
(2005) 03 AP CK 0042
In the Andhra Pradesh High Court
Case No : Appeal No. 1506 of 1989

Penumatcha Achyutharamaraju and Others	APPELLANT
Vs	
Padmanabhuni Venkata Subbaiah and Others	RESPONDENT

Date of Decision : 21-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 50, Order 30 Rule 1, Order 30 Rule 2, Order 30 Rule 3, Order 30 Rule 5
Limitation Act, 1963 — Section 21, 21(1), 22
Negotiable Instruments Act, 1881 (NI) — Section 118, 79
Partnership Act, 1932 — Section 22, 4, 72

Citation : (2005) 3 ALD 792

Hon'ble Judges : A. Gopal Reddy, J

Bench : Single Bench

Advocate : N.V. Suryanarayana Murthy, in AS No. 1506 of 1989, for the Appellant; N.V. Suryanarayana Murthy, for Respondent Nos. 1 to 8 in Cross Objections and K.N. Jwala, for the Respondent No. 1 in AS and Cross Objections, for the Respondent

Final Decision : Dismissed

Judgement

A. Gopal Reddy, J.—The appellants herein, who are defendants 2, 4, 5, 8 to 12 in O.S.No. 75 of 1981, preferred this appeal against the judgment and decree dated 26-4-1989 passed in O.S. No. 75 of 1981 by the learned Principal Subordinate Judge, Ongole, for recovery of a sum of Rs. 65,200/- with subsequent interest @ 6% per annum on the principal amount of Rs. 40,000/- from the date of the suit till the date of realization.

2. The 1st respondent/plaintiff initially instituted the above suit against the 1st defendant-registered partnership firm alleging that the firm represented by 6th defendant-A. Satyanarayana borrowed an amount of Rs. 40,000/- from him on 7-4-1978 by executing a demand promissory note in his favour agreeing to repay the same together with interest at the rate of Rs. 1.75 ps. per hundred per mensem. Subsequently, when the plaintiff demanded the 1st defendant to pay

the due amount, the 1st defendant promised to pay the same but failed to repay. As the suit promissory note was getting barred by time, the plaintiff was constrained to file the suit on the last date of limitation i.e., 7-4-1981. Subsequently, defendants 2 to 12 were added as parties to the suit as per the orders in LA. No. 2503 of 1981, dated 26-11-1981.

3. The 2nd defendant filed written statement denying the allegations made in the plaint and stated that the 1st defendant firm was not in existence on the date when the suit pronote is executed. Defendants 2 to 12 have formed into a partnership firm and took Sri Seetaramanjaneya Rice Mill for the purpose of doing rice-milling business. The said business of the firm was stopped even prior to 1977 cyclone. Subsequent thereto, the firm never did the rice milling business with defendants 2 to 12 as partners. In December, 1977, 6th defendant took the said Rice Mill on lease for his separate business, to which the 2nd defendant was not a partner. Therefore, the 6th defendant borrowing the amount and executing the promissory note on behalf of the firm does not arise and he was not authorized or entitled to contract debt, so as to bind the other defendants. Even if executing the suit pronote and borrowing the amount by the 6th defendant were true, it must be contracted by him for the purpose of his individual business but not for the firm. It was further stated that the plaintiff has no capacity to lend such huge amount of Rs. 40,000/- as alleged in the plaint. The plaintiff and 6th defendant have colluded with each other and brought into existence the suit pronote in order to cause loss to him and therefore, prayed for dismissal of the suit.

4. The 6th defendant in his written statement denied the borrowing of amount and execution of pronote in favour of the plaintiff. He stated that he did not know the plaintiff. On the date of execution of the pronote, he has actually attended the death ceremony of his brother at Ganapavaram. Therefore, his execution of pronote does not arise. He also took the plea that the plaintiff has no capacity to lend Rs. 40,000/- to him and one Mr. M. Satyanarayana also filed a suit in O.S. No. 77 of 1981 on the allegation that he executed another promissory note for Rs. 47,000/- on 7-4-1978. He does not know the said M. Satyanarayana also. Therefore, prayed for dismissal of the suit.

5. Defendants 3 to 5 and 8 to 12 adopted the written statement of 2nd defendant and 7th defendant adopted the written statement of 6th defendant.

6. Basing on the above pleadings the lower Court framed as many as three issues for trial, which read as under;

(1) Whether the suit promissory note is true, valid and binding on these defendants?

(2) If so, whether the other defendants are not liable to pay the suit debt?

