

SALIGRAM RUPLAL KHANNA & ANR

v.

KANWAR RAJNATH

May, 1, 1974

[H. R. KHANNA, M. H. BEG, AND Y. V. CHANDRACHUD, JJ.]

Indian Partnership Act, ss. 42 and 47—Scope of—Dissolution of a firm constituted for a fixed term—Mutual rights and obligations of partners after dissolution suit for rendition of accounts—Limitation.

A partnership consisting of the appellants and the respondent had entered into a lease agreement with the Custodian of Evacuee Property in respect of a mill and took possession of the mill on 31st August, 1952. The period of partnership was for 5 years being the period of the said lease. The partners having failed to pay one instalment of rent the Custodian served on the partners a show cause notice on 12-2-54 why the lease should not be terminated. On account of certain financial difficulties the parties entered into a second agreement on February 24, 1954.

Disputes having arisen between appellants and the respondent, the appellants filed a suit on December 20, 1960 alleging that after the termination of the lease by the Custodian on May 25, 1954 the two appellants and the respondent had orally agreed not to dissolve the partnership in spite of the termination of the lease and prayed for a declaration that the partnership between them and the respondent was still subsisting on the terms and conditions set out in the partnership deed dated 24th February, 1954. They also prayed for rendition of the partnership accounts. The respondent on the other hand alleged that there was no oral agreement between the parties and that the claim for rendition of accounts was barred by limitation.

The trial court held that the appellants had failed to prove that there was an oral agreement between the parties and that the claim for rendition of accounts was barred by limitation.

On appeal the High Court upheld the findings of the trial court.

Dismissing the appeal,

HELD :—(1) No inference of implied agreement can be drawn from the material on record. [371E]

According to section 42 of the Indian Partnership Act, subject to a contract between the partners a firm is dissolved if constituted for a fixed term by the expiry of that term. This provision makes it clear that unless some contract between the partners to the contrary is proved, the firm, if constituted for a fixed term would be dissolved by the expiry of that term. [371G-H]

In the instant case it was indicated in the agreement of partnership that the period of partnership had been fixed at 5 years because that was the period of the lease of the mills and the lease was terminated on May 25, 1954. [372B-C]

According to s. 47 of the Indian Partnership Act after the dissolution of the firm the authority of each partner to bind the firm and the other mutual rights and obligations of the partners continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of dissolution but not otherwise. The word 'transaction' in section 47 refers not merely to a commercial transaction of purchase and sale but would include also all other matters relating to the affairs of the partnership. The completion of a transaction would cover also the taking of necessary steps in connection with the adjudication of a dispute to which the firm before its dissolution was a party. In the instant case after dissolution, the partnership subsisted merely for the purpose of completing pending transactions, winding up the business and

A adjusting the rights of partners and for these purposes and these only the authority, rights and obligations of the partners continued. [374B-D, F-G]

(3) The suit for rendition of accounts brought by the appellants on December 20, 1960 was barred by limitation. In the absence of a contract to the contrary there could be no survival of the firm after August 30, 1957 when the period of partnership expired. [373D-F]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 143 of 1969.

(Appeal by Special Leave from the Judgment & Decree dated the 22nd March, 1968 of the Bombay High Court in Civil Appeal No. 23 of 1963).

S. T. Desai, K. L. Hathi and P. C. Kapur for the appellants.

C *K. S. Cooper, A. B. Diwan, Vasant Kotwal and I. N. Shroff* for the respondent.

The Judgment of the Court was delivered by

D KHANNA, J.—This appeal by special leave is directed against the judgment of a Division Bench of the Bombay High Court affirming on appeal the decision of the learned single Judge whereby a suit for dissolution of partnership and rendition of accounts filed by the two plaintiff-appellants, Saligram Ruplal Khanna and Pessumal Atalrai Shahani, against Kanwar Rajnath defendant-respondent was dismissed. The partnership which was sought to be dissolved carried on business under the name and style of “Shri Ambernath Mills Corporation” (hereinafter referred to as SAMCO). The property which according to the appellants belonged to the partnership consisted of three mills at Ambernath. One of them was a woollen mill, the other was a silk mill and the third was an oil and leather cloth factory with land, bungalows and chawls attached thereto. In addition to that, there was a bobbin factory at Taradeo with offices at Bombay, Ahmedabad and other places. For the sake of convenience the above property may be described, as it was done in the High Court, as “Ambernath Mills”. Although the case involves a tangled skein of facts, the points which survive for determination in appeal are rather simple.

