

(1982) 05 CAL CK 0012
In the Calcutta High Court
Case No : First Appeal No. 44 of 1959

Union of India (UOI)

APPELLANT

Vs

Madar Bux and Another

RESPONDENT

Date of Decision : 07-05-1982

Acts Referred:

Income Tax Act, 1922 — Section 46(2), 67

Citation : 86 CWN 1035 : (1983) 140 ITR 821 : (1983) 14 TAXMAN 103

Hon'ble Judges : S.C. Sharma, J;Chittatosh Mukherjee, J

Bench : Division Bench

Advocate : Balai Lal Pal, N.L. Pal and Ram Chandra Prasad, for the Appellant;C.F. Ali and Hafizur Rahaman, for the Respondent

Judgement

Chittatosh Mukherjee, J.—Madar Bux (since deceased), the plaintiff-respondent herein, had instituted a suit against the Union of India and State of West Bengal as defendants in the Subordinate Judge's Court, Asansol, for declaring that the certificate issued and filed under Sections 5 and 6 of the Bengal Public Demands Recovery Act in the Office of the Certificate Officer, Burdwan, in Certificate Case No. 967 of 1948/49 and the proceedings thereunder were without jurisdiction, ultra vires, ab initio null and void and not binding upon the plaintiff. The defendants contested the said suit. The learned subordinate judge, Asansol, decreed the suit declaring that the Certificate Case No. 967 of 1948/49 was without jurisdiction and illegal. The Union of India represented by the Commissioner of Income Tax, West Bengal, has preferred this appeal.

2. The learned subordinate judge has rejected the contention of the plaintiff, Sk. Madar Bux, that he had no concern with the firm, M/s. Moula Bux, the assessee. Upon consideration of the facts and circumstances and the evidence on record, the learned subordinate judge concluded that the plaintiff, Sk. Madar Bux, was a partner of the unregistered firm. The certificate had been filed for recovering the Income Tax from the said unregistered firm before its dissolution in April, 1946. The learned subordinate judge applied the ratio of the Division Bench decision of

this court in R.N. Bose Vs. Manindra Lal Goswami, , and held that the said assessment made of its pre-dissolution income in the name of the said unregistered firm was illegal and realisation of the said tax from the plaintiff was also without jurisdiction. The certificate issued u/s 46(2) of the Indian I.T. Act, 1922, against the plaintiff was also pronounced as illegal by the court below. The learned subordinate judge, for the said reasons, has declared the certificate case to be without jurisdiction.

3. Mr. Pal, appearing on behalf of the appellant, Union of India, has made a four-fold submission before us. The plaintiff's challenge against the aforesaid assessment orders made under the Indian I.T. Act, 1922, was barred u/s 67 of the said Act. According to Mr. Pal, the suit in question was also barred u/s 37 of the Bengal Public Demands Recovery Act. The plaintiff in his plaint did not pray for any relief in respect of the assessment orders made by the ITO, Burdwan. Therefore, he was not entitled to indirectly impugn the said assessment orders by praying for a declaration that the certificate proceeding for the recovery of the said Income Tax dues was illegal and without jurisdiction. Lastly, Mr. Pal submitted that the plaintiff was admittedly a partner of the assessee-unregistered firm, Sk. Moula Bux, and, therefore, he was liable under law for Income Tax dues in respect of the pre-dissolution period of the said firm.

4. Mr. C.F. Ali, learned advocate for the substituted respondent, has tried to challenge the aforesaid findings by the learned subordinate judge that Sk. Madar Bux had been a partner along with his nephew, Sk. Moula Bux, of the unregistered firm in question until it was dissolved in April, 1946. In our view, there is an overwhelming evidence that the plaintiff, Sk. Madar Bux, and his nephew, Sk. Moula Bux, used to carry on as partners in a contract business for the supply of meat and livestock to the military authorities during the Second World War. The plaintiff himself produced in the trial court his statement dated 24th April, 1946, a translation of which was marked as Ex. 1. He had declared that he had accommodated his nephew, Moula Bux, with him in his own business for nearly 10/12 years as a "working partner". The military contracts which Madar Bux got during the period were opened in the name of his nephew because Madar Bux himself was an illiterate person. In his statement, Madar Bux claimed that he was the owner of the said firm and the capital also belonged to him. Madar Bux had further declared that he had separated from his nephew and his family on payment of Rs. 11,000 and by giving him agricultural lands. We shall presently refer to the other evidence in the case which also fully establish that at all material times the plaintiff, Madar Bux, had represented and had acted as a partner of the said firm. Therefore, we affirm the finding of the trial court that the plaintiff, Madar Bux, had been a partner of the said unregistered firm, M/s. Moula Bux. In our view, the plaintiff, Madar Bux, cannot be allowed to contend now that the impugned assessment of Income Tax made in the name of the said partnership firm were illegal and that the said assessment ought to have been made in the names of the two individual partners of the unregistered firm. It is undisputed that on or about 24th August, 1948, in the office of the ITO,

