

(1958) 01 GAU CK 0003
In the Gauhati High Court
Case No : First Appeal No. 1 of 1954

Union of India (UOI)

APPELLANT

Vs

Durgadutta Biswanath and Others

RESPONDENT

Date of Decision : 29-01-1958

Acts Referred:

Companies Act, 1956 — Section 171
English Companies Act — Section 177
Partnership Act, 1932 — Section 69, 69(2)
Railways Act, 1989 — Section 77, 80, 9

Citation : (1958) 01 GAU CK 0003

Hon'ble Judges : H. Deka, J;G. Mehrotra, J

Bench : Division Bench

Advocate : M.C. Pathak and D.N. Medhi, for the Appellant; S.M. Lahiri and P.K. Gupta, for the Respondent

Final Decision : Allowed

Judgement

G. Mehrotra, JJ.—This is defendant's appeal against the judgment of the Subordinate Judge, Lower Assam Division (Nowgong) decreeing the suit. The facts briefly are that the plaintiff respondent was a partnership firm and carries on business of textile goods at Haibargaon, Nowgong. Assam. The pro forma defendants were commission agents on behalf of the plaintiff and carry on business at Bombay. The Union of India was impleaded as a defendant and Western Railway, Bombay, Central Railway, Bombay and North-Eastern Railway, Gorakhpur were all Impleaded as defendants. They were the carriers and they were managed by the Union of India. A consignment of nineteen bales of C. C. P. goods was booked from Ex Wadi Bundar to Nowgong, Assam under invoice No. B/40/R/R No. 4348/50 dated 2-8-1951 and at the time of the booking the condition of the goods was good.

The railway receipt was endorsed by the con-signers and the plaintiff was authorised to take delivery of these goods. When the goods arrived at Nowgong it was found that they had been damaged in transit due to the negligence and

misconduct of the Hallway servants. The delivery was taken after a protest and the present suit was brought by the plaintiff for the price of the damaged goods on the ground that damage was caused to the goods on account of negligence and misconduct of the Railway employees. The suit was defended by the Union of India. A number of points were raised challenging the validity of the notices given u/s 77 of the Indian Railways Act and Section 80 of the C. P. C. It was also contended by the defendant that the amount of damages claimed was excessive.

The contention however raised by the defendant No. 4 was that the suit was barred by provisions of Section 69(2) of the Indian Partnership Act, inasmuch as the firm was not registered. It is not disputed now that during the pendency of the suit the firm was registered. The trial Court decreed the suit on the finding that the subsequent registration validates the institution of the suit and there was no bar to proceed with the trial of the suit and pass a decree if before the decree was passed the firm had been registered. The trial Court accepted the defence contention as regards the amount of damages and reduced the amount to Rs. 4,800/- the claim being for Rs. 5,200/1/-.

2. In the appeal the main contention raised by the appellant is that the subsequent registration cannot validate the institution of the suit. A ground has also been taken that the trial Court should have allowed the parties to lead evidence but as it appears from the judgment of the trial Court, the parties made a statement that they did not wish to adduce any evidence. The only question therefore argued before us is that the subsequent registration of the firm cannot validate the institution of the suit. Before we consider the authorities on this point it will be necessary to refer to the language of Section 69(2) of the Indian Partnership Act which reads as follows:

No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

It is significant to note that the Section 69(2) in terms prohibits the institution of the suit without registration. The words in Section 69(2) in our opinion are mandatory and the suit instituted without obtaining registration of the firm is void and cannot be proceeded with. It is necessary to refer to some of the authorities on this point. In the case of Dwijendra Nath Singh and Another Vs. Govinda Chandra and Another, it was held by a Division Bench of the Calcutta High Court that a later registration of the firm before the suit was actually heard, cannot validate the institution of the suit and the suit must fail if the firm was not registered on the date of the institution of the suit.

A similar view has been taken by the Bombay High Court in the case of Govindmal Gianchand v. Kunj Biharilal AIR 1954 Bom 364. In this case Tendolkar J., observed as follows:

The provisions of Section 69 are mandatory and unlike their counterpart in

England there is no power in the High Court to grant to the defaulting partnership any relief against the disability imposed by the section. The section debars an unregistered firm from filing a suit as it does not confer any right on the defendant which he could waive at his option. Its effect is that a suit by an unregistered firm is at its inception bad, and the moment the court is satisfied that the plaintiffs are an unregistered firm it must treat the suit as not having been filed and dismiss it. No act of the defendant can make a suit good which is at its inception bad and therefore, the consent of the defendant in such a suit cannot enable the court to pronounce a decree in favour of the plaintiffs who are found to be an unregistered firm.

