(2025) 05 DRAT CK 1003

In the Debts Recovery Appellate Tribunal, Chennai

Case No : Regular Appeal No. 110 Of 2017

Sri. Sreekumar & Anr — APPELLANT

Vs

Canara Bank — RESPONDENT

Date of Decision : 09-05-2025

Acts Referred:

Contract Act, 1872 — Section 133, 134, 139, 141
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 20
Indian Partnership Act, 1932 — Section 25, 32, 32(3), 45, 72

Citation : (2025) 05 DRAT CK 1003

Hon'ble Judges : G. Chandrasekharan, Chairperson

Bench : Single Bench

Advocate : M/s Prashant Rajagopal & Co, M/s P.Sreenivasulu & Co

Final Decision : Disposed Of

Judgement

G. Chandrasekharan, Chairperson

1. This appeal is filed under Section 20 of RDDB & FI Act against the order passed by Learned Presiding Officer, DRT, Bangalore in OA No.1458/2013 on 27.1.2016.

2. Respondents 3 and 4 before the Tribunal below are the appellants. The first respondent bank filed OA 1458/2013 against respondents therein for recovery of an aggregate sum of Rs.41,32,064.05p. towards Term Loan of Rs.24,96,059.69p together with interest at 18.25 % p.a with monthly rests and Over Draft amount of Rs. 16,36,004.36p together with interest at 16.25% p.a. from 28.2.2013 till date of realization and sale of hypothecated movables, along with costs.

3. The case of the first respondent bank is that second respondent, viz. M/s Srishti Components is a partnership firm. Second respondent through its partners, viz., Smt. Preetha Menon, first appellant, Sri Sreekumar and the second appellant, Mrs. Shalini N. Menon approached the bank on 16.6.2008 for a Term Loan of Rs.35.00 lakhs for purchase of machinery and working capital of

Rs.15.00 lakhs. Accordingly, first respondent bank sanctioned the said Term Loan of Rs.35.00 lakhs and an Overdraft facility of Rs.5.00 lakhs in favour of respondents 2 to 6 and appellants. Partners of the second respondent firm executed Composite Hypothecation Agreement dated 4.7.2008 in favour of the first respondent bank. Smt. Preethi Mohan and Shri P. Sreekumar stood as guarantors for the amount borrowed by the partnership firm by executing necessary guarantee agreements.

Partnership firm represented by its Managing Partner Mrs.Preethi Menon approached the first respondent bank in the month of April, 2009 and informed about the change in the constitution of the partnership firm to the effect that Sri C. Naresh Babu and Sri T. Janeeth Kumar have replaced Sri Sreekumar and Smt. Shalini M. Menon as per the fresh partnership deed dated 18.2.2009. They executed fresh set of documents in support of financial facility availed by the partnership firm earlier on 4.7.2008. They executed new composite hypothecation agreement dated 16.4.2009 in favour of the first respondent bank. Smt. Preetha Mohan, Sri C. Naresh Babu and Sri T. Janeeth Kumar executed fresh guarantee agreement on the same day. The firm represented by Shri C. Naresh Babu approached the bank on 4.10.2009 for enhancement of OD facility towards working capital requirement upto a limit of Rs.14.00 lakhs. Accordingly, OD Limit was enhanced to Rs.14.00 lakhs. Shri Naresh Babu and Shri T. Janeeth Kumar executed fresh composite hypothecation agreement on 23.12.2009 and they also executed additional guarantee agreement on

23.12.2009. The 2nd respondent firm represented by Shri C. Naresh babu and Sri C. Raghavendra approached the bank with an application dated 11.3.2011 for renewal of working capital facility upto a limit of Rs.14.00 lakhs for a further period of one year. They represented that the partnership firm had been further reconstituted and that Shri T. Janeeth Kumar retired from the partnership firm. Their request was considered and the firm and Shri Naresh Babu issued a letter of renewal dated 25.3.2011 acknowledging the loan liability. Second respondent Firm and its partners defaulted in making payments and therefore notice dated 19.11.2012 was issued. Despite that loan repayment was not repaid. Therefore, Legal Notice dated 3.1.2013 was issued. Borrowers are liable to pay a sum of Rs.24,96,059.69p under Term Loan Account and Rs.16,36,004.36p under Overdraft account, along with interest. Under the circumstances, OA was filed.

