

PREM BALLABH KHULBE

A

v.

MATHURA DATT BHATT

December 16, 1966.

[K. N. WANCHOO, R. S. BACHAWAT AND J. M. SHELAT JJ.]

B

Code of Civil Procedure (Act 5 of 1908), cl. (c) of the proviso to s. 51—Partners—If in fiduciary relationship.

The partnership business carried on by the appellant, respondent and two others was dissolved. The appellant obtained a final decree for certain sums against the respondent, who was the managing partner of the partnership assets. The appellant applied for the execution of the decree by arrest and detention of the respondent in prison. The executing court held that the provisions of cl. (c) of the proviso to s. 51 of the Code of Civil Procedure were satisfied and issued a warrant for the arrest of the respondent. The High Court set aside this order. On appeal, this Court.

C

HELD : The appeal must be dismissed.

D

In the absence of special circumstances a partner cannot be regarded as a kind of trustee for the other partners or liable to render accounts to them in a fiduciary capacity. [300 D]

E

In the present case, the conditions of cl. (c) of the proviso to s. 51 were not satisfied. No fraud or clandestine dealing was alleged or proved. The facts did not disclose that the decree was for a sum for which the respondent was bound to account in a fiduciary capacity. [300 E]

Piddocke v. Burt, Chitty, [1894] 1 Ch. 343, Rodriguez v. Speyer Brothers, [1919] A.C. 59, Bhuban Mohan Rana v. Surender Mohan Das, I.L.R. [1952] 2 Cal. 123 and Velji Raghavji Patel v. State of Maharashtra [1965] 2 S.C.R. 429, approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 615 of 1964.

F

Appeal from the judgment and decree dated March 3, 1960 of the Allahabad High Court in Execution First Appeal No. 332 of 1956.

C. B. Agarwala and K. P. Gupta for the appellant.

S. G. Patwardhan, Yashpal Singh and M. S. Gupta for the respondent.

G

The Judgment of the Court was delivered by

H

Bachawat, J. The appellant, the respondent and two other persons carried on business in partnership under the name and style of Nayagaon Farm. The respondent was the managing partner and was incharge of the partnership assets. The firm was dissolved and a suit was instituted by the appellant for the taking of the accounts of the dissolved firm. Eventually a final decree

- A was passed in the suit in favour of the appellant against the respondent for Rs. 17,143/11/0 and Rs. 3,171/6 as on account of costs. The appellant applied for execution of the decree by arrest and detention of the respondent in prison. In this affidavit in support of the application, the appellant relied upon the grounds mentioned in clauses (a) and (b) of the *proviso* to s. 51 of the Code of Civil Procedure 1908. At the hearing of the application those grounds were not pressed but his counsel relied upon the ground mentioned in cl. (c) of the *proviso*. By cl. (c) of the *proviso* to s. 51, the court is empowered to order execution of a money decree by detention of the judgment debtor in prison if it is satisfied "that the decree is for a sum for which the judgment debtor was bound in a fiduciary capacity to account". The executing court held that the provisions of cl. (c) were satisfied and issued a warrant for the arrest of the respondent. On appeal, the High Court of Allahabad set aside this order. The decree holder now appeals to this court under a certificate granted by the High Court.

- D On behalf of the appellant our attention was drawn to ss. 9, 15, 18, 46 and 48 of the Indian Partnership Act 1932 and ss. 88, 94 and 95 of the Indian Trusts Act 1882, and it was urged that the respondent as the managing partner of the firm was bound in a fiduciary capacity to account for the assets of the partnership in his hands and the decree against him must be regarded as a decree for a sum for which he was bound in a fiduciary capacity to account.

- E On the question whether a fiduciary relation exists between the partners, the law is stated thus in Halsbury's Laws of England 3rd Edition, Vol. 38, art. 1363, p. 820 :

- F "Partnership itself does not create a fiduciary relation between the partners or make one of them a trustee for the other or for his representatives. The relation may, however, arise on the death of one of them or be created by other special circumstances."

This statement of law is consistent with the provisions of the Indian Partnership Act 1932 and the Indian Trusts Act 1882.

- G In *Piddocke v. Burt.* (1) Chitty, J. held that a partner failing to pay moneys in his hands and received by him on account of the partnership was not liable to be imprisoned under s. 4(3) of the Debtors Act 1869 as a person "acting in a fiduciary capacity" within the meaning of that statute. He said :

- H "I should be straining the law if I were to hold that a partner receiving money on account of the partnership—that is, on behalf of himself and his co-partners—

(1) [1894] 1 Ch. 343.

received it in a fiduciary capacity towards the other partners. The law allows one partner—one of several joint creditors—to receive the whole debt on account of the firm to whom it is due, and I am unable to recognise any such distinction, as was endeavoured to be made by Mr. Church, between the case of a partner receiving money of the firm and not accounting for it, and that of a partner over-drawing the partnership account; because if this distinction were true, it would apply to every case where one partner wrongly over draws the partnership account."

This decision was approved of by Lord Atkinson in *Rodriguez v. Speyer Brothers*,⁽¹⁾ and by Harries, C. J. in *Bhuban Mohan Rana v. Surender Mohan Das*.⁽²⁾ The last case received the approval of this Court in *Velji Raghavji Patel v. State of Maharashtra*.⁽³⁾ A partner must observe the utmost good faith in his dealings with the other partners. He is bound to render accounts of the partnership assets in his hands. But in the absence of special circumstances he cannot be regarded as a kind of trustee for the other partners or liable to render accounts to them in a fiduciary capacity.

In the present case the respondent as the managing partner was liable to render accounts of the partnership assets in his hands. On the taking of the accounts it was found that he over-drew the partnership account and a decree for the sum due was passed against him. No fraud or clandestine dealing is alleged or proved. On these facts it is not possible to say that the decree was for a sum for which he was bound to account in a fiduciary capacity. The High Court rightly held that the conditions of cl. (c) of the proviso to s. 51 of the Code of Civil Procedure were not satisfied.

The appeal is dismissed. There will be no order as to costs.

Y.P.

Appeal dismissed.

(1) [1919] A.C. 59, 89.

(2) I.L.R. 1952 (2) Cal. 23.

(3) [1965] 2 S.C.R. 429.