In the case of K.K.A. Ponnuchami Goundar Vs. Muthusami Goundar and Another, a similar view has been taken. It was held in this case that a suit is instituted when the plaint is filed in a court of competent jurisdiction. The registration of the firm is a condition precedent to the right to institute the suit and the court has no jurisdiction to proceed with the trial when the condition precedent has not been fulfilled. A similar view was taken by the Allahabad High Court in the case of (Firm) Danmal Parshotam Dass Vs. (Firm) Babu Ram-Chhote Lal, and by the Patna High Court in the case, of Firm Laduram Sagarmal Vs. Jamuna Prasad Chaudhuri and Others, The same view was taken by the Travancore-Cochin High Court in the case of Rank of Koothattukulam v. Itten Thomas AIR 1955 Trav-Co 155.

All the cases upto date have been considered by their Lordships of the Travancore-Cochin High Court and it has been held on consideration of all the cases that Section 69(2) is mandatory and that subsequent registration of the firm will not validate the institution of the suit. The Court below has relied upon an earlier case of the Calcutta High Court reported in Radha Charan Saha v. Matilal Saha, 41 Cal WN 534 and on the case of Nazir Ahmed v. Peoples Rank of Northern India Ltd. AIR 1942 Lab 289(FB), and the case of Varadarajulu Naidu v. Rajamanika Mudahar AIR 1937 Mad 767 . So far as the Madras case is concerned that was expressly overruled by the later Madras case to which we have already referred. As regards the Calcutta case referred to above it has been considered in the later Division Bench case to which we have already referred, reported in Dwijendra Nath Singh and Another Vs. Govinda Chandra and Another, and it has been distinguished on the facts.

Apart from it we are inclined to agree with the later view of the Calcutta High Court and in our opinion the case reported in 41 Cal WN 534 (ibid) does not lay down correct law. As regards the Lahore High Court case referred to by the trial Court that was a Full Bench decision of the Lahore High Court. In a later case of the same Court in the case of Puran Mal Ganga Ram, Firm Vs. The Central Bank of India Ltd., this case was distinguished and it was held by the Punjab High Court also that the subsequent registration will not validate the institution of the suit.

It was held in this case that where there was no registration of the firm u/s 69

before the suit was instituted subsequent registration will not rectify that mistake. The earlier decision of the Lahore High Court was a case where the Bench was considering the question u/s 171 of the Indian Companies Act. Relying upon the English decisions based on Section 177 of the English Companies Act it was held by the Lahore High Court that subsequent leave by the Judge will validate the proceedings even though it had been instituted at the time when there was no permission by the Judge. In our opinion the earlier Lahore High Court case is distinguishable.

The language of Section 171 of the Indian Companies Act is different from the language of Section 69(2) of the Indian Partnership Act. Section 171 expressly lays down that the suit cannot be proceeded with or commenced without obtaining permission of the judge. This section in terms contains prohibition both against the commencement and further proceeding. The Legislature has deliberately used the two words "proceeded with" or "commenced". In our opinion the use of these two words clearly indicates that the legislature never intended that failure to commence the proceeding without obtaining the leave will render the entire proceedings void ab initio.

Even if the principle laid down in, the Lahore High Court can be said to apply to the present case, in our opinion it does not lay down the correct law and we are not inclined to agree with the reasoning of the Lahore High Court.

3. Mr. Lahiri who appears for the respondent, has strenuously contended that the requirement of Section 69 of the Partnership Act is only a procedural requirement and it is not compulsory for any firm to get it registered under the Partnership Act. Under these circumstances the section can be reasonably interpreted to mean that the suit will be deemed to have commenced on the date when the registration has been obtained. In view of the express language of the section we do not think that any such fiction can be introduced. In fact the Calcutta case referred to earlier in 41 Cal WN 534 (ibid) is based on this fiction. As we have already pointed out in view of the express provision of Section 69(2) we do not think that there is any justification for introducing this fiction. In the result therefore we allow the appeal, set aside the decision of the Subordinate Judge and dismiss the suit. The defendant is entitled to its cost all throughout.

Deka, J.

4. I agree.