E The Ambernath Mills originally belonged to a company called Ahmed Abdul Karim Bros. Private Ltd. The mills were declared to be evacuee property in September 1951 and the Custodian took over the management of the mills in pursuance of the provisions of the Administration of Evacuee Property Act, 1950. It was then decided that the mills should be managed by displaced persons who had been industrialists in Pakistan. A private limited company was formed of 31 persons for taking over the management of the mills. Rs. 25,000 were contributed by each one of those persons in that connection. The appellants and the respondent too were members of the company. Appellant No. 1 and the respondent had migrated at the time of partition from Gujarat in West Punjab. The respondent was a big industrialist and left behind extensive properties in Pakistan. He held verified claim of rupees 23 lakhs in lieu of property left by him in West Pakistan. The first appellant had a verified claim of

Rs. 22,000 in respect of residential property left in Pakistan. In addition to that, he had a disputed claim in respect of industrial properties. The second appellant had a verified claim of about Rs. 80,000. The two appellants and the respondent were associated by the Custodian with the management of the Ambernath Mills. By August 1952 all the members of the private limited company dropped out. It was accordingly decided by the Custodian to grant a lease of the Ambernath Mills to the respondent and the two appellants. On August 30, 1952 two documents were executed. One of the documents was an agreement of partnership between the two appellants and the respondent for carrying on the business of Ambernath Mills under the lease in the name and style of Shri Ambernath Mills Corporation. The other document was the agreement of lease executed by the Custodian of Evacuee Property as lessor and the appellants and the respondent carrying on business in partnership under the name and style of SAMCO as lessees. The subject-matter of the lease was Ambernath Mills. It was stated in the lease that the lessees had appointed the respondent as their chief representative with full powers of control, management and administration of the entire demised premises. The lease was to be for a period of five years to be computed from the date on which the possession of the demised premises was handed over to the lessees, subject to sooner determination thereof on any of the contingencies provided in clause 21 or on the breach of any condition on the part of the lessees or in the event of any dispute among the lessees resulting in the closure of the mills. It was also provided that the lessees would purchase and the lessor would sell to the lessees at an agreed price the stocks of raw materials, unsold finished goods, consumer's stores, spare parts, cars and trucks and other movables which had already been vested in the lessor, as well as three diesel generating sets purchased by the lessor. In the event of any difference on the question of the price, the same was to be fixed through one or more experts. The sale was to be completed within a period of three months from the date of the agreement. The lessees were authorised to take as partner one or more displaced persons who had filed claims under the Displaced Persons Claims Act, 1950 subject to the prior approval of the Government. The agreement also contained a provision for reference of any dispute arising out of the agreement of lease to arbitrators chosen by the parties by mutual consent. The annual rent payable by the lessees was fixed at Rs. 6,00,000 payable in four quarterly instalments of Rs. 1,50,000 each on or before 30th day of each quarter. The lessees also undertook to deposit or furnish bank guarantee in the sum of Rs. 7,00,000 as security for the payment of the value of raw material, unsold finished goods, stores, spare parts and other articles. Clauses 17 to 21 of the agreement of lease read as under :

"17. It is agreed between the Lessor and the Lessees that when the entire claims of the lessees filed by them under the Displaced Persons Claims Act, 1950, for all their properties are determined and the compensation payable to them

A by the Government of India is ascertained, the market value of the entire demised premises shall be determined by an expert appointed in that behalf by the Government of India, Ministry of Rehabilitation, and such value as is determined shall be taken as price for acquisition by the lessees of the full proprietary interest in the demised premises in the manner shown in the next succeeding paragraph.

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18. The Lessees, being all displaced persons from Pakistan and having left large properties in Pakistan, have all of them put in claims in respect of their properties and other assets left by them in Pakistan under the Displaced Persons Claims Act, 1950. When the claims under the said Act of the Lessees are verified and determined and compensation payable in respect thereof has been ascertained the compensation payable to the Lessees shall be taken into consideration, and it has been agreed as a term of this Agreement between the parties hereto with the concurrence of Govt. of India, Ministry of Rehabilitation, that on such total compensation being arrived at the Lessees shall be allotted proprietary rights in the demised premises, in the manner shown *viz.*, in case the value of the aggregate compensation payable to the Lessees is equivalent to the value of the demised premises as assessed, the Lessor shall convey the demised premises absolutely to them as full proprietors thereof, their interest in the demised premises being in proportion to the compensation payable to each of the Lessees and the respective shares in the proprietary interest shall be adjusted according to the amount of compensation payable to each as finally determined.