Burdwan, the Income Tax returns u/s 22 of the Indian I.T. Act, 1922, in respect of the Income Tax year 1944-45 were filed in the name of M/s. Sk. Moula Bux described as a firm with Sk. Madar Bux and Sk. Moula Bux as the partners. On the same date similar Income Tax returns for 1945-46 and 1946-47 were filed on behalf of the firm, M/s. Sk. Moula Bux, with Sk. Madar Bux and Sk. Moula Bux as partners (vide Exs. D and D-1). In the said assessment proceeding Mr. Ambujaksha Paul had filed vakalatnama executed by Sk. Madar Bux (vide Ex. E series).

5. On 30th August, 1948, the ITO, Burdwan, u/s 23(3) read with Section 34 of the Indian I.T. Act, 1922, passed his assessment orders in respect of the aforesaid returns submitted on behalf of Sk. Moula Bux. The ITO found that Sk. Madar Bux and Sk. Moula Bux, who were uncle and nephew, had done business as proprietors. Subsequently, there was a dispute between them which had been settled by Madar Bux by paying his nephew Rs. 11,000 and transferring to him certain agricultural lands. The ITO assessed Rs. 35,000 for the year 1944-45 as the total net profit of M/s. Moula Bux described as an unregistered firm. He had also made similar assessment for the year 1945-46 (vide Ex. 3). Sk. Madar Bux through his pleader, Sri A. Paul, had applied for obtaining certified copies of the said assessment orders. We understand that the appeals preferred against the assessment orders before the AAC, Burdwan, were not successful. According to the learned advocate for the respondent, as the appeals were time-barred, the same were not entertained.

6. On 17th March, 1949, the ITO, Burdwan, u/s 46(2) of the Indian I.T. Act, 1922, certified to the Collector, Burdwan, that a sum of Rs. 52,145.14 was due from Sk. Madar Bux on behalf of the firm styled M/s. Sk. Moula Bux on account of Income Tax, super-tax, etc. The ITO requested the Certificate Officer to recover the said amount as if the same were arrears of land revenue (Ex. 5). Thereupon, on 21st March, 1949, the Certificate Officer, Burdwan, had issued a certificate of public demand for Rs. 52,145.14 in respect of Income Tax, super-tax, etc., for the years 1944-45 and 1945-46, with the Union of India as the certificate holder and Sk. Madar Bux on behalf of the firm styled M/s. Sk. Moula Bux as the certificate debtor (vide Ex. 5). It has transpired in evidence that Sk. Madar Bux had applied to the ITO, Burdwan, for an extension of time to deposit the tax for the years 1944-4-5 and 1945-46 (vide Exs. F, F-1 and F-3). The respondents have also exhibited several petitions filed by Sk. Madar Bux before the Certificate Officer, Burdwan, inter alia, stating that he had paid some amounts in the said certificate case and praying for granting him instalment, etc., (vide Exs. F-12 and F-13). It is unnecessary for us to set out in detail the contents of the various applications filed by Sk. Madar Bux before the ITO concerned and the Certificate Officer, Burdwan. It would be sufficient to say that in his said applications Sk. Madar Bux did not dispute that he had been a partner of the assessee, unregistered firm, M/s. Sk. Moula Bux, or that he was liable to pay the certificate dues. He had prayed both before the ITO, Burdwan, and the Certificate Officer, Burdwan, inter alia, for granting him time to pay the arrear

taxes. Sk. Madar Bux in his petition (Ex. F-12) dated 12th of July, 1949, had offered to pay Rs. 7,000 and had prayed that he may be granted instalment to pay the balance dues. Sk. Madar Bux in his petition (Ex. F-14) filed on 24th September, 1949, had submitted that he had deposited till then a sum of Rs. 12,000 and had renewed his prayer for granting him instalments. On 5th November, 1951, Sk. Madar Bux wrote a letter to the ITO, Non-companies income tax-cum-Excess Profits Tax District, Calcutta, submitting that his properties had been advertised for sale in Certificate Case No. 867 of 1948-49 by the Certificate Officer, Burdwan. Sk. Madar Bux claimed that he was a pauper and he had no means to pay the demand dues. He was going to apply to the insolvency court for protection. On 26th November, 1951, in his letter (Ex. F-6), he again expressed his inability to pay the dues and prayed that the dues may be realised from Sk. Moula Bux.