(3) To what relief?

7. In order to prove the case of the plaintiff, he himself was examined as P.W.1

and got marked Ex.A.1-pronote and also examined the attestor of the pronote as P.W.2. On behalf of the defendants, 2nd defendant was examined as D.W.1, the Assistant Commercial Tax Officer was examined as D.W.2 and the 9th defendant was examined as D.W.3 and Exs.B.1 and B.2 were got marked on their behalf. Exs.X.1 to X.4 were marked through D.W.2. Ex.A.1-pronote was executed by the 6th defendant, 7th defendant was his son, both of them engaged a common advocate, and PWs.1 and 2 were cross-examined on their behalf. Thereafter, the learned Counsel for the 6th defendant did not evince any interest to lead any evidence. Then, the plaintiffs evidence was closed on 16-8-1987. Thereafter, the case underwent several adjournments and it was reported that defendants 6 and 7 were not ready. Subsequently, the evidence of 6th and 7th defendants was also closed.

8. On such closure of evidence on behalf of 6th and 7th defendants, 2nd defendant was examined as D.W.1 on behalf of defendants 1 to 5 and defendants 8 to 12. The Assistant Commercial Tax Officer, Bapatia was examined D.W.2 and through him Exs.X1 to X4 were got marked. Defendant No. 9 was examined as D.W.3 to specify that partnership firm did not continue any business after December, 1977 and intimating the stoppage of business to Sales Tax and Income Tax Authorities. The lower Court after analysing the oral and documentary evidence held that Ex.A1-promissory note executed by 1st defendant-firm in favour of plaintiff is true,

9. On Issue No. 2 the lower Court held that debt incurred by 1st defendant-firm is binding on all the partners in view of Section 22 of the Indian Partnership Act. Condition No. 6 of Ex.B2 lays down that the 2nd defendant should manage the joint business of the partners and the other partners should assist him, but Condition No. 3 authorizes the other partners to borrow money from third parties in the event if the investment made by the partners was not sufficient. In the absence of dissolution of partnership firm and giving public notice of such dissolution the debt incurred by 6th defendant on behalf of the firm is binding on all the partners. Once the suit filed against the firm is within the limitation period, that suit is not barred against defendants 2 to 12.

10. On Issue No. 3 the Trial Court gave a finding that plaintiff-P.W.1, who being a petty clerk, has no capacity to lend a sum of Rs. 40,000/-, but P.W.2 is the actual person to whom the money belongs and P.W.1 is only a name lender for P.W.2. In view of the fact that said pronote is supported by consideration, plaintiff is entitled for decree and accordingly decreed the suit in favour of the plaintiff. Aggrieved by the judgment and decree defendants 2, 4, 5, 8 to 12 preferred this appeal. Against the finding recorded by the Court below, namely that P.W.1 had no capacity to lend the money and he is only a name lender and P.W.2 who actually lend the money and restricting the interest at 6% instead of 15% plaintiff preferred cross-objections.

11. Learned Senior Counsel, Sri N.V. Suryanarayana Murthy appearing for the appellants makes four submissions.

12. Firstly, it was contended that the suit was initially filed against 1st defendant-partnership firm on 7-4-1981, whereas the defendants 2 to 12 were impleaded subsequently on 26-11-1981 as per the orders passed in I.A. No. 2503 of 1981. In view of the same, no decree can be passed in the personal capacity of the defendants for the amounts due by the partnership firm. Elaborating the same, it was contended by him that in view of Section 21 of the Limitation Act a party is added as defendant in the suit and the same is deemed to have been instituted against them on the date when they were added as parties. To support the same he placed reliance on the following three judgments of the Apex Court.

1. Ramalingam Chettiar Vs. P.K. Pattabiraman and Another,
2. Ram Prasad Dagduram Vs. Vijay Kumar Motilal Mirakhanwala and Others,
3. Topanmal Chhotamal Vs. Kundomal Gangaram and Others,

13. Secondly, it was contended by him that when the lower Court gave a finding that the plaintiff had no capacity to lend a sum of Rs. 40,000/- and the promissory note is not supported by consideration, the suit should have been dismissed against all the defendants. In view of 6th defendant denying execution of promissory note, plaintiff has indulged in speculative action and the Court has to find a case set up. As per the evidence let in by the parties, no decree could have been passed against the appellants/defendants.