19. In case the aggregate amount of compensation payable by the Government of India to the Lessees exceeds the value of the demised premises as determined, the demised premises will be conveyed to the Lessees, their share *inter se* being in the proportion of the amount of compensation payable to each.

20. It is further agreed that in case the aggregate amount of compensation payable to the Lessees falls short of the value fixed for the demised premises, the Lessor shall be entitled to associate with the Lessees in the ownership of the proprietary interest to be allotted as aforesaid other displaced persons who have left industrial concerns in Pakistan, so that the total compensation payable to the Lessees and the others thus associated is equivalent to the total value of the demised premises and the said demised premises shall then become the absolute property of the Lessees and others thus associated in proportion to the total compensation payable to each as finally determined.

21. The lease to be granted pursuant hereto shall be liable to determination earlier on the settlement of the claims of the Lessees and the allotment and transfer of the full proprietary interest in the demised premises as provided in clauses 17 to 20 hereof; provided that if the value of the full proprietary interest in the demised premises exceeds the amount of compensation payable to the Lessees and part of such proprietary interest is allotted to other persons as provided in clause 20 hereof, the Lessees shall be at liberty to continue the lease for the unexpired residue of the term on the terms and conditions and yearly rent prescribed hereunder, the yearly rent being adjusted proportionately to the extent of the proprietary interest allotted and transferred to the Lessees."

According to the partnership agreement executed by the two appellants and the respondent on August 30, 1952, each partner had agreed to contribute a capital of Rs. 1,00,000. The amount of Rs. 25,000 already paid by each partner to the Custodian was regarded as part payment of the capital of rupees one lakh. Each partner had one-third share in the partnership, but it was provided that the shares would be adjusted by the respondent if fresh partners were taken in the partnership. The respondent was to be the managing partner and was entitled to assign work in the partnership to the two appellants. It was agreed that the appellants were not to interfere directly or indirectly in any manner with the management and control of the business by the respondent. The respondent was also authorized to form a limited liability company for running the business of the partnership with the consent of the Custodian and the appellants agreed to join the company as shareholders on such terms and conditions as might be agreed when such company was formed. The period of the partnership was five years "being the period of said lease".

The partnership took possession of Ambernath Mills on August 31, 1952. The respondent directed the first appellant to be incharge of the administration of the mills at Ambernath, while the second appellant, being an engineer, was placed incharge of the properties, machinery and stores of the mills. The respondent was in overall charge of the concerned.

It appears that the partnership made some progress in the first few months. The stocks of raw material, finished goods, stores and other movables which were deemed to have been purchased by SAMCO under the terms of the agreement of lease were in the meantime valued by an auditor appointed by the Custodian at rupees 30 lakhs. The Custodian called upon the partnership in April 1953 to pay a sum of rupees 7 lakhs or to furnish a bank guarantee for the said amount as provided in the agreement of lease. This payment could not be made by the partnership. There was also difficulty in paying the sixth instalment of the rent. A cheque for Rs. 1,50,000 was issued but the same was dishonoured. Subsequently, arrangements were made to pay Rs. 1,00,000. An amount of Rs. 50,000 out of the sixth instalment remained unpaid.

A On February 12, 1954 the Custodian served a notice on the respondent and the two appellants to show cause why the agreement of lease should not be cancelled on account of breach of conditions in the matter of the payment of the sixth quarterly instalment of rent and the failure to deposit or furnish bank guarantee for the amount of Rs. 7,00,000. A writ petition was thereupon filed by the partnership on February 16, 1954 in the Bombay High Court for quashing the notice issued by the Custodian.

B In the meantime, the second appellant sent letter dated February 8, 1954 to the respondent suggesting that his share in the partnership be reduced to 1 anna in a rupee or to such other fraction as the respondent thought fit. A similar letter was addressed by the first appellant. On February 24, 1954 the parties entered into a second agreement of partnership. It was agreed in the new partnership agreement that the share of the first appellant would be 3 annas and that of the second appellant 1 anna in a rupee. The respondent was to have the remaining 12 annas share. It was also agreed that the two appellants would not have the right, title and interest in the name, capital, assets and goodwill of the partnership. It was provided that the new partnership would be deemed to have been formed as from October 1, 1953. Accounts for the period from August 30, 1952 to September 30, 1953 were to be made up on the basis of the partnership agreement dated August 30, 1952 and the profits and losses for that period were to be distributed accordingly. The capital of the partnership was agreed to be arranged by the respondent and he was to be the managing partner in control of the entire affairs of the partnership. He was also to get interest at 6 per cent on all finances arranged by him. The appellants agreed to carry on such duties in the concern as might be assigned to them by the respondent. The period of the partnership was to be "the outstanding period of the lease".