4. Defendants 1 and 5 to 7 (Respondents 2 and 4 to 6 herein) before Tribunal below were set ex parte. Defendants 2 to 4 appeared through their advocate and second defendant filed a separate written statement. Defendants 3 and 4 filed common written statement raising similar contentions. Their contentions are that original application is barred by limitation and that they retired from the partnership firm. Therefore, they cannot be made liable to pay the claim amount, especially, when continuing partners admitted and accepted the responsibility towards the business and liabilities of the firm. Continuing partners also admitted that outgoing partners are not liable and responsible for the transaction of the

firm.

5. During enquiry before Tribunal, AW1 was examined and Exhibits A3 to A23 were marked. DW1 was examined and Exhibits D4 to D8 were marked. On considering the oral and documentary evidence, Learned Presiding Officer found that all the respondents before the Tribunal are jointly and severally liable to pay the amount claimed in the OA with other consequential relief. Aggrieved against this order, as mentioned earlier, respondents 3 and 4 in the OA have filed this appeal.

6. Learned Counsel for appellants submitted that appellants had retired from the partnership firm and that was duly intimated to the first respondent bank. On their retirement, their liability ceases and only reconstituted firm and partners are alone liable to pay the loan due. Prior to inception of OA proceedings, no demand notice was served on the appellants. Without a demand notice, claim cannot be made against the guarantors. Second appellant was not a party to the guarantee deed. After reconstitution of the firm, fresh set of documents were executed by newly inducted partners followed by execution of composite hypothecation agreement and guarantee deed. Without sending notice of demand, appellants were shown as respondents in the Original Application. Information with regard to retirement of the partners to bank would amount to a valid notice required under Section 32 of the Indian Partnership Act. It is further submitted that the claim is barred by limitation. Thus contending, Learned Counsel for appellants submitted that allowing the OA against appellants is against factual and legal position. Thus prayed for setting aside the order of the Learned Presiding Officer passed in OA 1458/2013 in respect of these appellants.

7. In support of his submissions, Learned Counsel for appellants relied on the judgment reported in re Central United Bank Ltd. Vs. B.A. Venkatarama Naidu reported in AIR 1963 Mad 302 for the proposition that proviso to Section 32(3) and the corresponding provision under Section 45 Indian Partnership Act indicate, beyond doubt, that only persons who are aware of the retirement of a particular partner, can take advantage of Section 32(3) and Section 45 of Indian Partnership Act. Learned Counsel also relied on the aforesaid judgment for the proposition that, bank which is aware of the retirement of the partners, would not be entitled to say that retired partners are liable in respect of the debt incurred by the firm, after retirement of the partner. Learned counsel also relied on the judgment of Hon’ble Supreme Court of India in re Syndicate Bank Vs. Channaveerappa Beleri & others reported in CDJ 2006 SC 313 for the proposition that without a demand notice, no claim can be made against a guarantor.

8. Learned Counsel for the first respondent bank submitted that retiring partner should give a public notice by way of publication in Official Gazette and in newspapers in vernacular language with regard to his retirement. Without such public notice, they cannot avoid liability. Except the appellants and the third respondent, other respondents have not contested the Original Application. Appellants and other respondents accepted the borrowal by availing Term Loan

and Overdraft Facility. They have executed loan documents, hypothecation deed, guarantee deed and renewal letters. Partners are liable for the act of the Firm, when they were partners. There is a specific clause in the Guarantee Deed that a guarantor is not entitled to avail rights under Sections 133, 134, 139 and 141 of the Indian Contract Act. It is submitted that first respondent bank is not a party to the reconstitution of the firm. Bank's consent and approval was not sought before reconstitution. Without including the bank, if any reconstitution of partnership firm is made, bank cannot be expected to give effect to the terms agreed between the old partners and the new partners. Unilateral reconstitution of the firm without involving the bank cannot be enforced against the bank. Thus, all the partners, present and past, are liable to pay loan amount.

