

(1975) 04 DEL CK 0001

In the Delhi High Court

Case No : Regular Second Appeal No. 102 of 1971

S.N. Soni

APPELLANT

Vs

Taufiq Farooki etc.

RESPONDENT

Date of Decision : 02-04-1975

Acts Referred:

Citation : AIR 1976 Delhi 63 : (1976) RLR 103

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Advocate : S.K. Bagga and Kailash Narain, for the Appellant;

Judgement

B.C. Misra, J.

(1) RESPDT. 4 was a partnership entered on 6-2-65 which carried on business of advancing loans. Appellant, Respdts 2 & 3 executed on 9-6-66 pro-note for Rs. 1,000.00 in its favor. A partner, Krishnan Avtar gave notice of retirement on 15-12-66. Firm was dissolved and he was separated on 15-12-66. Firm owed Rs. 550.00 to Respdt. 1. Krishan Avtar in lieu of Rs. 550.00 assigned firm's pro-note of Rs. 1,000.00 to Respdt. 1. Latter filed a suit for Rs. 1,000.00 and interest. Trial Court dismissed the same. A.D.J. in 1st appeal allowed additional evidence under O. 41 Rs. 27, CPC which showed that Krishan Avtar had authority to assign. Appellant filed 2nd appeal. After narrating these facts, Judgment para 6 onwards is :

(2) Mr. Bagga contends firstly that section 19(2)(c) of the Partnership Act prohibits an implied authority of a partner to extend to compromise or relinquish any claim or portion of a claim by the firm. Secondly, the authority, if any, which has been conferred upon the said partner by the dissolution deed was made on 15th December, 1966 and the same could not be used to validate the assignment which had been made earlier on 14th October, 1966 before the deed of dissolution and further that under the law the initial invalid assignment cannot be validated by ratification. He also submits that the defendant appellant can

challenge the validity and effect of the assignment.

(3) Sections 19 and 20 of Partnership Act are:

(4) A perusal of the aforesaid provisions shows that the implied authority mentioned in section 19 is subject to the contract between the partners and it is also subject to the usage or custom of the trade. The provisions contained in section 19 are, in my opinion, a statutory presumption of the terms of the contract between the partners which is rebuttable. The restrictions have been imposed for the benefit of and in the interests of the partners and no absolute legal bar has been imposed by the law against the partners in acting contrary to the provisions of sub-section (2) and it is certainly open to the partners to relax or waive the restrictions.

(5) The assignment of the promissory note (Ex. P3) has been made by endorsement Ex. P1. The endorsement is clear and unconditional..... By this endorsement Krishan Avtar, partner of the firm, had not compromised or relinquished any claim or portion of claim of the firm. The promissory note in question was an asset or security of the firm. The business of the finance company consisted of advancing loans and obtaining security of promissory notes. It would constitute normal business of the firm to advance loans, realise debts and assign or endorse the promissory notes. Should a partner dispose of the goods or stock of the firm in due course of business at a lesser value than its market value (or the value permitted by the other partners), the transfer if otherwise legally valid would legally and effectively bind the firm and should the other partners object, they may be entitled to accounts from the offending partner who disposes of the goods or stock in due course of business at a lesser value. But the transaction between the third parties and the firm would remain binding. There is nothing contained in section 19 of the Partnership Act to prohibit the partner from acting in due course of business and disposing of the goods and stocks at a full or lesser value.

(6) The contention of the defendant appellant is that had the matter stood merely at the endorsement of Ex. P1, no objection could reasonably be raised against it. But, receipt (Ex. P 2) which accompanies the endorsement shows that Krishan Avtar acting for the finance company has transferred the promissory note of the face value of Rs. 1,000.00 on receipt of a consideration of Rs. 550.00 only in full and final settlement of the claim and it entitles the plaintiff assigned to recover from the defendants the entire amount of the promissory note and interest thereon. According to the learned counsel for the appellant, this amounts to relinquishment of a portion of the claim of the firm against the defendants by the indirect method of assigning the promissory note to a third party and that this act contravenes clause (c) of sub-section (2) of section 19 of the Partnership Act.

