(2000) 01 GAU CK 0032

In the Gauhati High Court

Case No : F.A. No. 40 of 1991

Ranadhir Deb Roy — APPELLANT

Vs

State of Assam and Others — RESPONDENT

Date of Decision : 25-01-2000

Acts Referred:
Partnership Act, 1932 — Section 69, 69(1), 69(3)

Citation : (2000) 2 GLT 517

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : S. Dutta and K.K. Dey, for the Appellant; Govt. Advocate, for the Respondent

Judgement

J.N. Sarma, J.—This is an appeal by the Plaintiffs. The Plaintiffs who are the partners (some are the heirs of deceased partners) brought this suit for compensation for an amount of Rs. 64,562.61.

2. The case of the Plaintiffs was that the Plaintiffs No. 1 and 2 and the predecessor of the Plaintiffs No. 3 and 4 were carrying on a partnership business under the name and style of Messrs Mamani Construction having its office at Chandmari Road, Silchar. The said partnership business was unregistered one. One of the partners i.e. Subinay Deb Roy thed bachelor on 12.11.87 and as such the Plaintiffs No. 3 and 4 are his heirs being the brOrs. of the deceased. That during the life time of Subinay Deb Roy, he alongwith Plaintiff Nos. 1 and 2 in the name of their firm Messrs Mamani Construction submitted tender for the purpose of construction of Water Treatment Plant at Manipur Water Plant under Water Supply Scheme GR No.2 in pursuance to a tender published by the Defendant No. 2. The tender was accepted and the work order was issued in the name of the above mentioned firm. The work was to be completed within a period of three months but it is alleged that due to the fault on the part of the Defendant, the work could not be completed in time and thereafter the work was cancelled in the year 1987 and the work was allotted to some other person. Hence the suit

was filed claiming compensation as mentioned above on the plea that the cancellation of the work was arbitrary and Plaintiff/contractors suffered financial loss in such cancellation.

3. A written statement was filed where it was stated by the Defendants that the contract was cancelled by following due process of law and the Plaintiffs have not suffered any loss because of such cancellation. In the suit as many as six issues were framed, they are as follows:

(i) Cause of action.

(ii) Maintainability.

(iii) Bar of limitation.

(iv) Whether the contract was rightly cancelled.

(v) Whether the Plaintiffs are entitled to compensation as claimed.

(vi) To what relief.

4. Only one witness was examined in the suit i.e. Plaintiff No. 1, as many as 30 documents were exhibited in the suit. The learned Judge by his judgment dt. 18.3.91 dismissed the suit holding interalia that the contract was cancelled by following due process of law and it was further found by the learned Judge that there was no evidence to show that the Plaintiff suffered loss due to such cancellation of the contract The learned Judge did not decide the issue No. 2 as it was not pressed but that is the most important issue in this case inasmuch as the case made out in the plaint is that this work was given to a firm as indicated above and that firm is an unregistered firm. So, the question is that whether the partners can file the suit. Section 69(1) of the Partnership Act is quoted below:

69. Effect of non-registration (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suit is or has been shown in the Register of Firms as a partner in the firm.

5. This aspect of the matter came up for consideration before the Apex Court in Delhi Development Authority Vs. Kochhar Construction Work and Another, wherein the Supreme Court pointed out that Section 69 creates a bar for institution of a suit by or on behalf of unregistered firm against a 3rd party. Institution of suit is void-ab-initio and this initial defect cannot be cured by subsequent registration of the firm.

6. To the same effect, there is a decision in M/s. Krishna Motor Service by its Partners Vs. H.B. Vittala Kamath, wherein in paragraph 6 the Supreme Court laid down the law as follows:

Section 69 is mandatory in character and its effect is to render a suit by Plaintiff in respect of a right vested in him or acquired under a contract which he entered into as a partner of a firm, whether existing or dissolved, void. In other words, a partner of an erstwhile unregistered partnership firm cannot bring a suit to enforce a right arising out of a contract falling within the ambit of the main part of Section 69(3) of the Act. However, the words, "but shall not affect" require to be given meaning and effect thereof in the position of the main part of Sub-section (3). The exceptions engrafted in Sub-section (3) intend to exclude the embargo created by Sub-section (3) and intended to effectuate the exceptions enumerated therein. The proviso gives an exception stating that the main part of Sub-section (3) shall not affect (a) the enforcement of any right arising from dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm ; it conferred interest to the partners, i.e. parties to the contract.

7. On that count alone the suit is liable to be dismissed. Further a bare perusal of exhibit 24 and 25 the two letters issued by the department before cancellation of the contract will show that the authority took necessary steps to inform the Plaintiffs before cancellation of the work and further I have perused the evidence, P.W. 1. In the evidence of P.W. 1 absolutely there is nothing to show that the amount of compensation claimed has been suffered by them as a loss. The burden is squarely on the Plaintiffs to establish the loss in order to enable to get the compensation but that burden was never discharged. At this stage Sri Dutta, learned Advocate for the Appellant draws my attention to the reply sent by the department to the notice u/s 80 and in mat reply there is admission to the effect that they have to pay Rs. 14, 411.90. Shri Dutta submits that in that view of the matter, the department should be asked to pay this amount. I find this prayer to be a reasonable prayer and not to cause injustice to the Plaintiffs I direct that the department to refund this amount, if not already done within a period of four months from today. The appeal shall accordingly disposed of.

8. I have heard Sri Section Dutta, learned Advocate for the Appellants and Sarma, Advocate for the Respondents.