D The writ petition referred to above filed by the partnership to quash the notice of the Custodian was allowed by a single Judge of the Bombay High Court on March 31, 1954. On appeal filed by the Custodian, a Division Bench of the High Court as per judgment dated April 13, 1954 set aside the order of the single Judge and dismissed the writ petition. Certificate of fitness for appeal to this Court was granted by the High Court on May 5, 1954. Stay order was also issued on that day restraining the Custodian from dispossessing the respondent and the appellants from Ambernath Mills. Appeal against the decision of the Division Bench of Bombay High Court was then filed in this Court. The Custodian of Evacuee Property made an order on May 25, 1954 cancelling the agreement of lease of Ambernath Mills dated August 30, 1952. The possession of the mills was voluntarily delivered by the partnership to the Custodian on June 30, 1954.

F G H Representations were made on behalf of SAMCO to the Minister of Rehabilitation during the later half of 1954 for being allowed to retain Ambernath Mills. A communication was also addressed on December 14, 1954 to the Minister of Rehabilitation suggesting, *inter alia*, that the claim of the Custodian against the partnership in respect

of arrears of rent and the value of raw material and other goods should be referred to arbitration.

The Displaced Persons (Compensation and Rehabilitation) Act, 1954 came into force on October 9, 1954. On March 10, 1955 the Central Government issued notification under section 12 of that Act acquiring the Ambarnath Mills. An advertisement was then issued by the Central Government for the sale of Ambarnath Mills. Tenders for the purchase of the mills were required to be submitted by July 9, 1955. On June 7, 1955 a representation was made by SAMCO that in view of the pendency of its appeal in the Supreme Court in respect of the Custodian's notice for cancellation of the lease, the Ambarnath Mills should not be sold. On July 7, 1955 the partnership submitted a tender for the purchase of the mills in accordance with the Government advertisement. The offer was for an aggregate amount of Rs. 55,55,555. On October 14, 1955 the partnership made another offer to purchase the mills for an aggregate amount of Rs. 75,00,000 on terms and conditions to be mutually agreed upon. The offer of October 14, 1955 was made after the last date for the receipt of tenders. The appeal referred to above filed by the partnership in this Court against the judgment of the Bombay High Court was dismissed by this Court on November 10, 1955 vide reported case *Rai Bahadur Kamwar Raj Nath & Ors. v. Pramod C. Bhatt, Custodian of Evacuee Property*⁽¹⁾. This Court held that the Custodian had the power of cancelling the lease under section 12 of the Administration of Evacuee Property Act and that the notice issued by the Custodian was valid. This Court, however, left open the question whether the partnership had any right to purchase the mills under the agreement of lease.

Notice under section 80 of the Code of Civil Procedure was issued to the Custodian and the Central Government on November 9, 1955 intimating the intention of the partnership to file a suit for restraining the Custodian and the Central Government from selling Ambarnath Mills. The Central Government on December 30, 1955 informed the partnership that its offer to purchase the mills for Rs. 55,55,555 was rejected. The partnership thereafter withdrew its subsequent offer of purchase of the mills for Rs. 75,00,000. On January 31, 1956 a suit was filed on behalf of the partnership against the Custodian and the Central Government for permanent injunction restraining them from selling Ambarnath Mills to any person other than the partners. The said suit was dismissed by the City Civil Court Bombay on October 8, 1956. An appeal was thereupon filed by SAMCO against the decision of the City Civil Court. This appeal too was dismissed by a Division Bench of the Bombay High Court as per judgment dated January 14, 1957. This judgment is reported as *Shri Ambarnath Mills Corporation v. G. B. Godbole, Custodian of Evacuee Property & Anr.*⁽²⁾ It was held by the Division Bench that the agreement of purchase containing clauses 17 to 21 of the lease deed was indefinite and vague in various particulars and that the agreement of sale was not capable of

(1) [1955] 2 S.C.R. 977.