7. From the records of the case it does not appear that Sk. Madar Bux had filed any petition u/s 9 of the Bengal Public Demands Recovery Act denying the liabilities for the aforesaid certificate dues. There was also no adjudication by the authorities under the said Act as to whether or not the certificate in question had been duly filed and whether the demand was recoverable from the certificate debtor, Sk. Madar Bux.

8. Thus, although the Indian I.T. Act, 1922, provided for an elaborate procedure for determination of the rights and liabilities created by the said Act, the plaintiff, Madar Bux, did not establish before the authorities under the said Act that the assessment made in the name of the unregistered partnership firm, of which he was one of the partners, was not correct. In fact, the assessment orders passed by the ITO, Burdwan (Ex. 3A), does not even indicate that the plaintiff, Sk. Madar Bux, who was represented by a lawyer did question the jurisdiction of the ITO to assess the said unregistered firm and the only point urged by Sk. Madar Bux before the ITO was that the business actually belonged to his nephew, Sk. Moula Bux, and not to him. Sk. Moula Bux, on the other hand, claimed that although the work was done in his name, the real owner was his uncle, Sk. Madar Bux. The ITO came to the finding that both Sk. Madar Bux and S.K. Moula Bux had jointly done business and both of them were proprietors. Later on, there was dispute between them and they had amicably separated. The plaintiff, Sk. Madar Bux, who was a certificate debtor did not deny before the Certificate Officer his liabilities for the certificate dues. He did not also file any appeal or revisional application under the said Act. Therefore, though both the Indian I.T. Act, 1922, and the Public Demands Recovery Act provide for the determination of the rights and liabilities, the plaintiff did not seek before the authorities under the said Act a determination of the question which he ultimately raised by filing the present civil suit on 9th December, 1953. We may also point out that another serious infirmity in the plaintiff's case was that in his plaint he did not pray for any relief either in respect of the assessment orders or in respect of the certificate issued u/s 46(2) of the Indian I.T. Act, 1922. But the learned subordinate judge entered into the correctness of the said assessments and

certificates and has indirectly set aside the said assessment order of the ITO. In spite of the express prohibition contained in Section 67 of the Indian I.T. Act, 1922, without determining the correctness of the said assessment orders and of the certificate u/s 46(2) of the said Act, the learned subordinate judge could not have declared that the certificate issued and filed in the name of the plaintiff in the office of the Certificate Officer, Burdwan, were without jurisdiction, ultra vires and ab initio null and void and not binding upon the plaintiff.

9. The Indian I.T. Act, 1922, created the liability to pay Income Tax and also provided for a determination of the right or liability in respect of the same. Section 67 of the said Act expressly excluded the civil court's jurisdiction in these matters. The plaintiff, Sk. Madar Bux, did not challenge the vires of any of the provisions either of the Indian I.T. Act, 1922, or those of the Bengal Public Demands Recovery Act. Further, when there was an adequate remedy provided under the said two Acts for doing what the learned subordinate judge has done, we are inclined to hold that the instant suit was not maintainable in the civil court. In this connection, the learned advocate for the appellant, Mr. Pal, has correctly relied upon the decision of the Supreme Court in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, . Hidayatullah C.J. in *Dhulabhai's* case had considered the decision of the Judicial Committee in AIR 1940 105 (Privy Council) and in *Raleigh Investment Co. Ltd. v. Governor-General in Council* [1947] 15 ITR 332 . The learned Chief Justice in para. (17) (of AIR) (see p. 425 of 22 STC), of this judgment with reference to these two cases had observed that they were decided on the basis of the provisions in the relevant Act for correction, modification and setting aside assessments and the express bar of the jurisdiction of the civil court. The presence of the section barring the jurisdiction was the main reason and the existence of an adequate machinery for the same relief was the supplementary reason.