9. In support of his submission, he relied on the judgment in re Allahabad Bank Vs. Hemant Kumar & Others reported in II (2018) BC 421(Bom.) for the proposition that when the bank had not released the guarantors, guarantors are liable to pay the debt of the firm. He produced the judgment of in re Syndicate Bank Vs. Channaveerappa Beleri & others reported in II (2006) BC 579(SC) in respect of same proposition. The Judgment rendered in re S. Prakash Vs. Aiswariya Flour Mills and others reported in 2023 (6) CTC 293 is relied for the proposition that as per Section 32(3) of Indian Partnership Act, all partners continue to be liable until public notice is given of their retirement.

10. I have considered the rival submissions and perused the records.

11. Appellants canvassed this appeal ,mainly ,on the following grounds.

a) In view of retirement of the appellants from the partnership, they cannot be held liable for the loan sanctioned to the partnership firm when they were partners and loan sanctioned subsequent to retirement.

b) Second appellant has not given any personal guarantee to the loan sanctioned to the partnership firm.

c) Insofar as the first appellant is concerned, prior to filing of original application, no demand notice was given.

d) Demand notice was given only to other borrowers. Without demand notice, OA cannot be instituted against guarantors / borrowers.

e) Claim is barred by limitation.

12. Certain factual dates and events are relevant before dealing with other aspects of the dispute.

13. To start with, appellants and 3rd respondent are the partners of the second respondent firm. There was a reconstitution of the partnership firm on 18.2.2009. As per this reconstitution, respondents 4 and 5 replaced the appellants in the partnership of the second respondent firm. In a subsequent reconstitution on 28.7.2009, 3rd respondent retired from 2nd respondent partnership firm.

14. It appears that 6th respondent on retirement of 5th respondent has been inducted as a partner in the year 2011. The reconstitution of partnership firm for inducting 6th respondent is not available in the typed set of papers.

15. For every stage of reconstitution, it is averred in the OA, that necessary loan documents had been executed by the partners, apart from loan documents executed by the original partners. Moot point that arises in this appeal is, whether on retirement, appellants can claim that they are shorn off from their liability to the first respondent bank. Appellants produced letter dated 30.11.2009 addressed by them informing the first respondent bank that partnership firm was reconstituted after their resignation on 18.2.2009. Main contents of this letter are "Reconstituted firm is in operation and all assets and liabilities are transferred to the new partners. Therefore, all pending or claims arising from the date of incorporation, will be the sole liability of the new partners. Thus, the appellants requested the bank to acknowledge the letter confirming change in the records". This letter informing their resignation on 18.2.2009 was communicated to the bank only on 30.11.2009. Meanwhile, two reconstitution had taken place one on 18.2.2009 and the other on 28.7.2009. Apparently, bank has not responded to this letter though retirement of appellants and induction of new partners in their place had been pleaded in the OA. Bank has also not released the appellants from their liability.

16. Perusal of partnership deeds reconstituted on 18.2.2009 and 28.7.2009 shows that bank is not a party. Bank has not exonerated appellants from their liability after the reconstitution of the partnership firm. When there is no express release of appellants from their liability by the bank, appellants are liable to pay the debt due when the reconstituted partnership firm and its partners failed to pay the debt due to the bank.

17. Section 25 of Indian Partnership Act, 1932 deals with the liability of the partners over the acts of the Partnership Firm. It reads as follows:

"Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner"

From this Section, it can be gathered that every partner is jointly with other partners and severally liable for all the acts of the firm done, while he was a partner.

18. What about the liability after his/her retirement?. Section 32 of Indian Partnership Act answers this question, which reads as follows:

(1) A partner may retire--

(a) with the consent of all the other partners,

(b) in accordance with an express agreement by the partners, or

(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

19. This Section makes it clear that a partner can retire by aforesaid three means. When it come to discharge, retiring partner can be discharged from his liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm. As said earlier, first respondent bank is not a party to the deed of reconstitution dated 18.2.2009 and 28.7.2009. First respondent bank has not agreed to discharge the appellants from their liability fastened on the partnership firm when they were partners.

20. Learned Counsel for the appellants submitted that agreement between the bank and the retiring partners can be inferred impliedly by the way bank permitted reconstitution of the partnership firm for retirement of existing partners and induction of new partners.