(2) A.I.R. [1957] Bom. 119.

A specific performance. The Division Bench further held that the Central Government by virtue of notification dated March 10, 1955 acquired the mills free from all encumbrances and that such right as SAMCO might have had of specific performance of agreement of sale was in the nature of an encumbrance. The Central Government, according to the Division Bench, must be deemed to have acquired the mills free from that encumbrance. No appeal was filed against the above decision of the Bombay High Court.

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The respondent, it would appear, started making efforts from the middle of 1957 to get the Ambernath Mills for himself. He was in Delhi for several months from June 1957 onwards. On August 14, 1957 an agreement for sale of Ambernath Mills to the respondent was executed by the respondent and the President. The price of the mills was fixed at Rs. 50,11,000. Out of this amount, a sum of Rs. 2,00,000 was to be paid on the execution of the agreement as earnest money and in part payment of the purchase price. This amount could be paid either in cash or by adjustment of net compensation payable to the respondent or to other displaced persons who might assign their verified claim in favour of the respondent. A further sum of Rs. 28,00,000 was to be paid within three months from the date of the agreement either in cash or by adjustment of the net compensation payable to displaced persons who assigned their verified claims in favour of the respondent. The balance of Rs. 20,11,000 was to be paid in seven equal instalments. It was provided that if the respondent failed to pay the amount of Rs. 28,00,000 within three months from the date of agreement the earnest money of Rs. 2,00,000 paid by him was to be forfeited. In addition to the above, the respondent undertook to mortgage the mills for a sum not exceeding Rs. 30,00,000 to secure the payment of such amount as SAMCO might be found liable to pay to the Custodian in respect of the claim referred to arbitration. On September 20, 1957 the first appellant executed an agreement for the transfer of his compensation claim amounting to Rs. 6,994. The amount was to be repaid to the first appellant within three years with interest at the rate of 6 per cent per annum. It was stated in the agreement that the respondent was contemplating to form a joint stock company to own, run and manage the mills. The respondent agreed that in the event of such a company being formed the first appellant would have the option to purchase shares of the said company to the extent of 50 per cent of the amount of his claim compensation.

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On August 12, 1957 the dispute between the Custodian on one side and the two appellants and the respondent on the other, which had been referred earlier in accordance with the arbitration clause in the agreement of lease to the arbitration of other arbitrators, was referred to the arbitration of Mr. Morarji Desai. On November 13, 1957 the respondent and the Custodian agreed before the arbitrator that the dues of the Custodian against the partnership be settled at Rs. 18,00,000. A consent award awarding Rs. 18,00,000 in favour of the Custodian against the partnership was made by Mr. Morarji Desai on the following day, viz., November 14, 1957. The award was made a rule of the court on May 1, 1958.

The respondent was unable to submit to the Central Government compensation claims to the extent of Rs. 30,00,000 within three months of the agreement dated August 14, 1957. By April 1959 he submitted compensation claims to the extent of Rs. 20,00,000. A supplemental agreement was executed by the respondent and the President on April 29, 1959. In this agreement the President acknowledged the receipt from the respondent of the sum of Rs. 20,00,000 by way of adjustment of compensation claims. The respondent undertook to pay the remaining amount of Rs. 30,11,000 and Rs. 18,00,000 under the award of Mr. Morarji Desai, in all, Rs. 48,11,000. It was agreed that the aforesaid amount would be paid by the respondent in seven annual instalments. A second supplemental agreement was executed by the President and the respondent on April 6, 1960, but we are not concerned with that. On April 21, 1960 the grant of the Ambernath Mills was made by the President to the respondent. The same day the respondent executed in favour of the President a mortgage of the Ambernath Mills for the payment of Rs. 48,11,000. The sum was payable in seven equal annual instalments. On April 22, 1960 the respondent took possession of Ambernath Mills which had been lying idle for nearly six years since June 30, 1954. On May 7, 1960 the respondent sent a circular letter to all displaced persons whose compensation claim had been transferred to him informing them that possession of the mills had been handed over to him by the Central Government. They were also informed that statement of their accounts was being prepared. One such letter was sent to the first appellant. He also received a statement of account and in September 1960 a cheque for Rs. 204 was sent to him by way of interest.

On October 7, 1960 the first appellant sent a letter to the respondent complaining that his property had been attached in execution of a decree for Rs. 271.44 which had been obtained by a creditor against SAMCO. In this letter the first appellant hinted that he was a partner of the respondent. The respondent in response sent to the first appellant a cheque for Rs. 271.44. It is also stated that the respondent informed the first appellant on telephone that he did not regard the latter as his partner. On December 20, 1960 the two appellants filed the present suit.