10. The court in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, , did not agree with the extreme proposition that even the question of ultra vires of the taxing laws cannot be questioned in a civil court and held that the said question of ultra vires is always open to the civil courts, for, it cannot be the implication of any provision making the decision final that even void or invalid laws must be enforced without remedy. Although the court was not prepared to accept the dictum in *Raleigh Investment Co. Ltd.'s* case [1947] 15 ITR 332 , that even constitutional validity of the taxing provisions would have to be challenged by adopting the procedure prescribed by the I.T. Act, it had recognised the Legislature's power to bar the jurisdiction of the civil court in respect of the special rights and liabilities created by a statute and to provide for determination of the rights and liabilities by the Tribunals constituted under the Act. After a review of various reported decisions including *Kamala Mills Ltd. Vs. State of Bombay*, and in *K.S. Venkataraman and Co. Vs. State of Madras*, , the learned Chief Justice formulated seven principles relating to the exclusion of the civil court's jurisdiction.

11. The plaintiff in the instant suit did not challenge the vires of any of the provisions of the I.T. Act. He did not even pray for setting aside or modifying the assessments made by the ITO, Burdwan, in the name of the unregistered partnership firm, M/s. Moula Bux. In fact, he did not also make any averments in his plaint that the I.T. assessments in the name of the unregistered firm were void ab initio. In our view, in the suit, as framed, there was no scope for adjudicating whether or not the assessment order made under the Indian I.T. Act, 1922, and the certificate granted u/s 46(2) of the said Act were illegal and without jurisdiction. The plaintiff not only did not pray for any relief in respect of the said assessment orders and the certificate u/s 46(2) of the Indian I.T. Act, 1922, but also he did not even implead either the ITO concerned or even the Certificate Officer in whose office the certificate had been filed. The plaintiff did not pray for, and the court below did not grant, any consequential relief either in respect of the assessment order or the certificate case. In our view, before adjudicating on the validity or otherwise of the assessment orders and the certificates issued and filed in the name of the plaintiff, Madar Bux, both the ITO and the Certificate Officer ought to have been given opportunities to contest the suit. We are fully aware of the fact that the defendants did not raise in the trial court the question of non-joinder of the said authorities. But, at the same time, as merely a declaratory decree against the Union of India and the State of West Bengal without granting any consequential orders against the ITO and the Certificate Officer may be ineffectual, Section 42 of the Specific Relief Act, 1877 (corresponding to Section 34 of the Specific Relief Act, 1963) would also be a bar to decreeing the suit in the manner done by the court below.

12. In decreeing the suit the learned subordinate judge, however, had relied upon the decision of Chakravartti C.J. and Dasgupta J. in R.N. Bose Vs. Manindra Lal Goswami, , and held that the I.T. assessment in the name of the unregistered firm for its pre-dissolution income was invalid and, according to the learned subordinate judge, the certificate u/s 46(2) of the I.T. Act in the name of the plaintiff (Ex. 5) dated 17 March, 1949, and also the proceeding under the Bengal Public Demands Recovery Act against the plaintiff were null and void. Mr. Pal, learned advocate for the appellant, Govt. of India, did not dispute before us that Chakravartti C.J. and Dasgupta J. in R.N. Bose's case had correctly laid down the law at the relevant time relating to the assessment of unregistered partnership firms, but had rightly contended that the said decision in R.N. Bose's case does not warrant the further proposition that a partner of the assessee, unregistered firm, by filing a suit can challenge proceedings under the Bengal Public Demands Recovery Act on the ground that the assessments of Income Tax had not been made in accordance with law.

13. Chakravartti C.J. and Dasgupta J. in R.N. Bose's case had dismissed an appeal by the Revenue against the judgment of D.N. Sinha J. making absolute a rule obtained by the respondent, Manindra Lal Goswami. The said Manindra Lal was alleged to be partner of an unregistered firm and after its dissolution an ITO had assessed the pre-dissolution income of the firm in the name of the said