(7) I find there is force in the submission of the learned counsel and am of the opinion that although Krishan Avtar does not purport to relinquish or compromise

the claim of the finance company against the defendants ostensibly, he cannot be allowed to do so indirectly by the instrumentality of assigning the promissory note in favor of a third party, if he were debarred from doing so directly. I shall, Therefore, examine the controversy raised by the appellant on the merits as to whether Krishan Avtar was debarred from endorsing the promissory note for a lesser value than was due to the firm.

(8) Before I proceed further, I may clear one other ground of contention between the parties as to whether or not it is open to the defendant debtors to raise the objection of the excess of implied authority of Krishan Avtar, partner. Ordinarily, where a partner acts in violation of the authority of other partners to compromise or relinquish the claim of the firm against a third party, that party would be privy to the transaction and having acquiesced in bringing about the result, it would normally be estopped from challenging its own acts as invalid and so it would not be allowed to raise the plea of the excess of authority of the partner, while the other partners acquiesce in the same. Nevertheless, in a case where the third party debtor is not a privy to the action of the partner in assigning the promissory note in excess of the implied authority of the partner and in derogation of the rights of the other partners, there is no reason why the principal debtor, who was not a party to the assignment should not be entitled to challenge the validity of the act or assignment on any ground legally open. Moreover, in a case where a suit was brought by the plaintiff on the ground that he is an assignee from the firm and is, Therefore, entitled to recover the debt due to the firm, it is reasonable to hold that it would be open to the debtor to challenge the legality and validity of the assignment, which is an integral part of the cause of action of the plaintiff against the debtor. The reason is supposing the debtor acquiesces in the matter and suffers the decree, then this may not constitute a valid defense to a claim set up by the other partners ignore the assignment treating it as illegal and pursue their claim against the debtor according to law. Considered from any point of view, in the instant case, I hold that it was open to the defendant appellant to assail the legality and validity of the assignment made by a partner of the firm on which reliance had been placed by the plaintiff. Is the assignment in dispute invalid ?

(9) The deed of dissolution (Ex. AW1/1) is dated 15th December, 1966. It recites that the partnership had been formed on 6th February, 1965 and that on 15th September, 1966 Krishan Avtar had given a notice of separation from the partnership and it had actually been decided amongst the partners that Krishan Avtar shall be removed from the partnership on the terms and conditions appearing in the deed and in pursuance thereof Krishan Avtar had been removed from the firm with effect from 6th December, 1966 and he would have no right, title or interest in the firm. Paragraph 2 of the deed is to the effect that all the partners had enrolled members for the Partnership business during their continuance as members, a list of which had been annexed to the deed. The list contains names of each of the members (or debtors) who enrolled themselves through Krishan Avtar, Partner No. 5 and the amount payable to the chit holders

or payable by the chit holders to the partnership firm had been shown against their names and that party No. 5 (Krishan Avtar) shall deal with enclosed list solely which had fallen to his share and the other members of the firm will have no right to deal with or realise any amount due to the members which had been allotted to the share of Krishan Avtar. Similarly, Krishan Avtar was not to have any right title or interest in the list falling to the share of the surviving members of the partnership and Krishan Avtar was not expected to make any payment to such members. The list of members allotted to Krishan Avtar party No. 5, contains the name of the defendant-debtors Nos. 1, 2 and, viz. H.L. Malhotra and others, from whom Rs. 1,000.00 plus interest was shown as due. The result is that Krishan Avtar alone was entitled to recover or pay any debt due from or to the defendants in the suit without any hindrance from the other members of the firm. Sohan Lal Dewan, one of the partners of the firm was examined as AW1 on 6th November, 1970. He proved the dissolution deed (Ex. Aw 1/1) and has explained the position thus : The notice of dissolution had been served by Krishan Avtar about three months prior to the execution of Aw 1/1 and some of the promissory notes had been handed over to Krishan Avtar to deal with as his own pronotes. The witness added. "I know that the pronote in suit was handed over to Krishan Avtar for his dealing in the manner he liked after service of his notice". But the witness could not give the date when it was handed over to Krishan Avtar. The witness also deposed that at the time the pronotes were handed over to Krishan Avtar after the receipt of the notice of dissolution, he was permitted to deal with the pronotes in any manner he liked. The statement of this witness and the deed of dissolution leave no room for doubt that the promissory note in suit had been allotted to Krishan Avtar alone to be dealt with by him in any manner he liked and the partnership, that is the surviving members of the firm, had washed their hands any right, title, interest or claim under the aforesaid promissory note. As such Krishan Avtar had been given the fullest authority by all the partners to act and deal with the promissory note, as if it were his own and this certainly included the assignment of the promissory note or compromise or relinquishment of any claim under it without any authority or concern of the other partners.