It was alleged in the plaint that after the termination of the agreement of lease by the Custodian on May 25, 1954 the two appellants and the respondent assembled and orally agreed not to dissolve the partnership in spite of the termination of the lease. The agreement between the parties was further stated to be that "the partnership should be continued for the purpose of acquiring on behalf and for the benefit of the said partnership the properties Ex. 1 (Ambernath Mills) hereto and to exploit the said industries". The respondent was stated to have made a representation that he was acquiring the Ambernath Mills on behalf of the partnership and that the agreement had been executed in the respondent's name because the Central Government desired to deal with only one individual. It was also stated that the respondent had admitted utilisation of a sum of Rs. 2,00,000 out of the partnership fund for payment of earnest money. The respondent

- A being a partner, according to the appellants, stood in a fiduciary character *vis-a-vis* the appellants and was bound to protect their interest. He could not gain for himself pecuniary advantage by entering into dealings under circumstances in which his interests were adverse to those of the appellants. The properties and profits acquired by the respondent were stated to be for the benefit of the partnership also. In the
- B complaint, as it was initially filed, the appellants prayed for a declaration that the partnership between them and the respondent was still subsisting on the terms and conditions set out in partnership deed dated February 24, 1954 excepting the terms relating to the period of partnership. Prayer was made for a declaration that the Ambernath Mills belonged to the partnership and for rendition of the partnership accounts. By a subsequent amendment prayer was added that the partnership be dissolved from the date of the filing of the suit.
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- The respondent in his written statement denied the alleged oral agreement between the parties on or about May 25, 1954. According to the respondent, the partnership stood dissolved on March 10, 1955 when the Central Government acquired the Ambernath Mills. According further to the respondent, the funds of the partnership were utilized for the payment of various creditors of the partnership and after those payments were made the partnership did not have sufficient funds to pay to the remaining creditors. With regard to the negotiations for the acquisition of the mills, the respondent stated that the first appellant was aware that Ambernath Mills were being acquired by the respondent for himself alone. The respondent denied that he ever told the first appellant that the amount of earnest money of Rs. 2,00,000
- D for the purchase of the Ambernath Mills had been paid out of funds belonging to the partnership. Allegation was also made by the respondent that the first appellant had requested that he might be given some benefit in the nature of appointment or agency in the business of Ambernath Mills. The claim of the appellant for rendition of the accounts was stated to be barred by limitation. In an affidavit filed on
- E January 11, 1961 the respondent stated that in case it was held that there was an oral agreement of partnership between the parties, the same should be taken to have been dissolved.
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- Learned trial judge held that the appellants had failed to prove that there was an oral agreement between the parties on or about May 25, 1954. It was further held that there was no agreement, express or
- G implied, to form a partnership for acquiring the mills and for carrying on the business thereon. The appellants were held not entitled to have the mills treated as partnership assets by invoking principles enunciated in section 88 of the Indian Trusts Act, to which reference had been made on behalf of the appellants. The learned judge also held the appellants claim for rendition of accounts to be barred by limitation because in his view the partnership had stood dissolved on May
- H 25, 1954 when the agreement of lease was cancelled. In any case, according to the learned judge, the partnership must be deemed to have been dissolved either on January 14, 1957 when the suit filed by the two appellants and the respondent against the Custodian and the Cent-

ral Government for permanent injunction was finally dismissed in appeal by a Division Bench of the Bombay High Court on August 30, 1957 when the period of the lease came to an end. A

In appeal before the Division Bench the following four contentions were advanced on behalf of the appellants :

"(1) that on 25th May 1954 the parties expressly agreed to continue their partnership for acquiring the Mills and exploiting them, that a partnership at will thus came into existence between them, and that therefore the Mills acquired by the defendant on his agreement with the President of India dated 14th August 1957 and the subsequent grant by the President of India on 21st April 1960 must be held to be an asset of the said partnership; B C

(2) that if such an express agreement is held not to have been proved, an implied agreement to the same effect should be inferred from the conduct of the parties and the correspondence between them; D

(3) that, even supposing that there was no express or implied agreement as stated above, the rights acquired by the defendant as a result of his agreement with the President of India dated 14th August 1957 and the subsequent Presidential grant are impressed with a trust in favour of the partnership under section 88 of the Indian Trusts Act; and E

