
(1986) 05 RAJ CK 0056
In the Rajasthan High Court
Case No : Civil First Appeal No. 100 of 1975

Sankal Chand

APPELLANT

Vs

Vardhi Chand and Another

RESPONDENT

Date of Decision : 13-05-1986

Acts Referred:

Partnership Act, 1932 — Section 45

Citation : (1986) WLN 163

Hon'ble Judges : S.M. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sobhag Mal Jain, J.—This appeal has been filed by defendant No. 2 Sankalchand against the judgment and decree dated March 8, 1975, of the Additional District Judge, Sirohi, in Civil Suit No. 4 of 1974, decreeing the plaintiff's suit for Rs. 14091/- against the defendants including the appellant here in.

2. The plaintiff was carrying on the business at Sheoganj in the name of Vardhichand Ratanji. Appellant Sankalchand and his son Devichand were partners of the firm Chenaji Chandulal, but the said firm was dissolved on October 22, 1968. No public notice of the dissolution was, however, given as required by Section 45 of the Indian Partnership Act, 1932, hereinafter referred to as the Act. A sum of Rs. 14,500/- was advanced by the plaintiff to the defendant firm on November 29, 1972. A further sum of Rs. 2500/- was by the plaintiff to the defendant firm on January 6, 1973. Out of the total amount of Rs. 17,000/- so advanced by the plaintiff to the defendant firm, a sum of Rs. 5000/- was repaid to the plaintiff on February 19, 1973 and a sum of Rs. 12,000/- remained outstanding.

3. On April 5, 1974, the plaintiff filed a suit for a sum of Rs. 14091/- against Devichand defendant No. 1 and Sankalchand defendant No. 2 in the court of the Additional District Judge Sirohi. A sum of Rs. 12,000/- as principal and a sum of

Rs. 2091/- as interest, total a sum of Rs. 14091/- was claimed from the defendants.

4. The defendants filed separate written statements. Devichand defendant No.1 alleged that the firm Chenaji Chandulal belonged to defendant No. 1 alone and was not a Joint Hindu family. He, however, admitted the outstandings against the firm. He prayed for instalments, Sankalchand defendant No. 2 also took the stand that the firm Chenaji Chandulal was not a Joint Hindu Family firm. According to him, it was a registered Partnership firm which was dissolved on October 22, 1968 and thereafter it remained the firm of defendant No. 1 alone. According to him Devichand defendant No. 1 was the sole owner of the firm and, therefore, defendant No. 2 was not in any way liable to pay the dues outstanding against the firm. He pleaded ignorance about the borrowings.

5. The Additional District Judge by his judgment dated March 8, 1975 decreed the plaintiff's suit for Rs. 14091/- against both the defendants. Interest at rate of 6% per annum was also awarded as pendente lite and future interest. The learned Additional District Judge has held that the defendants Devichand and Sankalchand were partners in the firm Chenaji Chandulal. The notice of the dissolution of the firm alleged to have taken place on October 22, 1968 was not given in accordance with Section 45 of the Act. The learned Additional District Judge has further recorded a finding that in spite of the dissolution of the firm defendant No. 2 Sankalchand continued to act on behalf of the firm. The learned Additional District Judge held also that defendant Sankalchand was liable for the suit amount despite the fact that he ceased to be a partner in the firm before the plaintiff advanced the money.

6. Aggrieved by this, defendant No. 2 Sankal Chand has filed the present appeal.

7. I have heard learned Counsel for the parties.

8. The contention of Shri Parmatma Saran on behalf of the appellant is that the transaction took place four years" after the dissolution of the firm and hence defendant No. 2 could not be held liable for the borrowings if any made by defendant No. 1 on behalf of the firm.

9. The short answer to this contention is furnished by Section 45 of the Act which provides that notwithstanding the dissolution of the firm, the partners shall continue to be liable as such to the third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until a public notice is given of the dissolution.

10. In the present case, it is an admitted case of the parties that no public notice of the dissolution alleged to have taken place on October 22, 1968, was given. It is a settled principle of law that even after the dissolution of a firm, persons dealing with its partners are entitled to assume that they continued to be each others" agents until notice is given of the dissolution. This principle has been incorporated in Section 45 of the Act. In the absence of a public notice as

contemplated by Section 45 the liability of the partners continues against the third parties who in the absence of such public notice have dealings with the firm.

11. In this view of the matter, I do not find any merit in the present appeal and the same is dismissed with costs.