21. Whether by mere acceptance of new constitution of partnership firm, getting fresh loan documents from the partners of the reconstituted partnership firm can be construed as consent given by the bank for discharging the liability of the appellants?

May be so, had the partners of the reconstituted partnership firm discharged the loan liability of the partnership firm. When reconstituted partnership firm and partners have not discharged the loan liability due to the bank secured when appellants were its partners, it cannot be said that by mere acceptance of reconstitution, execution of fresh loan documents, bank had discharged the liability of the appellants.

22. It is the submission of Learned counsel for the first respondent bank that Section 32(3) of Indian Partnership Act requires public notice of retirement of a partner. How public notice should be effected is dealt in Section 72 of the said Act, which reads as follows:

"Section72 - A public notice under this Act is given—

(a) where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to Registrar of Firms under section 63, and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relate has its place or principal place of business, and

(b) in any other case, by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.”

23. As per Section 72 of Indian Partnership Act, 1932, where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm, by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to Registrar of Firms under section 63, and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relate has its place or principal place of business, and

In any other case, by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.

Thus, Learned Counsel submitted that no such publication was given in this case. Therefore, retirement has no effect on the liability of the appellants to the first respondent bank.

24. In support of this submission, he referred to the judgment which was referred earlier i.e. Hon’ble High Court of Madras judgment reported in 2023 (6) CTC 293, supra.

25. On the other hand, Learned Counsel for appellants reiterated the judgment of Hon’ble Division Bench, High Court of Madras reported in AIR 1963, Madras, 302, referred supra, for the proposition that when there is no third party is involved except the bank, personal service is the best service and that was done in this case by sending notice intimating resignation. It is pertinent to refer to the relevant portion of the judgment, which reads, as follows:

“Taking the first two cases referred to above, the disadvantage of the law is that it envisages no uniform method of issuing notice of retirement to all those who have dealings with the firm before and after the retirement. What Section 32 of the Indian Partnership Act does is to remove the distinction between public notice and private notice. It enacts that public notice would be sufficient both in the case of the old customers as well as those who dealt with the firm after the retirement of a particular partner, the third category of cases referred to above rests on a different basis. That principle would remain unaffected by Section

32(3) as before. In other words, Section 32(3) is not intended to create a liability where none existed before or to penalise a retired partner who failed to give public notice of his retirement. The true basis of the liability of a retiring partner is, as we said, on the principle of holding out. There can be no holding out if the person who deals with the new firm is aware of the retirement of a particular partner. In Ratanji Bhagwanji and Co. v. Prem Shanker, AIR 1938 All 619, Misra, J. recognised that a retiring partner could escape liability in respect of transactions entered into by the continuing partners after his retirement if the third party was aware that the former had ceased to be a partner of the firm.

In our opinion, the proviso to Section 32(3) and the corresponding provision in Section 45 with its proviso indicate beyond doubt, that only persons who were not aware of the retirement of a particular partner could take advantage of Section 32(3) or Section 45. The purpose of Section 32(3) is more to specify how notice should be given. Its main object is to avoid the necessity of giving actual or private notice to the various persons. In other words, it specifies the mode by which the retiring partner may be relieved of the responsibility of issuing notice to the various classes of persons who might enter into transactions with the surviving partners. Public notice is intended only to serve a purpose, namely, to bring home to the persons concerned the fact of retirement That purpose will undoubtedly be served in a better way by personal or actual notice. To contend that actual notice cannot take the place of the public notice is to miss the substance of the matter and argue counter to the very principle on which the retiring partner's liability is based. In Jarvis v Hemmings, 1912-1 Ch 462, a question somewhat analogous to the present one arose. Under the relevant statutory provision a landlord, who was given certain rights on condition of his issuing notice by registered post addressed to his tenants, was held to have satisfied the requirements of the statute where he gave persona! notice. Warrington J. observed:

"No service can be better than personal service. The object of the section is that the notice shall come to the knowledge of the person for whom it is intended and there cannot be any reason why that should be secured by service by registered post, rather than by personal service, which is a surer mode of service. I cannot imagine, therefore, that there can be any reason why it should be sent by registered post and in no other way. Therefore on the true construction of the section, quite independent of authority, I should have thought that the service was sufficient."