(4) that, even if it is held that the Mills are no longer an asset of the partnership, the plaintiffs are still entitled to accounts of the partnership which admittedly existed between them and the defendant for working the Mills under Agreement of lease dated 30th August 1952." F

The learned judges constituting the Division Bench repelled all the contentions advanced on behalf of the appellants and substantially agreed with the findings of the trial judge. On the question of the limitation, the learned judges held that the partnership had been dissolved at the latest on November 10, 1955 when all the attempts of the partners to get the Custodian's order dated May 25, 1954 set aside came to an end with the decision of the Supreme Court. The present suit for rendition of accounts brought on December 20, 1960 more than three years after the date of the dissolution of the partnership was held to be barred by limitation. In the result the appeal was dismissed. G

In appeal before us Mr. S.T. Desai on behalf of the appellants has frankly conceded that he is not in a position to challenge the concurrent findings of the trial judge and the appellate bench that the appellants had failed to prove that on May 25, 1954 the parties had expressly agreed to continue the partnership for acquiring the mills and exploiting them. Although Mr. Desai indicated at the commencement H

- A of the arguments that he would challenge the finding of the appellate bench that the rights acquired by the respondent as per agreement dated August 14, 1957 with the President and the subsequent Presidential grant are impressed with trust in favour of the partnership under section 88 of the Indian Trusts Act, no arguments were ultimately advanced by him on that score. Mr. Desai has, however, challenged the finding of the trial judge and the appellate bench that
- B no implied agreement as alleged by the appellants could be inferred from the material on record. The main burden of the arguments of Mr. Desai, however, has been that the appellants were entitled to the accounts of the partnership which admittedly existed between the parties as per partnership agreements dated August 30, 1952 and February 24, 1954. According to Mr. Desai, there had been no dissolution of the firm prior to the institution of the suit and the appellants' suit for the rendition of accounts was not barred by limitation. The High Court, it is urged, was in error in holding to the contrary. The above contentions have been controverted by Mr. Cooper on behalf of the respondent and, in our opinion, are not well-founded.
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- D We may first deal with the question as to whether the implied agreement as alleged by the appellants can be inferred from the material on record. In this respect Mr. Desai has submitted that the appellants no longer claim any interest in the ownership of Ambernath Mills which now vest in the respondent. It is, however, urged that an agreement can be inferred from the conduct of the parties that Ambernath Mills were to be run by the respondent in partnership with the appellants, even though the ownership of the same might vest in the respondent. In this connection we find that no case of such an implied agreement was set up in the trial court, either in the plaint or otherwise, nor was such a case set up in appeal before the Division Bench. What was actually contended was that the agreement was for acquiring the mills as an asset of the partnership. The above stand of the appellants could plainly be not accepted when one keeps in view the agreement of
- E lease dated August 30, 1952 as well as other documents on record. The said agreement of lease shows that Ambernath Mills would become the absolute property not only of the appellants and the respondent but of all persons who were to be associated with the lessees in the ownership of the proprietary interest in proportion to the total compensation payable to each of them. The agreement of lease further contemplated that the lessee rights of the two appellants and the respondent were to be distinct from the proprietary interest in the demised premises and that the lessees were at liberty, in spite of the transfer of proprietary interest, to continue the lease for the unexpired residue of the term on the terms and conditions of the lease and payment of rent prescribed thereunder. The respondent submitted representation on August 9, 1954 on behalf of SAMCO to the Custodian for the restart of the mills and along with it the respondent sent copies of
- F letter of authority and particulars of verified claims of 30 displaced persons. It is implicit in the representation that in case Ambernath Mills was transferred, the same would vest in all the 30 displaced persons whose claims were submitted.
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There are two documents which run counter to the stand taken on behalf of the appellants in this Court that there was an implied agreement that in case the respondent acquired the ownership of the mills, the mills would be worked by the respondent in partnership with the appellants. One of those documents is agreement dated September 20, 1957 which was signed by the first appellant and the respondent a day before the respondent executed bond in favour of that appellant in view of the fact that the first appellant agreed to have his claim compensation amounting to Rs. 6,994 adjusted towards the price of Ambernath Mills. It was stated in the agreement dated September 20, 1957 that the respondent was contemplating the formation of a joint stock company to own, run and manage the mills and it was agreed between the parties that in the event of such company being formed, the first appellant would have the option to purchase shares of the said company to the extent of 50 per cent of the amount of the adjusted claim compensation. In case the option was exercised in favour of the purchase of the shares of the company, the respondent was to ensure that the said shares would be allotted to the first appellant at par. It was further agreed that if the shares applied for or any proportion thereof were not allotted to the first appellant by the said company, the respondent would not in any way be liable to the first appellant on that account. In the bond the respondent agreed to pay to the first appellant interest at the rate of 6 per cent on the amount of compensation from the date of the adjustment of the first appellant's claim compensation. Had the first appellant any interest in the Ambernath Mills which were being acquired by the respondent, there could arise no occasion for the execution of the agreement dated September 20, 1957 and the bond dated September 21, 1957. All that was agreed by the respondent in those two documents was that in case he promoted a company for owning, running and managing of the Ambernath Mills, the first appellant would get a share of the value of half of his claim compensation of Rs. 6,994. The said amount when compared to the price of Ambernath Mills was wholly insignificant. No question could arise for the respondent borrowing money from the first appellant for payment of price of the mills in case the acquisition of the mills was for the benefit of the respondent as well as the appellant. It may also be stated that the interest on account of the above compensation was duly paid by the respondent to the first appellant.