14. Thirdly, it was contended by him that when the partners stopped the business in the year 1977, partnership need not be dissolved. Once the firm stopped its business there is no need to borrow the amount. If at all the amount, if any, is borrowed by 6th defendant, it is for his individual capacity but not for the business of the partnership firm. Even if the plaintiff is entitled for any decree against the firm, the property in the hands of the partners can be proceeded first but no personal decree can be granted making defendants liable. For the said proposition he relied on judgment of the Supreme Court in Ramalingam Chettiar (supra).

15. Fourthly, he contends that even if other defendants have not appealed against the decree, this Court in exercise of powers under Order XLI Rule 31 CPC can set aside the decree against all the defendants.

16. Learned Counsel for respondents 3 and 4/defendants 6 and 7 supports the contentions advanced by learned Senior Counsel, but contended that the plea of the defendants that plaintiff and 6th defendant are colluded in defrauding other defendants is not correct; and the very fact that the 6th defendant denied execution of promissory note and witnesses were cross-examined on their behalf clearly indicate that there is no collusion between them.

17. Learned Counsel for the 1st respondent/plaintiff, Mr. Rajanikanth Jwala while supporting the judgment of the lower Court contends that in the absence of dissolution of the partnership firm a decree can be enforced against all the partners even though they are not impleaded as defendants in the suit. The

finding of the lower Court that the plaintiff had no capacity to lend the amount covered by promissory note is erroneous, the plaintiff who did business earlier stated in his evidence that out of his savings he lend Rs. 40,000/- to 6th defendant. In the absence of any legally acceptable evidence the finding arrived at by the Court below that the plaintiff had no capacity to lend the amount is liable to be set aside and plaintiff's cross-objections have to be allowed.

18. In view of rival submissions made by the learned Counsel, the following points that emerge for consideration:

1. Whether the suit filed by the plaintiff is barred by limitation against D2 to D12 to obtain a personal decree against them.

2. Once the lower Court gave a finding that the plaintiff had no capacity to lend a sum of Rs. 40,000/-, whether it is justified in decreeing the suit on the presumption that P.W.2 lends the money and the suit pronote is supported by consideration and the said finding is liable to be set aside by allowing cross-objections.

3. Whether it is open for the defendants to plead without there being a dissolution of the firm that the debt incurred by one of the partners of the undissolved firm will not bind on the partners/defendants 2 to 12.

Point No. 1 :

19. In order to prove the claim of the plaintiff, he himself was examined as P.W.1. He admitted that he was working as clerk in Badrinath Rice Mill, Ongole since 1970. In the chief examination he stated that 6th defendant never purchased rice or any other commodities in Badrinath Rice Mill or from its proprietor-P.W.2. But in the cross-examination it is admitted by him that 6th defendant used to come to the Rice Mill and also borrowed money from P.W.2 by way of hand loan and there was good business dealings between 6th defendant and P.W.2. He admitted that on the date of lending money he was under the impression that 6th defendant alone was running Seetharamanjaneya Rice Mill and the said mill exclusively belongs to him and later he came to know that there are other partners in the said Rice Mill. When 6th defendant approached P.W.2 to lend some money, latter said that he has no money. In the cross-examination it is stated by him that after execution of pronote he did not look into to ascertain on behalf of which company the 6th defendant signed in Ex.A1 nor 6th defendant tell him that he was borrowing on behalf of a particular company nor he enquired about the same. It is admitted that he has not issued any notice before filing the suit but denied the suggestion that he had no capacity to lend stating that he was having cash of Rs. 40,000/- on the date of execution of Ex.A1 in his house and there is no evidence to show that he was in possession of cash of Rs. 40,000/- by the date of Ex.A1. He also admitted that on the date of Ex.A1 Penumatcha Atchuramana and Company was not doing any business and the said company was not in existence on the date of execution of Ex.A1. P.W.2 who is a testator of Ex.A1 stated that P.W. 1 lend Rs. 40,000/- to D1-Rice Mill on his

executing pronote on behalf of DI Rice Mill. He do not know from where PW1 brought Rs. 40,000/-. In the cross-examination he admitted that he recommended the case of 6th defendant to P.W.1 and he is not aware of the fact that who was running Seetharamanjaneya Rice Mill on the date amount was borrowed. It was also admitted by him that 6th defendant was friendly towards him and he do not know whether he has friendship with P.W.1. Whereas defendant No. 2 who was examined as D.W.1 stated that 1st defendant-firm was not doing any business with effect from 30-11-1977, which was reported to the Sales Tax authorities and Income Tax authorities. After the firm stopped doing its business, defendant No. 7 took the Rice Mill on lease and did business. They obtained licence under A.P.G.S.T. In the cross-examination it is stated that it was only himself (D6) borrowing monies for the firm and no other partner has maintained account books. Further it is stated that dissolution of firm was intimated to Sales Tax authorities.

