
(1977) 07 SC CK 0008

In the Supreme Court Of India

Case No : Civil Appeal No. 393 of 1977

Vasantrao alias Baburao and Another

APPELLANT

Vs

Shyamrao and Others

RESPONDENT

Date of Decision : 28-07-1977

Acts Referred:

Companies Act, 1956 — Section 271(2), 582, 590

Citation : AIR 1977 SC 2021 : (1977) 47 CompCas 666 : (1977) 4 SCC 9 : (1978) 1 SCR 218 : (1977) 9 UJ 499

Hon'ble Judges : P. N. Shingal, J;A. C. Gupta, J

Bench : Division Bench

Advocate : K.S. Ramamoorthy, S. Balakrishnan and N.N. Ghatate, for the Appellant; Naunit Lal, Mrs. Lalita Kohli and S.G. Ghate, for the Respondent

Final Decision : dismissed

Judgement

A.C. Gupta, J.—The two appellants and the six respondents were partners of a firm called "Shivraj Fine Art Litho Works." The appellants as plaintiffs instituted civil suit No. 9 off 1974 in the Court of the Senior Civil Judge, Nagpur, for dissolution of the partnership and accounts. The reliefs asked for included a declaration that the firm stood dissolved on and from January 9, 1974. It appears that thereafter the original defendants who are the respondents before us were transposed as plaintiffs and the appellants who were originally the plaintiffs were transferred to the category of defendants. The transposed defendants raised an objection that the court had no jurisdiction to entertain the suit in view of the provisions of Part X of the Companies Act, 1956. The trial court rejected the application. The defendants then moved the Bombay High Court, Nagpur in revision. The High Court having dismissed the revision on the present appeal has been filed with special leave granted to this Court.

2. argued on behalf of the appellants that as Part X of the Companies Act, 1956 contains special provisions for the winding up of unregistered companies, which expression as defined in that Act includes, a partnership consisting of more than seven

members, any for the winding up such a partnership must be in accordance with the procedure prescribed for that purpose in the Companies Act, the suit instituted in the court of the Senior Civil Judge was maintainable. Part X of the Companies Act includes Sections 590. Section 582 defines the expression "unregistered company" as follows:

Meaning of "unregistered Company".

For the purposes of this Part, the expression "unregistered company" -

(a) shall not include -

(i) a railway company incorporated by any Act of Parliament or other Indian law or any Act of Parliament of the United Kingdom;

(ii) a company registered under this Act; or

(iii) a company registered under any previous companies law and not being a company the registered office whereof was in Burma, Aden or Pakistan immediately before the separation of that country from India; and

(b) save as aforesaid, shall include any partnership, association or company consisting of more than seven members at the time when the petition for winding up the partnership, association or company, as the case may be, is presented before the Court.

3. It is not disputed that the partnership in question had more than seven members at the time when the suit was instituted. This was an "unregistered company" as defined in Section 582(b). Section 583(1) states that subject to the provisions of this Part, a registered company may be wound up under this Act and all provisions of this Act with respect to winding up shall apply to a registered company, with the exceptions and additions mentioned in Sections (2) to (5)". It is not necessary to refer in any detail to these Sub-sections except to point out that Sub-sections (2) and (3) mention the circumstances in which an unregistered company may be wound up and one of the circumstances is that the company is dissolved. It may also be stated that under Sub-section (3) no unregistered company can be wound up under this Act voluntarily or subject to the supervision of the court and can only be wound up by the court. Admittedly this is not a case of voluntary winding up or winding up subject to the supervision of the court under Chapter VI of the Indian Partnership Act, 1932 also contains provisions for the dissolution of a firm and its winding up on dissolution. The argument for the appellants is that the special provisions of Part X of the Companies Act exclude the operation of the general law contained in the Partnership Act in the matter of winding up of a firm having more than seven persons and as the Civil Judge tried the suit shall have to apply the Partnership Act, the suit is not maintainable.

4. It is difficult to appreciate why the suit should not be maintainable at any rate in, so far as it is one for dissolution of the firm. As already stated, one of the reliefs prayed for is a declaration that the firm stood dissolved from January 9, 1974. This is

not a relief can be claimed in a proceeding under Part X of the Companies which provides for the winding up of unregistered companies, even it is not necessary to consider whether the Civil Judge had jurisdiction to entertain some of the claims made in the suit, because section 590 of the Companies Act makes it clear that Part X of the does not affect the operation of the Indian Partnership Act. S 590 states:

5. Saving and construction of enactments conferring power to w partnership, association or company in certain cases.

Nothing in this Part shall affect the operation of an enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under the Indian Companies Act, 1913 or any Act repealed by that Act:

Provided that references in any such enactment to a provision contained in the Indian Companies Act, 1913 in any Act repealed by that Act shall be read as reference to the corresponding provision, if any contained in this Act.

6. As the marginal note to this section indicates, this is a saving provision. It leaves unaffected the operation of any enactment (a) which provides for any partnership, association or company being wound up, or (b) which provides for any partnership, association or company being wound up as a company or as an unregistered company under the Indian Companies Act, 1913 or any Act repealed by that Act. An enactment means the whole Act or a part of it. The proviso which contains a rule of construction of reference in any such enactment to any provision in the Companies Act, 1913 or any Act repealed by that Act is not relevant for the present purpose. It is clear that provisions for winding up of the affairs of a firm which are contained in VI of the Indian Partnership Act and besides provision for dissolution of partnership are left untouched by Section 59 of the Companies Act. The cases cited in support of the respective contentions of the parties are not really on the point under consideration except the one of the Mysore High Court in *Pattada Ananth-v. Pattada Somayya and Anr.*(1), to which counsel for the appellants referred. The Mysore case contains an observation on Section 271 of the Indian Companies Act, 1913 which corresponds to Section 590 of the Companies Act, 1956. The learned single judge who decided the case held that there was nothing in section or in the words "any unregistered company may be wound up" which ring in that section to indicate that the aggrieved party had an option to institute a suit for winding up of an unregistered company. The decision does not take note of Sub-section (2) of Section 271 which is similar to Section 590 of the Companies Act, 1956 leaving the operation of other enactments providing for any partnership, association or company being wound up.

7. The appeal is dismissed with costs.