partnership firm and had also issued a certificate u/s 46(2) of the Indian I.T. Act, 1922, in the name of the dissolved firm. The certificate under the Bengal Public Demands Recovery Act was also filed in the name of the said dissolved firm. Subsequently, the Certificate Officer had purported to add the name of Manindra Lal Goswami and two others as certificate debtors and had served upon them notice u/s 7 of the Bengal Public Demands Recovery Act. Manindra Lal had filed an objection which was rejected by the Certificate Officer. While his appeal against the same was pending before the Commissioner, he had also moved this court under Article 226 of the Constitution. During the pendency of the writ case, the learned Commissioner, Presidency Division, had allowed the appeal of Manindra Lal and had set aside the proceeding under the Bengal Public Demands Recovery Act. Sinha J. had made the rule obtained by Manindra Lal absolute, holding, inter alia, that Manindra Lal could not be proceeded against for tax dues and the assessment in the name of the dissolved unregistered partnership firm was not possible in law. Chakravartti C.J. affirmed the finding of the learned trial judge that on the notices issued u/s 34 of the Indian I.T. Act, 1922, there could not have been any assessment of the firm at all and the firm could not be proceeded against for recovery of tax imposed by such assessment. Although the said finding about the invalidity of the notices u/s 34 of the Indian I.T. Act, 1922, was sufficient for the disposal of the appeal, on the prayer of the learned advocate for the I.T. Dept. Chakravartti C.J. had also dealt with the wider question of the proper method of assessment to be valid in case of a dissolved firm. Chakravartti C.J. observed that after the dissolution of an unregistered firm, the assessment of the pre-dissolution income of the said firm could be made in the name of the partners of the firm at the time of its dissolution and not in the name of the firm. His Lordship assumed for this purpose that Section 44 of the Indian I.T. Act, 1922, would apply.

14. In our view, the learned advocate for the appellant is right in his submission that in the instant suit challenging only the certificate proceedings for recovery from the plaintiff of the Income Tax dues of the dissolved firm in question, there was no scope for determining the validity or otherwise of the assessments made by the ITO, Burdwan, on 30th August, 1948, upon the dissolved partnership firm, Sk. Moula Bux. For the same reason we hold that the plaintiff was not entitled to challenge the certificate u/s 46(2) of the Indian I.T. Act, 1922, issued in his name. Several reported decisions of this court have considered the observation made in R.N. Bose Vs. Manindra Lal Goswami, , and have declined to apply the ratio of the said decision at the stage of recovery proceedings. We may proceed to refer to some of these decisions.

15. Renupada Mukherjee and Kamalesh Chandra Sen JJ in UNION OF INDIA Vs. SATYANARAYAN KHAN AND OTHERS., , modified the judgment and decree passed by the trial court declaring that three certificates filed and issued by the Certificate Officer, Dist. 24-Parganas, were invalid as against him and for cancelling these certificates and also for declaring the attachment of the movable properties in suit were null and void. The plaintiff was one of the partners of an

unregistered firm which had been assessed to Income Tax. The firm defaulted in paying the taxes. Thereupon, three certificates were filed and notices u/s 7 of the Bengal Public Demands Recovery Act were served upon the said firm. In the said certificate case, certain movable properties belonging to the plaintiff-partners were attached and his objection was rejected by the Certificate Officer. His appeal was dismissed by the Collector. Thereupon the plaintiff, Satyanarayan Khan, had filed the suit which was decreed by the trial court. The Union of India preferred an appeal in this court. The learned advocate for the plaintiff-respondent had conceded at the time of the hearing of the appeal that even though the firm had been since dissolved, a certificate could be legally filed against the firm in its own name as the assessment had been made against the firm when it was a going firm, but urged that when the demand had been also served upon the firm, the personal goods of the plaintiff, who was an ex-partner, could not be attached. The Division Bench was of the view that the certificates were executable also against the plaintiff-respondent personally and did not accept the submission of the appellant that he was not liable to pay Income Tax levied upon the firm without fresh assessment. The court had referred to the provisions of Section 44 of the I.T. Act and also of Order 21, Rule 50 of the CPC and held that the Income Tax itself would be recoverable from the plaintiff after his name is mentioned in the certificate as a certificate debtor. The court held that the certificates could be levied against the plaintiff only after the certificates were amended and fresh notice u/s 7 of the Bengal Public Demands Recovery Act was served upon the plaintiff in his personal capacity.