20. The Assistant Commercial Tax Officer who examined as D.W.2 to prove the case of the defendants stated that 1st defendant-firm stopped the partnership business from 30-11-1977 onwards and through him Exs.X1 to X4 were got marked. He also stated about granting of registration certificate in the name of 7th defendant on 4-5-1978 under Ex.X1 application. Ex.X2 is the certificate of registration issued to D7. Exs.X3 and X4 are the letters dated 2-3-1988 and 15-3-1988 respectively. In Ex.X4 he stated that the firm stopped its business with effect from 30-11-1977 as per its letter dated 1-2-1978 on verification of "A" register maintained in their office and the said fact was also brought to the notice of the Court. In the cross-examination it is admitted that Ex.X1 does not relate to 1st defendant-firm. It is also admitted by him that he had no knowledge whether 1st defendant-firm stopped its business from 30-11-1977 except endorsement relating to the stoppage of business of 1st defendant-firm was made on 1-2-1978 at Page No. 100 of "A" register, which was produced in the Court.

21. Similarly, defendant No. 9 who was examined as D.W.3 stated about stoppage of business and intimating the same to Sales Tax and Income Tax authorities. After the firm stopped its business 6th defendant and his son 7th defendant did the business. In the cross-examination it was admitted by him that both himself and 6th defendant used to borrow monies for their firm.

22. From the evidence adduced by either parties, it has to be noticed that though the partnership is registered it was not dissolved as per the provisions of the Indian Partnership Act and intimation of dissolution was not given to general public as contemplated u/s 72 of the Indian Partnership Act. Unless the partnership is dissolved as per the provisions of the Act its legal entity continues to be in existence. It is the specific case of the plaintiff that 6th defendant who had borrowed the money of Rs. 40,000/- for business purpose of 1st defendant-firm which was in existence on the date the amount was lent. The suit as such is filed against 1st defendant-firm within the limitation.

23. It is not in dispute that initially suit was filed against the partnership firm and later defendant Nos.2 to 12 were impleaded in their individual capacity to have an individual decree against them. They have impleaded after expiry of period of limitation.

Section 21 of the Limitation Act reads as under:

(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

Provided that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

24. After considering the proviso to Section 21 of the Limitation Act the Supreme Court in Ramalingam Chettiar's case (supra) held as under:

"..... Thus, under the proviso, if the Court is satisfied, it can direct that the suit, as regards newly-added or substituted plaintiff or defendant, shall be deemed to have been instituted on an earlier date. In such a case, the Court after substituting or adding a party in the suit is required to pass a separate/further order that the suit, as regards the newly-added defendant or plaintiff, shall be deemed to have been instituted with effect from the date the suit was laid. Merely adding or substituting a plaintiff or defendant by the Court is not enough. In the absence of any order that the impleadment of newly-added or substituted party shall take effect from the date of institution of a suit, the period of limitation so far as the newly-added or substituted (sic) shall run from the date of their impleadment in the suit...."

25. In Ramprasad v. Vijaykumar (supra) the Supreme Court held as under:

"..... in view of Section 22 of the Limitation Act, (Section 21 new) the suit as regards the parties added under this Sub-rule had to be deemed to have been instituted when they were added.....In view of the bar of limitation, such addition would not have resulted in any decree being passed and, therefore, the addition should not have been ordered. I am however, not to be understood as holding that apart from the difficulty created by Section 22 the order could have been properly passed under the sub-rule."

26. There is no quarrel with the proposition in Case Nos.1 and 2 supra. In Topanmal's case (supra) the Supreme Court after taking note Order XXI Rule 50 CPC where the suit can be filed against the firm and decree can be executed

against the firm; and the mode of execution against the firm under Order XXX, Rule 3 CPC held as under:

"The gist of the said provisions may be stated thus: A decree against a firm can be executed (i) against the property of the partnership, (ii) against any person who has appeared in the suit individually in his own name and has been served with a notice under Rule 6 or 7 of Order XXX of CPC (iii) against a person who has admitted on the pleadings that he is or has been adjudged a partner, or (iv) against any person who has been served with notice individually as a partner but has failed to appear. The decree against the firm can be executed against the personal property of such persons.

