(1976) 11 GAU CK 0005

In the Gauhati High Court

Case No : Civil Rule No. 135 of 1972

Paresh Chandra Kar and Others APPELLANT

Vs

The Bakijai Officer and Others RESPONDENT

Date of Decision : 04-11-1976

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Partnership Act, 1932 — Section 32

Citation : (1978) 41 STC 247

Hon'ble Judges : M.C. Pathak, C.J;N. Ibotombi Singh, J

Bench : Division Bench

Advocate : B.K. Das, for the Appellant; B.M. Goswami, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Pathak, C.J.—By this application under Articles 226 and 227 of the Constitution of India, the three petitioners have challenged the order dated 17th December, 1971, passed by the Bakijai Officer, Dhubri, in the Bakijai Case No. 66(T) of 1971-72 as well as the proceedings in the said Bakijai case.

2. The petitioners are Paresh Chandra Kar, Suresh Chandra Kar and Smt. Maya Rani Kar. Their case is that there was a partnership firm under the name and style of Kar Brothers constituted some time in 1946, which consisted of the following partners:

3. This partnership firm carried on business and it was registered u/s 5 as a dealer under the Assam Finance (Sales Tax) Act, 1956, hereinafter referred to as the "Act" on 14th April, 1964. Suresh Chandra Kar and Paresh Chandra Kar retired from the firm Kar Brothers and intimated this fact to the Superintendent of Taxes, Dhubri, on 18th November, 1965. Notwithstanding the retirement of Suresh Chandra Kar and Paresh Chandra Kar, the firm Kar Brothers continued with the remaining partners.

4. The petitioners'' further case is that subsequently on 4th December, 1964,

another partnership firm under the name and style "Assam Stores" was constituted with the following partners :

5. Thereafter, this firm was again dissolved on or about 14th April, 1971 and a new partnership firm under the name and style "Raja Stores" was constituted with the following partners on 15th April, 1971:

6. Thereafter, two Bakijai cases being Bakijai Cases Nos. 45(T) of 1969-70 and 46(T) of 1969-70 were started against Naresh Chandra Kar and Ramendra Narayan Kar, the two partners of Kar Brothers. Ultimately, on the report that the defaulters had neither movable or immovable properties, the cases were dropped.

7. Thereafter, two show cause notices bearing Nos. 1877-78 dated 19th May, 1971, were issued to Suresh Chandra Kar and Paresh Chandra Kar, partners of Raja Stores, Dhubri, to pay up the dues under the Act amounting to Rs. 20,050.51 stood as outstanding against the firm, Kar Brothers. Two persons, namely, petitioners Nos. 1 and 2 in this case, showed cause against the show cause notices and, ultimately, the impugned order dated 17th December, 1971, was passed by the Bakijai Officer, Dhubri, which has been challenged in this writ petition.

8. It may be observed here that the taxes due are for the periods ending 31st March, 1965, 30th September, 1966, 30th September, 1967, 31st March, 1968, 30th September, 1968 and 31st March, 1969 and the amount of tax demanded is Rs. 20,050.51.

9. Mr. B. K. Das, the learned counsel appearing for the petitioners, firstly submits that petitioners Nos. 1 and 2, against whom the present Bakijai proceedings have been started, retired from the firm M/s. Kar Brothers on 14th April, 1964 and this fact was intimated to the Superintendent of Taxes on 18th November, 1965 and, therefore, petitioners Nos. 1 and 2 ceased to be partners of M/s. Kar Brothers with effect from at least 18th November, 1965 and, therefore, petitioners Nos. 1 and 2 were not at all accountable for any dues under the Act payable by M/s. Kar Brothers, which is the dealer in question.

10. In order to appreciate this submission, it is necessary to examine how a partner may retire from a partnership firm and since when the retirement takes effect.

11. Section 32 of the Indian Partnership Act, 1932, deals with retirement of a partner and it reads as follows :

32. Retirement of a partner.-(1) A partner may retire-

(a) with the consent of all the other partners, or

(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.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(4) Notices under Sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

12. We have examined the materials on record and we do not find any material to bring the case of retirement of petitioners Nos. 1 and 2 from the dealer-partnership firm within Clause (a) or Clause (b) of Sub-section (1) of Section 32 of the Indian Partnership Act. So also there is nothing in the record to show that either the partnership is at will or notice was given in writing to all the other partners by petitioners Nos. 1 and 2 of their intention to retire from the partnership firm. In the same way we do not find any material to bring the case of retirement of petitioners Nos. 1 and 2 from the dealer-partnership firm under Sub-section (4) of Section 32. That being so, even assuming that an information was given to the Superintendent of Taxes that on 18th November, 1965, petitioners Nos. 1 and 2 have retired, that will not absolve them from the legal liabilities under the provisions of the Indian Partnership Act, because no case of retirement could be made out by them.

13. Section 2(2) of the Act defines "dealer" as follows :

2. (2) ''Dealer'' means any person who sells taxable goods manufactured, made or processed by him in Assam, or brought by him into Assam from any place outside Assam for the purpose of sale in Assam.

Section 2(3) of the Act defines "person" as follows:

(3) ''Person'' means and includes:-

(i) an individual,

(ii) a Hindu undivided or joint family,

(iii) a company,

(iv) a firm,

(v) an association of persons or body of individuals, whether incorporated or not,

(vi) a Department of any Government, (vii) a local authority and

(viii) every artificial juridical person, not falling within any of the preceding Sub-clauses.

14. It is common case that M/s. Kar Brothers is a dealer under the Act and, therefore, it is liable to tax in accordance with the provisions of the Act.

15. Section 37 of the Act deals with information to be furnished regarding change of business.

16. The information that is stated to have been given to the Superintendent of Taxes on 18th November, 1965, about the retirement of petitioners Nos. 1 and 2 from the dealer-partnership firm does not help these petitioners in this case in any way.

17. Section 23 of the Act deals with mode of recovery and Sub-section (3) of Section 23 reads as follows :

23. (3) Where a dealer is in default, the Commissioner may order that amount due shall be recoverable as an arrear of land revenue and may proceed to realise the amount due as such.

18. Since there is no legal evidence before us to conclude that petitioners Nos. 1 and 2 legally retired from the dealer-partnership firm, M/s. Kar Brothers, they cannot escape the liability of the partnership firm of which they still continue to be the partners in the eye of law.

19. That being so, the dues under the Act may be recovered from the two petitioners, namely, Suresh Chandra Kar and Paresh Chandra Kar. Since petitioner No. 3, Smt. Maya Rani Kar, was not a partner of M/s. Kar Brothers, there is no question of any dues payable by her.

20. The learned counsel for the petitioners next submits that in any view of the matter the taxing authorities have no jurisdiction to attach the properties belonging to person or persons other than M/s. Kar Brothers and, in the instant case, it is submitted by the learned counsel that the properties belonging to some other person, namely, M/s. Raja Stores, have been attached.

21. This is a disputed question of fact and we do not like to enter into it, but we would like to observe that if there are any taxes due under the Act by M/s. Kar Brothers, those may be realised in accordance with law from M/s. Kar Brothers, the dealer, or its partners. But the taxes due under the Act by M/s. Kar Brothers cannot be realised from persons other than M/s. Kar Brothers or its partners.

22. In the result, we find that this petition has no merits and it is rejected. The rule is discharged. The stay order stands vacated. We, however, make no order as to costs.

Ibotombi Singh, J.

23. I agree.