
(1954) 08 MP CK 0007

In the Madhya Pradesh High Court

Case No : L. P. A. No. 39 of 1950 First Appeal No. 69 of 1952

Sitaram Kalani

APPELLANT

Vs

Manmal Gattani

RESPONDENT

Date of Decision : 05-08-1954

Acts Referred:

Partnership Act, 1932 — Section 4

Citation : (1954) 08 MP CK 0007

Hon'ble Judges : Dixit Offg., C.J;Chaturvedi, J

Bench : Division Bench

Advocate : Chitale and Waghmare, for the Appellant; Chaphekar and U.M. Trivedi, for the Respondent

Final Decision : Allowed

Judgement

Chaturvedi, J.—This first appeal filed by the Defendant is directed against a judgment and a decree dated 27-9-1952, passed by the Additional District Judge Mandsaur.

2. The Plaintiffs suit was for Rs. 16,805-11-0 and a decree has been passed in his favour for Rs. 10, 887-6-3. The Defendant has filed his appeal against this decree and the Plaintiff has cross-objections for that portion of the suit-which has been dismissed.

3. The Plaintiff's case is that the Defendant wanted to have a factory for manufacturing brass-utensils and other implements at Ratlam, and therefore, he wanted to have the Plaintiff as a partner in that business. The idea was that the Plaintiff should subscribe Rs. 40,000 for the business and that the Defendant and his friend, one Panditji, should finance Rs. 35,000. It was with this idea that the Plaintiff upto 5-9-1948 advanced a sum of Rs. 20,622-2-0 but the Defendant asked him to contribute more than Rs. 40,000 for which the Plaintiff was not prepared, and therefore, the idea of partnership did not materialize.

The Plaintiff then asked for refund of his money and on 12-9-49 he got a refund

Rs. 7000/-: but a sum of Rs. 13,622-2-0 was not returned by the Defendant, and therefore, he instituted this suit for that sum plus interest at the rate of As. 0-8-0 per cent per month. The Plaintiff filed this suit in the Court of the Additional District Judge, Mandsaur, alleging that the parties belonged to Neemuch, within the Jurisdiction of the "District Court of Mandsaur.

4. The Defendant (Sitaram) resisted the suit on various grounds alleging that the cause of action arose at Ratlam and not at Neemuch, and the Mandsaur Court had no jurisdiction and that the suit was barred by time. He denied his liability to pay any sum to the Plaintiff stating that he had not received any money the Plaintiff and the Plaintiff, the Defendant and one Pandit Ramnarayan had formed a partnership and established a firm at Ratlam known as "Shri. Madhya Bharat Metal Industries" for the manufacture of brass utensils, iron Tagaries (iron basins) and other implements.

The Defendant further alleged that the Plaintiff had agreed to advance other necessary finance besides Rs. 40,000 and that it had been agreed that the Plaintiff's share in the partnership was to be six annas, the Defendant's the same and Ramnarayan's four annas. According to the Defendant, it was further stipulated, that the Defendant and Shri. Ramnarayan were to be working partners and should draw remuneration or working allowance at the rate of Rs. 250/- permonth each.

The Defendant added that whatever money had been paid by the Plaintiff was paid according to this agreement to the partnership firm. But when due to difficulties in finance a demand was made for more money from the Plaintiff, the latter refused to pay and the business could not succeed. Consequently the business had to be stopped on Kartik Badi Amavas S.Y. 2005, and when the Plaintiff insisted that his dues as partnership should be paid, the Defendant on Baisakh Sudi 14. S.Y. 2006, sent a Hundi of Rs. 7000 - to the Plaintiff in full settlement of the Plaintiff's claim.

The Defendant alleged that the suit was entirely misconceived as there could not have been a suit for repayment of money, but the Plaintiff can only file a suit for accounts on the basis of partnership in which Ramnarayan should be a necessary party.

5. On these pleadings the trial Court framed as many as 23 issues. Most of them are over lapping and caused considerable confusion. In fact the main question is this case is; Whether there was a partnership as alleged by the Defendant or the money was paid on the footing that the Plaintiff wanted to be a prospective partner at some future date?