27. A suit can be filed against the firm and decree can be obtained against the firm including shares of the partners at the time of accruing the cause of action. When the suit is filed, where persons are sued as partners in the name of their firm, the summons shall be served in the manner provided under Order XXX Rule 3 CPC; where a summons is issued to a firm and is served in the manner provided by Rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner Order XXX Rule 5 CPC.

28. In *Her Highness Maharani Mandalsa Devi and Others Vs. M. Ramnarain (P) Ltd. and Others*, , the Supreme Court held as under:

"..... The persons who are individually called partners are collectively called a firm, and the name under which their business is carried on is called the firm name, see Section 4 of the Indian Partnership Act, 1932. Order 30, Rule 1 of the CPC enables two or more persons claiming or being liable as partners and carrying on business in India to sue or be sued in the name of the firm of which they were partners at the time of the accrual of the cause of action. Rule 1 shows that the individual partners sue or are sued in their collective firm name. Rule 2 provides that on disclosure of the names of the partners of the plaintiff firm, the suit proceeds as if they are named as plaintiffs in the plaint. Rule 6 provides that the persons sued in the firm name must appear individually in their own names. A suit by or in the (SIC) of a firm is thus really a suit by or in the name of all its partners, See *Purushottam Umedbhai and Co. Vs. Manilal and Sons*, . So also a suit against the firm is really a suit against all the partners of the firm. In *Western National Bank of City of New York v. Perez, Triana and Co.* 1891 1 QB 304 at p. 314, Lindley, L.J., said:

"when a firm's name is used, it is only a convenient method of denoting those persons who compose the firm at the time when that name is used, and a plaintiff who uses partners in the name of their firm in truth sues them individually, just as much as if he had set out all their names."

The decree passed in the suit, though in form against the firm, is in effect a

decree against all the partners. In *Lovell and Christmas v. Beauchamp* 1894 AC 607, Lord Herschell, L.C. said:

"Although the judgment may be pronounced against the firm in the firm's name, it is in reality a judgment against all the persons who are in fact members of the firm; and it is because such a judgment exists that the right of execution follows."

29. In *J.K. Jute Mills Co. Ltd. Vs. Firm Birdhichand Sumermal*, the Allahabad High Court considered the scope of Order XXX when a decree passed in terms of the award sought to be executed against the partners of the firm, majority, on reference held as under:

"A consideration of the provisions of Order XXX makes it plain that a firm may bring a suit without impleading the partners by name and proper service in respect of firm may be obtained without serving any of the parties but at its principal place of business on a person who may have at that time the control of management of the business. A decree obtained in a suit against a firm is a decree against all the partners composing the firm. In 1899-1 QB 566(C) Lindley, M.R., said thus:

"When you have a rule which enables you for the sake of convenience to bring an action and to obtain judgment against a firm, you are in truth bringing an action against the persons who constitute the firm, and the judgment really a judgment against the individuals"

30. Having regard to the above legal position, it is not the personal decree that is passed against defendants 2 to 12 for due recovery of the amount it is passed against the firm. Any decree obtained against the firm is in reality a decree against all the persons who are partners of the firm and the same can be executed in the manner provided under Order XXI Rule 50 CPC Point No. 1 is accordingly answered.

Point No. 2:

31. Before answering Point No. 2 it is necessary to notice Section 118 of Negotiable Instruments Act 1881, which reads as under:

118. Presumptions as to negotiable instruments:--Until the contrary is proved, the following presumptions shall be made":

(a) of consideration--that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date--that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance--that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer--that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements--that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereupon;

(f) as to stamps--that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course-that holder of a negotiable instrument is a holder in due course

provided that, where the instrument has been contained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

32. When the plaintiff himself was examined as P.W.1 and stated that he lend a sum of Rs. 40,000/- to defendant No. 6. It was signed by 6th defendant on behalf of 1st defendant-firm, which was attested by P.W.2. Legal presumption can be drawn in view of Section 118 of N.I. Act that such promissory note was made or drawn for consideration and burden lies on defendants to prove that the said promissory note was executed without consideration, namely, the plaintiff had no capacity to lend such amount. Except ipsi dixit of 2nd defendant and 6th defendant that the plaintiff had no capacity to pay the amount no other contra evidence is led to prove that the plaintiff had no capacity to lend money.