10. We are therefore of the opinion that the appellant bank which was aware of the retirement of the respondent (third defendant) would not be entitled to hold him liable in respect of a debt incurred by the firm after the retirement of the respondent. The appeal fails and is dismissed with costs.”

26. Reading of this judgment shows that personal service is better service especially in a case like this. Retiring partner cannot be held liable in respect of transaction entered into by continuing partners after his retirement. If third party

is aware that a person is ceased to be a partner of the firm , then, the creditor cannot hold the retiring partner liable for the debt incurred by the firm after retirement.

27. Information regarding retirement on 18.2.2009 had been informed to the first respondent bank only on 30.11.2009 after the reconstitution of the firm two times on 18.2.2009 and 28.7.2009. No public notice of retirement was given. Admittedly, after the reconstitution of partnership firm, its partners had not discharged the liability to the first respondent bank, as undertaken by them when firm was reconstituted. In such circumstances, appellants cannot claim that they are not liable to pay the debt due to the bank by the partnership firm, especially when there is no agreement entered among the appellants, newly inducted partners and the first respondent bank, for discharging the appellants from their liability on their retirement.

28. Learned counsel for the appellants heavily relied on the judgment of Hon'ble Supreme Court of India reported in CDJ 2006 SC 313 referred supra, for the proposition that without the demand notice prior to reconstitution, guarantors cannot be made liable. Aforesaid judgment deals with the case where company and its directors are involved.

29. So far as Company is concerned, directors are not personally liable. Therefore, personal liability sought to be fastened on the directors on the basis of personal guarantee deed executed by them. Here, in this case, appellants are partners in a partnership firm. Partners are personally liable for the liability of the partnership firm. It is true that in the guarantee agreement, it is mentioned that guarantors are liable to pay on the demand made. It is also true that in the pre-suit notice sent, appellants were not shown as parties, therefore, that notice was not sent to them. In the OA, they are made as parties and participated in the proceedings. Therefore, non-sending of pre-suit notice cannot be considered as fatal defect. Even in the absence of guarantee deed executed by the first appellant, first appellant is liable for the debt due in his capacity of partner. One solace to the retired partners, as per the dictum laid down in re, Central United Bank Ltd. Vs. B.A. Venkatarama Naidu reported in AIR 1963 Mad 302 is that they cannot be made liable for the subsequent loan facilities extended to the reconstituted partnership firm and its partners. In the case before hand, second respondent firm had originally availed term from for a sum of Rs.35.00 lakhs and OD facility upto Rs.5.00 lakhs on 23.6.2008. This OD Facility was enhanced on 18.12.2009 to Rs.14.00 lakhs and it was extended further in the year 2011 for a period of one year.

30. Therefore, this Tribunal is of the view that appellants along with other partners are liable to repay the debt due to the first respondent bank, however, they cannot be made responsible or liable for the enhanced Overdraft facility of Rs.9.00 lakhs. They are liable only for the Term Loan of Rs.35.00 lakhs and Overdraft Facility of Rs.5.00 lakhs along with interest. Therefore, judgment relied on by the Learned Counsel for appellants with regard to guarantee reported in

CDJ 2006 SC 313 is not applicable to the facts and circumstances of this case.

31. In so far as the contention of Learned Counsel of appellants with regard of limitation of the claim is concerned, it is seen that appellants voluntarily resigned from the partnership firm and reconstitution was effected. At every stage of reconstitution, fresh loan agreements, guarantee agreements, renewal letters were executed by reconstituted partners. Therefore, contention of Learned Counsel for appellants that claim is barred by limitation is not correct.

32. In this view of the matter, this Tribunal finds no reason to interfere with the order of Learned Presiding Officer, DRT, Bangalore passed in OA No.1458/2013 on 27.1.2016. However, while confirming the same, passes the following order.

"The appellants along with other partners are liable to repay the debt due to the first respondent bank, however, only for the Term Loan of Rs.35.00 lakhs and Overdraft Facility of Rs.5.00 lakhs, along with interest and they are not liable for the enhanced Overdraft facility of Rs.9.00 lakhs."

33. In the result, Appeal RA 110/2017 is disposed of, as indicated above, with the costs of the first respondent bank.

34. Pending IAs, if any, stand closed.