6. It may be stated at the outset that neither an agreement of partnership has been produced in this case, nor any document has been produced by the Plaintiff to show that the money really sent by the Plaintiff was to be considered merely as an advance or loan to the Defendant. There is no doubt that the contract of partnership may be implied and need not be expressed, in fact it can arise out of

a mutual understanding between the parties evidenced by a consistent course of conduct.

There is no doubt that many letters were exchanged between the parties and most of the letters are on record. In fact the arguments of the learned Counsel on either side centred round these letters. Mr. Chitale, on behalf of the Appellant, argued that there was sufficient evidence of a fulfilled partnership between the parties which was carrying on business according to an agreement. Mr. Chaphekar, on behalf of the Respondent, urged that it was a case of a contemplated partnership which did not materialize and the Plaintiff did not elect to become a partner though he had advanced money to the Defendant on the understanding that he may become a partner at some future date.

The learned Court below has taken the view that partnership in this case, could not be proved on the basis of these letters and the learned Counsel on behalf of the Respondent supported this finding on the basis of certain letters written by the Defendant. For example, in one of his letters dated 7-7-1948 (Ex. P-6) the Defendant mentioned that it was due to financial difficulties that he had to talk the matter with the Plaintiff and that the Plaintiff should give a definite reply whether he could finance the business fully according to the previous talk.

In Anr. letter (Ex. P-3) dated 31-5-1948, reference was made to a rough and incomplete draft agreement sent by the Defendant to the Plaintiff for his opinion; and on the basis of these letters, the Court below has arrived at the finding that there had been no completed agreement about the venture and so there could be no partnership.

After a perusal of the judgment and after hearing the learned Counsel on, either side on this point, I have come to the conclusion that stray isolated sentences in letters should not have been given much weight. Where it is sought to establish, a contract by correspondence, the rule is well settled that the whole of the correspondence relating to the matter in question must be looked at for the purpose of finding out if there was a completed contract between the parties.

In *Cayley v. Walpole* (1870) 39 LJ Ch 609 (A), it has been held that where the cardinal points of a proposed contract are definitely agreed upon by letters, the mere fact that in the course of the correspondence a reference has been made to a mere formal agreement or to subsidiary non-essential stipulations, will not prevent the Court from considering the agreement arrived at by the letters as concluded.

This view has consistently been followed in India (See - *Currimbhoy and Co. Ltd. Vs. L.A. Creet and Others*, at pp. 120-121 (B)). We have, therefore, to consider the whole of the correspondence that passed between the parties about this partnership. (After discussing the correspondence and other evidence, his Lordship proceeded):

7. The evidence as whole, in my opinion supports the Defendant's version that a

definite agreement had been reached about the capital to be subscribed by each partner and about the share each one would have in the profits. It was on this understanding that the business was started at Ratlam and an account was opened in the Imperial Bank of India in the name of Madhya Bharat Metal Industries (Ex. P-13).

In brief, the business was started when the cardinal points were agreed upon and it was only after this, that steps were taken for receiving the engine and for purchasing the machinery etc. The mere fact that a formal agreement with other minor details and stipulations was to be drawn up later should not prevent us from considering the agreement of partnership as concluded.

On the evidence as a whole, I feel that this cannot be called a case only of an inchoate agreement. The version of the Plaintiff that he had advanced the money on the understanding that he would have the option of becoming a partner at some future date cannot, in the least, be inferred from the evidence and from the course of conduct adopted by him and by the other partners in this case.

Therefore, the learned Counsel for the Appellant seems to be right when he contends that as soon as parties agreed to subscribe capital and to get shares in the profits and as soon as they started business in pursuance of this agreement, Section 4, Indian Partnership Act was attracted.

8. There is no doubt that it is the carrying on of a business, not an agreement to carry it on, which is the test of partnership. In the present case, the business was actually started as is already seen above. Mr. Chaphekar for the Respondent, however, advanced a rather ingenious argument that till brass utensils were actually manufactured, it could not be said that "business was carried on" within the meaning of Section 4, Indian Partnership Act.

