p. 478, under the marginal note "interest on overdrawing and balance on hand", the learned author states:-

"Except, however, where there has been a fraudulent retention or improper application of money, it is not the practice of Court to charge a partner with interest on money of the firm in his hands. For example, under ordinary Circumstances a partner is not-charged with interest on sums drawn out by him or advanced to him."

Even under our Indian Partnership Act, as a general rule, interest on capital subscribed by partners is not allowed in taking accounts between, them unless there is an agreement Or trade custom to that effect. In such a case the fact that

the bulk of the capital or all the capital necessary for the business was subscribed by one partner will not make any difference.

12. In order to entitle a person, to interest on moneys brought by him into the partnership business, there must be (a) an express agreement to that effect, or (b) practice of the particular partnership; (usually shown from the partnership books) or other facts and circumstances from which such an agreement may be implied, or (c) any trade custom to that effect; or (d) a statutory provision which entitles him to such, interest; such, for instance is the rule in clause (d) of Section 13 of the Partnership Act, which recognises the right of a partner to charge interest on advances made by him to the firm as distinguished from capital subscriptions.

13. Bearing all these Principles in mind we have to consider whether the learned City Civil Judge is right in directing the plaintiffs to pay interest on the sums now found to be Payable. Following the well established principles of the law of Partnership in respect of interest payable on money overdrawn by Partners and the practice of the Courts not to charge a partner with interest in respect of monies overdrawn by him from partnership funds, or on the balance remaining in his hands, we hold that a partner should not be made liable for interest on his overdrawings.

Usually the Courts allow interest only under exceptional circumstances where, there is an express or implied agreement to that effect Or when a partner wrongfully withholds money of a partnership business and makes secret profits in breach of his duty to other partners, or where some partners have Withdrawn money from partnership funds and have established other businesses with that money and have made large profits. In such cases, they are not only bound to account for the profits made in the other businesses but are chargeable with interest on the money so withdrawn.

14. Here is a simple case of dissolution of partnership and claim for accounts There is no partnership deed. There are no special circumstances rendering it necessary to charge interest. There is no evidence or allegation that there is an express or implied agreement to Pay interest on the overdrawings. Under these circumstances we hold that the learned City Civil Judge was not right in directing the plaintiffs to pay interest on the amounts now found due and payable by them to defedants 4 and 5 for the period prior to the final decree. We therefore modify the decree of the lower appellate Court and direct that the plaintiffs are liable in Jaw to pay interest only from the date of the Passing of the final decree and not for the period prior to it.

15. Learned counsel for the appellants also contended that the plaintiffs should not be directed to return the sum of Rs. 9964-12-3. This amount was received by the plaintiffs before the institution of the suit from defendants 4 a"d 5 when they were called upon to render accounts of the said partnership firm and pay to the estate of the said Voora Sriramulu Chetti the moneys due on account of capital,

interest thereon and profits. Defendants 4 and 5, the surviving partners, looked into the accounts of the firm that were settled up to 31-3-1941, and a cheque on the Central Bank for the said sum of Rs. 9964-12-3 was sent to the plaintiffs along with the statement of account.

But unfortunately, the plaintiffs representing the estate of the late Voora Sriramulu Chetti filed the present suit for taking 311 account of the moneys due to the estate of the said Voora Sriramulu Chetti from the firm of Voora Sriramulu Chetti and Co., which became dissolved on 31-3-1941, and for passing a decree for the sum found due. When the matter came before the learned City Civil Judge for passing a final decree, it turned out that the plaintiffs had to bring back large sums of money including the above sum of Rs. 9974-12-3. Naturally, they should return this amount and we see no reason why we should allow the plaintiffs to retain the said sum which the plaintiffs have admittedly received before the institution of the suit.

16. The appellant's learned counsel also raised another point," namely, that a declaration should be given that the plaintiffs are entitled to or liable for interest in respect of their credits or debits even before 1-4-1939. In order to prove that they are entitled to interest even before 1939, they attempted to file some additional documents and referred to some of the admissions made by the defendants themselves that even before 1939 the partners were charging interest in respect of their credits and debits before 1939. We think that no useful purpose will be served in reopening this matter, as this question was finally settled in the previous proceedings, namely, C.C.C.A. No. 11 of 1950, wherein it was held:

"None of the Partners will be entitled to be liable for interest in respect of their Credits or debits before 1-4-1939. On and from that date, all the partners will be entitled to and liable for interest in respect of their Credits and debits. Interest will be six per cent per annum."

The matter having thus been finally settled, it is not proper for the plaintiffs to reopen the issue and once again claim interest before 1939. Therefore, we hold that the parties are not entitled to charge interest or be liable for interest before 1-4-1949.

17. In the result, we modify the decree of the lower Court and direct that the plaintiffs will be liable to pay interest only from the date of passing of the final decree in respect of the monies now found due and payable by them to defendants 1 and 4 to 6.

18. The parties bear their own costs. Court-fee will be paid at the time of the execution. The suit will go back to the Court below for the passing of a revised final decree in accordance with the judgment.