(10) Mr. Bagga, counsel for the appellant, almost conceded and rightly that Krishan Avtar was certainly entitled to make the endorsement in dispute by virtue of the dissolution deed (Ex. Aw 1/1). But the counsel submits that in this case the endorsement had in fact, been made prior to the deed of dissolution (after notice of retirement from the partnership) and as such it was invalid when it was effected and the Same could not be ratified by subsequent agreement contained in Ex. Aw 1/1. I am unable to accept the said submission of the counsel.

(11) As observed above, the provisions of section 19(2) of the Partnership Act did not create any statutory bar on the powers of the partners, but they are merely a statutory expression of the presumptions of the terms of the contract between the partners and also subject to the usage or custom of trade. The

provision exists for the protection of interests of the partners and the restriction can surely be acquiesced, waived or ratified by the partners without any difficulty or legal bar. I am unable to read the aforesaid provision of law as a mandate of the legislature creating the bar and making the transaction per se illegal and incapable of being ratified. In my opinion, although the statute has helped in formulating the implied terms of the contract of partnership between the partners of the firm, the matter rests entirely in the will and capacity of the partners to extend or limit the implied authority and rebut the presumption which has been expressed by the statute. I do not see any difficulty as to why the partners can subsequently not agree to ratify and waive their objection to a legal act which had been done by a partner without their previous authority, but which could very well have been done with their authority.

(12) Section 18 of the Partnership Act provides that a partner is the agent of the firm for the purpose of the business of the firm. Section 19 prescribes the scope of the implied authority of the partner to carry on the business of the firm. Section 20 expressly provides that the partners in a firm may by contract between them, extend or restrict implied authority of any partner. The statute, Therefore, recognises the partner to be an agent for the other partners. An agent within the meaning of Chapter X of the Contract Act when he is employed by a principal may have an express or implied authority. Section 196 to 199 lay down the statutory provisions for ratification of the authority of an agent. They may be referred to with advantage. Section 196 provides that where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or disown such acts ; if he ratifies them, the same effects will follow as if they had been performed by his authority. Section 197 provides that ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done. Section 198 and 199 provide that no valid ratification can be made by a person whose knowledge of the facts of the case is materially defective and a person ratifying any unauthorised act done on his behalf, ratifies the whole of the transaction of which such act formed a part.

(13) Bowstead on Agency, 13th Edn. lays down the rule of law in Article 15 thus : Where an act is done in the name or purportedly on behalf of a person by another person purporting to act as his agent, the person in whose name or on whose behalf the act is done may, by ratifying the act, make it as valid and effectual, as it had been originally done by his authority, whether the person doing the act was an agent exceeding his authority, or was a person having no authority to act for him at all. The rule is subject to exceptions specified in Articles 16 to 21, which have no application to the facts of the present case. If the rule of law is that the acts of an agent performed in excess or without any authority can be ratified by a principal, this would apply with stronger force to the case of a partner, since, in my opinion, a partner is a co-proprietor and has an authority and interests of his own in addition to acting as an agent for the other partners so as to bind the firm. The same rule of law, Therefore, would apply to the case of the authority of a partner. Lindley on Partnership, 13th Edn.

