(1991) 03 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 64 of 1979

Smt. Vishan Devi APPELLANT

Vs

Sun Beam Rubber Mills and Another RESPONDENT

Date of Decision : 26-03-1991

Acts Referred:

Citation : (1991) 192 ITR 611

Hon'ble Judges : A.L. Bahri, J

Bench : Single Bench

Advocate : V.K. Jain and Sanjay Viz, for the Appellant; R.S. Mittal, Senior Advocate, R.S. Surjewala, R.K. Sharma and Sarita Jain, for the Respondent

Judgement

A.L. Bahri, J.—Vide this judgment, Regular Second Appeals Nos. 2209, 2210 and 2211 of 1978 and 64 of 1979 are being disposed of together as the facts are common and they were disposed of by the common judgment by the courts below.

2. Messrs. Sunbeam Rubber Mills was a partnership concern consisting of two partners, namely, Sham Sunder and Sada Nand, who are grandsons of Loku Ram. They had equal shares in the partnership. The said partnership was dissolved on June 30, 1989, vide deed of dissolution (exhibit PW-3/1), The building and power connection fell to the share of "Sham Sunder whereas machinery, goodwill, assets and liabilities except one item fell to the share of Sada Nand. The exception of liability was to the extent, of Rs. 12,500 which was specifically mentioned to be met by Sham Sunder. In the accounts of the partnership firm, certain amounts of money stood invested in the names of the present plaintiffs, Smt. Vishan Devi and others. These amounts were also shown in the balance-sheets and in the returns filed before the Income Tax authorities. Smt. Vishan Devi and others filed separate suits for the recovery of those amounts against the firm being impleaded through Sada Nand as well as Sham Sunder, defendants. All these suits were contested by the firm represented by Sada Nand whereas Sham Sunder did not contest. The pleas taken by Sada Nand

in the respective suits were that it was Sham Sunder who had invested such amounts in the names of his wife and children, the plaintiffs. At the time of dissolution of the firm, such accounts were also settled with Sham Sunder. In fact, those amounts belonged to Sham Sunder and were shown benami in the accounts of the firm. The trial court decreed these suits whereas the lower appellate court, while accepting the appeals, dismissed the same. Hence, the present appeals are by the plaintiffs.

3. It has been rightly argued by Shri V. K. Jain, learned counsel for the appellants, that the plea of benami transaction is now not available to the defendant-firm in view of the Benami Transactions (Prohibition) Act. The matter was considered by this court regarding the applicability of the provisions of the aforesaid Act to the pending cases in Narinder Kumar Jain and Others Vs. Munisubrat Dass Jain and Others, ; It was held that, after enforcement of the aforesaid Act, even the defendant could not put up a defence of benami transaction. The matter was also considered by the Supreme Court in Mithilesh Kumar and Another Vs. Prem Behari Khare, . It was held that the aforesaid Act is retrospective in nature. It will also apply to pending cases. After enforcement of the Act, no plea of benami transaction could be taken either by the plaintiff or by the defendant. In view of the settled position of law as above, there is no scope for raising an argument by the defendant-firm in the present case that though the amounts were shown in the account books of the firm in the names of Smt. Vishan Devi and others, the plaintiffs, in fact it was benami and the true owner of these amounts was Sham Sunder, the partner of the firm. In this view of the matter, it is not considered necessary to refer to the oral evidence produced by the parties regarding the true ownership of the amounts lying in the accounts of the firm. Since the amount was shown in the names of Vishan Devi and others, the plaintiffs, they are held entitled to receive the same as the same was not paid to them by the firm. Exhibit P-2 is the balance-sheet for the year 1968-69 showing the liabilities of the firm with respect to these amounts due to the plaintiffs. This balance-sheet was submitted to the Income Tax Officer in September, 1969. Subsequently also, the amount was shown in the names of Vishan Devi and others. During arguments, reference was made to the provisions of Section 281A of the Income Tax Act, which was repealed by Section 7 of the Benami Transactions (Prohibition) Act, 1988, with effect from May''19, 1988, which would only show that the provisions of the Benami Transactions (Prohibition) Act would apply and these provisions have already been discussed by the Supreme Court and interpreted.

4. The question for consideration is as to which of the partners of the firm, Messrs. Sun Beam Rubber Mills, should be made liable for the amounts due to the plaintiffs. The contention of counsel for the appellants-plaintiffs is that since, under the deed of dissolution, exhibit PW-3/1, the liability to meet the debts was fastened upon Sham Sunder, a decree is to be passed against him as he is now a partner of the aforesaid firm. On the other hand, learned counsel for the respondents has argued that the amount due to the plaintiffs as recorded in the

account books of the firm was taken into consideration while settling the account of Sada Nand, partner, and, therefore, Sada Nand is to be made liable if their alternative plea was not accepted that it was Sada Nand''s amount which was invested by him though in the names of his wife and children, the present plaintiffs. I have given due consideration to the respective arguments.

5. No doubt, under the dissolution deed, exhibit PW-3/1, it was the liability of Sada Nand to pay debts of the firm except one the liability for which was imposed on Sham Sunder which was to the extent of Rs. 12,500. The question for consideration is whether, in between the two partners, the amount which was recorded in the names of the plaintiffs was adjusted in the account of Sham Sunder or not. If credit was given to him while settling his account on dissolution of the firm, there is no reason to burden Sada Nand with the liability. The lower appellate court, after relying upon the statements of Sada Nand and Sham Sunder, held that the amount standing in the names of the plaintiffs was taken into consideration and adjusted against the share of Sham Sunder. This was so stated by Sada Nand. However, Sham Sunder gave evasive replies. There is no reason to differ with the lower appellate court in this respect. Thus, holding that Sham Sunder was not actually the owner of the money invested in the names of his wife and children, he having been paid out of the partnership funds such amounts, it is his duty to meet the claims of the plaintiffs brought in these suits. Sada Nand is not to meet this liability. So held.

6. Learned counsel for the appellants submitted that interest on the amount claimed should also be allowed in view of the provisions of Section 34 of the Code of Civil Procedure. There is force in this contention. Section 34 of the CPC empowers the court to grant future interest at the rate of 6% per annum, the minimum which is allowed.

7. For the reasons recorded above, these appeals are allowed. Judgments and decrees, of the lower appellate court are modified. The suits filed by the plaintiffs shall stand decreed along with 6% interest per annum from the date of the suit till realisation against Sham Sunder, the defendant. There will be no order as to costs.

