(1963) 07 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 121-D of 1961

Tilak Raj APPELLANT

Vs

B.L. Verma and Others RESPONDENT

Date of Decision : 19-07-1963

Acts Referred:

Partnership Act, 1932 — Section 19, 22, 25, 26, 27

Citation : (1964) 1 ILR (P&H) 24

Hon'ble Judges : Daya Krishan Mahajan, J

Bench : Single Bench

Advocate : N.D. Bali, for the Appellant; Yogeshwar Dayal, for the Respondent

Final Decision : Dismissed

Judgement

Daya Krishan Mahajan, J.—This order will dispose of Civil Revisions Nos. 121-D of 1961, 306-D of 1961 and 307-D of 1961. The point that requires determination in all these petitions is common to all. The point is whether a lease-deed executed on behalf of the partnership binds the partners. In order to arrive at a correct, decision of the matters it is proper to set out the relevant facts.

2. B.L. Verma, who is the landlord of the premises consisting of two sets of godowns, executed two documents of lease on the 20th of May, 1952, in favour of Mysore Soap Mills through Jagdish Rai, the managing partner of the firm. In the documents of lease all the other partners are mentioned; they being, besides Jagdish Rai, Kundan Lal, Tilak Raj, Wazir Chand and Madan Lal. As the rent was in arrears from the partnership for various periods, three suits were filed for its recovery by the landlord in the Court of the Judge, Small Cause Court, Delhi, against all the partners including one Vishwa Nath. These suits were decreed by the trial Court against all the partners but were dismissed against Vishwa Nath. One of the partners, namely, Wazir Chand, came up in revision to this Court. Three revision petitions were filed, one against each of the decrees in the suits. The decrees of the trial Court were set aside and the cases were remanded to the trial Court for a fresh decision. The trial Court again decreed the suits against

all the partners excepting Wazir Chand. It is against these three decrees that the present petitions for revision have been filed by Tilak Raj. The only contention raised by his counsel is that he being not a party to the lease deeds there is no privity of contract between him and the landlord and, therefore, the suits against him are not maintainable. In support of this contention the learned Counsel relies on a decision of the Bombay High Court in Ragoonathdas Gopaldas and Ors. v. Morarji Jutha and Ors. ILR 16 Bom. 568. This decision does support his contention but will be of no avail as this decision was given long before the Indian Partnership Act (Act No. IX of 1932) was enacted. It will be at this stage proper to set out the relevant provisions of this Act. Section 19 deals with the implied authority of a partner as agent of the firm and is in these terms:

(1) Subject to the provisions of Section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his ''implied authority''.

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

(a) submit a dispute relating to the business of the firm to arbitration,

(b) open a banking account on behalf of the firm in his own name,

(c) compromise or relinquish any claim or portion of a claim by the firm,

(d) withdraw a suit or proceeding filed on behalf of the firm,

(e) admit any liability in a suit or proceeding against the firm,

(f) acquire immovable property on behalf of the firm,

(g) transfer immovable property belonging to the firm, or

(h) enter into partnership on behalf of the firm.

3. Section 22 deals with the mode of doing act to bind a firm and is in these terms:

In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

4. Section 25 deals with the liability of a partner for acts of the firm and is in these terms:

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.

5. Sections 26 and 27 also provide for the vicarious liabilities of the partners and are in these terms:

26. Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefore to the same extent as the partner.

27. Where-

(a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or

(b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners, while it is in the custody of the firm, the firm is liable to make good the loss.

6. It will be apparent from the combined reading of these provisions that the lease-deeds Exhibits P. 1 and P. 2, which were executed on behalf of the partners, will bind all the partners and, therefore, there is no substance in the contention that there is no privity of contract between the landlord and the partners other than the one signing the lease-deeds. It is not disputed that the lease-deeds have been properly executed on behalf of the firm. In this view of the matter these petitions fail and are dismissed with costs. The record be sent to the trial Court without any delay.