page 167, has stated that if a partner exceeds his authority, and it is contended that the firm is bound by what he has done, on the ground that it has ratified his acts, evidence must be given to prove that at the time of the alleged ratification his co-partners knew of those acts and the ratification must be of the whole of the transaction. A more specific case of submission of a dispute to arbitration in excess of implied authority has been noticed by Lindley at page 168 and it has been observed that the partner actually referring the dispute is himself bound by the award and the other partners may become bound by ratification. In *Marsh v. Joseph*, (1897) 1 Ch. 213, the court of appeal observed at page 246, "To constitute a binding adoption of acts a priori unauthorised these conditions must exist : (1) the acts must have been done for and in the name of the supposed principal, and (2) there must be full knowledge of what those acts were, or such an unqualified adoption that inference may properly be drawn that the principal intended to take upon himself the responsibility for such acts, whatever they were". The Judicial Committee of the Privy Council in *La Banque Jacques-Cartier v. La Banque d'Epargne De La Cite ed du District De Montreal*, (1887) A C. 111, observed that, "acquiescence and ratification must be founded on a full knowledge of the facts, and further it must be in relation to a transaction which may be valid in itself and not illegal, and to which effect may be given as against the party by his acquiescence in and adoption of the transaction."

(14) The aforesaid discussion leads me to the conclusion that the rule of law is that all the partners of the firm can ratify an act of a partner, which has been done by him in excess of the implied authority or without any authority, provided the act is such that it could be legally done with the authority of all the partners previously given and that the partners ratify the act with full knowledge of the facts. In the instant case the partners have given the promissory note in dispute to Krishan Avtar soon after his notice of retirement from the firm and by the deed of dissolution they mutually agreed that the promissory note in dispute has been allotted to Krishan Avtar, who has been authorised to deal with it in any way he liked and the other surviving partners of the firm have relinquished their right, title, interest or claim in the said promissory note altogether. They have, Therefore, expressly permitted Krishan Avtar to deal with the promissory note in any manner he liked which certainly would include the recovery of the debt under it or compromise or relinquish or assign the debt by him, as if it were exclusively his own property. 59. Mad. 1036; (1969) A.P. 274 are then distinguished].

(15) In the special facts of the above noted case, the Division Bench of the Andhra Pradesh High Court came to the conclusion that the provisions of law corresponding to section 12 of the Partnership Act did not allow ratification by a majority without the question having been raised and debated No exception can be found to the rule of law that section 12(c) provides that any difference arising as to ordinary matters connected with the business may be decided by a majority of partners and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners. This rule shows that every partner is

entitled to have an opportunity of being heard and press his point of view before the matter is decided and it is certainly not open to the majority to decide the matter ex post facto by ignoring the minority of the partners and then contend that they have now decided the matter and the holding of the meeting would not have brought about any different result. This cannot be allowed to be urged. But, even this provision of law is subject to a contract to the contrary between the partners. Whatever may be said with regard to the right of the majority, which chooses to ignore the minority, no exception can really be found to all the partners consenting to any course of action or ratifying any act which has been done by any partner in excess of implied authority.

(16) In the case in hand, no such legal infirmity can be found, as was pointed out by the High Court of Andhra Pradesh in the above noted case. In the instant case, the firm had not only been dissolved, but the debt in dispute (along with some others) had been expressly allotted to Krishan Avtar and he had been given the consent and authority of all the other partners to deal with the promissory note as his personal property and the surviving partners of the firm had disowned any interest or claim under the same. All the partners acted unanimously and they had ratified the acts of Krishan Avtar relating to the promissory note in dispute, which had been done by him after the notice of retirement. The partners have, Therefore, waived their objection, if any, to the assignment of the promissory note in dispute by Krishan Avtar for an amount lesser than its face value. This clearly amounted to giving authority to Krishan Avtar to deal with the promissory note including the assignment or relinquishment or compromise of the claim under it, as if it were his personal property. Consequently, I hold that the assignment of the promissory note by Krishan Avtar on behalf of the partnership firm (finance company) made in favor of the plaintiff was valid and does not suffer from any legal infirmity. The plaintiff was, Therefore, a holder of the promissory note in due course for valuable consideration.