In my opinion this contention is without force as each and every step taken for the erection of the factory, which was to manufacture utensils, would be considered within the purview of "carrying on business". This term has been used in the Indian Partnership Act in a broad and general sense. It may be observed that as soon as a partnership starts its commercial life having its own capital, its own assets and liabilities, its own employees and its own credit in the market-in short as soon as it becomes business entity it would be regarded as "carrying on business" within the meaning of Section 4, Indian Partnership Act.

9. I, therefore, come to the conclusion that the partnership had actually come into existence and if afterwards a partner wants his share back he cannot get it through a Court of law without filing a suit for dissolution and for rendition of accounts.

10. The learned trial Court has fallen into error because it did not consider the correspondence as a whole, but placed reliance only on certain sentences in Exs. P. 4, P. 5 and P 10 and overlooked other documentary evidence that was on record.

11. Many rulings were cited at the bar but no case was on all fours with the present one and therefore, I do not think it necessary to refer to facts of those rulings.

12. It appears to me that the Plaintiff had promised to subscribe Rs. 20,000 as capital and to advance Rs. 40000 more, but he could not fulfil the last part of the promise owing to certain circumstances and therefore the business could not make further progress. Consequently the feelings became strained between the partners and the Plaintiff insisted that he should get back the money he had advanced.

In this connection there was an exchange of letters between the Defendant and Ramswaroop Gattani. On the basis of this correspondence Mr. Chaphekar contended that the Appellant had taken upon himself, a personal obligation to pay the Plaintiff the money which he had advanced. The trial Court also reached the same conclusion and specially relied on three letters of the Defendant . Exs. P 10 to P 12 in this connection.

In my opinion these letters can be considered only as replies to the letters Exs. D/3 and D/4 addressed to the Defendant by Ramswaroop Gattani, Ramswaroop wrote in these letters that the Plaintiff must have his share "as. per original agreement." In Ex. D/4 he specially emphasised the point that the Plaintiff had given the money "as partnership contribution". Ramswaroop, therefore, stressed the point that the Plaintiff should get back his share. In this connection the Defendant, in his letter Ex. P 10, dated 4-1-1949, wrote:

You have stressed that because I cannot pay immediately to Shri. Manmalji, he is fully entitled to demand any interest from me and that too with retrospective effect. This is really strange....only in order to maintain cordial relations with him I can agree to As. -/12/- per cent interest or the market rate of interest in Neemueh, whichever he prefers, from 1-12-1948. I have to pay his money and I shall pay the same as soon as I could.

13. In this letter it is clear that the Defendant had agreed to pay interest only from 1-12-1948 though the first sum of Rs. 5000 had been advanced by the Plaintiff on 14-2-1948. It should be taken from this letter that the partnership terminated on 1-12-1948 and therefore, when the Plaintiff insisted for selling back his share, the Defendant agreed to pay interest on it with effect from the date of termination of the partnership. In this letter no special significance can be attached to the words "I have to pay his money." This obligation was taken by the Defendant only as a partner and not in his personal capacity.

14. In Anr. letter Ex. P-11. dated 12-2-1949, addressed to Ramswaroop Gattani, the Defendant stated:

He was insisting that I should pay Rs. 10,000 this month. I told him that I am expecting Rs. 10,000, against the Bank of Bikaner shares and I will remit the sum to him when I receive. But the whole thing was not sure until the bank

sanctioned the loan.

15. This can be read only as continuation to the previous letter, and here is nothing significant in Ex. P-2.

16. From all this correspondence one must come to the conclusion that a partnership had come into existence, but that partnership was afterwards terminated and a suit for accounts must have been instituted by the Plaintiff. A suit for money paid and received cannot succeed.

17. In my opinion, therefore, this suit is clearly misconceived and must be dismissed. In this view of the matter, I need not consider other issues. A suit for accounts could have been instituted only in the District Court of Ratlam where the partnership business was being carried on and Ramnarayan was a necessary party to that suit.

It follows that the cross objections must be dismissed with costs and the appeal be allowed. The judgment and decree of the Court below will be set aside and the suit will be dismissed. The Defendant will be entitled to costs both here as well as in the Court below.

Dixit Offg. C.J.

18. I agree.