33. In view of the same, appellants 2 to 6 cannot plea that the suit was instituted against them only when they are made as parties. Admittedly, the suit was filed against the firm within the period of limitation. The ratio in cases 1 and 2 supra do not apply to the appellants in view of provision under Order XXX Rule 1 CPC, which emphasizes the procedure to be followed.

34. Learned Senior Counsel made abortive attempt by contending that there are inconsistencies in the plaintiff's evidence with regard to lending of money to defendant No. 6; whereas he admitted that 6th defendant has not informed him that he is borrowing amounts to a particular company and also admitted in the cross-examination that the partnership was not doing any business and was not in existence by the date Ex.A1 was executed. In view of the same, a decree cannot be passed against the partnership firm and the same can be passed against the person who borrowed the money, namely 6th defendant and placed reliance on the judgment of this Court in Thadikonda Ramulu Firm and others Vs. Mallavarapu Kasivisweswara Rao, , wherein it is held as under:

"....If the plaintiff gives evidence inconsistent with the presumption no decree can be passed on the basis of the presumption arising u/s 118 of the Act. We have extracted the evidence of P.W.1 in extenso, which indicates that no amount was paid to the defendants under Ex.A21. In view of the above the Trial Court is

right in dismissing the suit of the plaintiff under Ex.A21, pronote...."

35. In the above case, plaintiffs evidence disclose that no amount was paid to the defendant under the suit pronote wherein it was admitted that the amount borrowed prior to the date of pronote. But the same is not the case on hand. The evidence of P.Ws.1 and 2 is consistent with regard to payment of amount and execution of Ex.A1-pronote. Except suggestion that the plaintiff had no capacity to lend money of Rs. 40,000/- no other contra evidence was adduced by the defendants.

36. In view of the same, it is presumed that on lending the amount of Rs. 40,000/- 6th defendant executed a pronote under Ex.A1 and it is for the defendants to discharge the onus of plaintiffs capacity to lend the money. In view of the same, the finding arrived at by the Court below that the plaintiff had no capacity to lend money of Rs. 40,000/- and he is only a name lender and it is actually P.W.2 who lend money through P.W.1 is not based on any evidence and the same cannot be sustainable and the said finding is set aside. Cross-objections to the said extent are to be allowed and they are accordingly allowed. Point No. 2 is answered in favour of plaintiff.

Point No. 3:

37. The plaintiff specifically pleaded that the defendant No. 1 is a registered partnership firm and in evidence also P.W.1 stated that the 1st defendant is a registered firm represented by A. Satyanaryana; but in the written statement defendants have not denied the said fact and the said partnership was in existence and it is not dissolved in the manner prescribed after giving public notice as contemplated u/s 72 of the Indian Partnership Act. Exs.B1 and B2 disclose that all the defendants were shown as partners and the licence to run the Rice Mill was obtained in the name of the partnership firm.

38. u/s 22 of the Indian Partnership Act in order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

39. Ex.A1-pronote clearly discloses that the amount was borrowed by 6th defendant in the name of 1st defendant-firm for running the Rice Mill business. Though DWs.1 and 3 stated that 6th defendant was writing account books, but the said account books were not produced by them to substantiate the plea that 1st defendant firm stopped its business with effect from 30-11-1977. When D.W.2 categorically admitted that his department has no knowledge that 1st defendant-firm orally stopped business from 30-11-1977, unless it is established that partnership is dissolved as per the terms and conditions of the partnership deed or as per the procedure contemplated under the Indian Partnership Act and Exs.X1 and X2 are also subsequent to the date of execution of Ex.A1-pronote, they are liable to be proceeded for the debt incurred by one of the partners and the decree obtained against the firm can be proceeded in the manner prescribed

under Order XXI Rule 50 CPC against all the partners. Point No. 3 is answered accordingly.

40. Learned Counsel for the 1st respondent/plaintiff except attacking the finding of the lower Court that the plaintiff has no capacity to pay the amount has not made any submissions with regard to plaintiff's entitlement of interest at the rate of 15% p.a. instead of 6% as awarded by the Court below. There is no obligation cast upon the Court to award the contractual rate of interest after institution of suit in all the cases. u/s 79 of the Negotiable Instruments Act Court can exercise discretion vested in it for awarding the interest. In the absence of any submission made that the lower Court has not properly exercised discretion in awarding the interest at the rate of 6%, I see no infirmity in the discretion exercised by the lower Court in awarding the interest. Cross objections to the said extent are disallowed.

41. In the result, appeal is dismissed and cross-objections are partly allowed, as indicated above, and there shall be no order as to costs.