16. Mr. Pal, learned advocate for the appellant, made strong reliance upon the decision of S.K. Sen and N.K. Sen JJ. in *AJIT KUMAR GANGULI Vs. UNION OF INDIA*, The Division Bench in *Ajit Kumar Ganguli's* case, after referring to the decision of *Manindra L. Goswami Vs. R.N. Bose, Income Tax Officer, on appeal R.N. Bose Vs. Manindra Lal Goswami*, , held that an assessment made in the name of the dissolved unregistered partnership firm was a mere irregularity and this could have no adverse effect upon the validity of the certificate proceedings for the recovery of tax dues from the persons who were partners at the time of the dissolution of the firm. The Division Bench had further observed that such defects did not affect the jurisdiction to make assessment on an objection that assessment had been made in the name of the dissolved unregistered firm would not be taken while questioning the validity of the certificate proceedings. According to the Division Bench the proper forum for challenging the validity of the assessment was the AAC or the Appellate Tribunal or the High Court on a writ petition against the tax assessment proceedings (vide p. 119 of 46 ITR).

17. Our attention has been also drawn to the later Division Bench decision in *RAMGOPAL KHEMKA AND OTHERS Vs. UNION OF INDIA*, . Chatterjee and Gupta JJ. held that once the Income Tax becomes due from a firm under the provision of the Indian I.T. Act, 1922, and if, thereafter, the firm is dissolved, the partners become liable u/s 49 of the Indian Partnership Act to pay the debts first out of the property of the firm, then out of their separate property. That liability is not

affected or modified by the I.T. Act. The Bengal Public Demands Recovery Act deals with the matter of recovery and does not determine the liability. If there is a liability of the partners u/s 49 of the Indian Partnership Act for the debt of the dissolved partnership firm, it could be recovered as against them. Thus, the decision in RAMGOPAL KHEMKA AND OTHERS Vs. UNION OF INDIA, , is an authority for the proposition that the liability of the firm for tax dues could, on dissolution, be imposed upon the partners.

18. The Supreme Court in Sahu Rajeshwar Nath Vs. Income Tax Officer, C-Ward, Meerut and Another, , had approved the decision of this court in UNION OF INDIA Vs. SATYANARAYAN KHAN AND OTHERS., and in RAMGOPAL KHEMKA AND OTHERS Vs. UNION OF INDIA, . The appellant in Sahu Rajeshwar Nath's case was partner of a firm who claimed to have sold away his share in the partnership firm. The assessment was made in respect of the firm's income for the period prior to his said sale and a certificate u/s 46(2) of the I.T. Act had been forwarded for recovery of tax due. The appellant had filed a writ application for restraining the respondents from recovering the tax from him. The Supreme Court rejected the contention that without a separate notice u/s 29 of the I.T. Act, the recovery proceedings could not be initiated against the appellant. According to the Supreme Court, the expression "other person liable to pay" in Section 29 of the said Act did include a partner of an unregistered firm because his liability was not imposed on account of the provisions of the I.T. Act itself. The court referred to Section 25 of the Partnership Act and also to Order 21, Rule 50(2) of the Code. The Collector u/s 46(2) of the Indian I.T. Act, 1922, according to the Supreme Court, for the purpose of recovering the amount, have the powers which a civil court, under the CPC, has for the purpose of recovery of an amount due under a decree. In the result, it was held that the tax due from the dissolved unregistered partnership firm could be recovered from the appellant.

19. The plaintiff-respondent has been found to have been a partner of the unregistered firm and the impugned assessments were in respect of the pre-dissolution period of the said firm. The plaintiff himself filed returns in the name of the unregistered firm and in his presence the assessments in question were made by the ITO, Burdwan. On the authority of the aforesaid decisions noted above, we hold that the plaintiff respondent was liable for the tax due from the firm. After the certificate u/s 46(2) of the Indian I.T. Act, 1922, was issued in the plaintiff's name, he did not raise any objection before the ITO. Even after the certificate cases were started, instead of denying his liability, he had repeatedly prayed for time to pay the certificate dues. Therefore, he was not entitled to thereafter file a civil suit challenging only the certificate cases which were in the nature of execution proceedings. The aforesaid reported decisions amply make it clear that for the dues of the firm the plaintiff-respondent was liable both u/s 49 of the Partnership Act and under Rule 50(2) of Order 21 of the CPC. Therefore, the learned subordinate judge has clearly erred in law in decreeing the suit.

20. We accordingly, allow this appeal, set aside the judgment and decree and

dismiss the suit brought by the plaintiff-respondent. In the circumstances of the case, both parties will bear their respective costs throughout.

Sharma, J.

21. I agree.