Another document which has a bearing in the above context is letter dated December 18, 1959 which was addressed by the first appellant to the Collector of Bombay in connection with the recovery of arrears of sales tax. The first appellant in that letter stated that the responsibility for the payment of such arrears of sales tax was that of the respondent and the first appellant was no more in picture. The above letter shows that the first appellant repudiated his liability for the payment of the sales tax by disclaiming his connection with the business in question.

Our attention has been invited by Mr. Desai to the following observations contained in the judgment of the appellate bench :

"There is no dispute between the parties that the partners met on 25th May 1954, after the Custodian's order

A terminating the Agreement of Lease and decided that they should try to have the Custodian's order set aside by pursuing the appeal in the Supreme Court as well as by making representations to the Ministry of Rehabilitation in the Central Government. It is also not disputed that either on 25th May 1954 or soon thereafter the parties decided that they should also try to acquire the proprietary interests in the Mills by relying on clauses 17 to 21 of the Agreement of Lease. What is disputed is whether it was agreed between the parties that, after acquiring the proprietary interest in the Mills, the business of the Mills should be carried on in partnership between the parties. It is the defendant's case that the proprietary interest in the Mills was sought to be acquired by the partners for certain incidental advantages but that it was never intended that the Mills after acquisition should be run in partnership under the terms agreed in the partnership deed of 24th February 1954."

The above observations may have some bearing on the question of the express agreement, but so far as such an agreement is concerned, it has already been pointed out above that the concurrent findings of the trial judge and the appellate bench have not been challenged before us. No inference of implied agreement mentioned by the learned counsel for the appellants can be drawn from the above observations.

We are, therefore, of the view that no inference of the implied agreement referred to by Mr. Desai can be drawn from the material on record.

E So far as the question is concerned as to whether the claim for rendition of accounts was within time, we find that according to clause 16 of the partnership deed dated August 30, 1952 the period of partnership was fixed at five years, being the period of the lease. Clause 17 of the deed of partnership dated February 24, 1954 provided that the "period of partnership shall be the outstanding period of such lease". The possession of Ambernath Mills under the agreement of lease was delivered on August 31, 1952. The period of five years of the lease was thus to expire on August 30, 1957. As the partnership was for a fixed period, firm would in normal course dissolve on the expiry of the period of five years on August 30, 1957. No agreement between the partners to keep the firm in existence after the expiry of the fixed term of five years has been proved. According to section 42 of the Indian Partnership Act, subject to contract between the partners a firm is dissolved—

"(a) if constituted for a fixed term, by the expiry of that term;

(b) if constituted to carry out one or more adventures or undertakings by the completion thereof;

H (c) by the death of a partner; and

(d) by the adjudication of a partner as an insolvent."

The above provision makes it clear that unless some contract between

the partners to the contrary is proved, the firm if constituted for a fixed term would be dissolved by the expiry of that term. If the firm is constituted to carry out one or more adventures or undertakings, the firm, subject to a contract between the partners, would be dissolved by the completion of the adventures or undertakings. Clauses (c) and (d) deal with dissolution of firm on death of a partner or his being adjudicated insolvent.

It was indicated in the agreement of partnership that the period of partnership had been fixed at five years because that was the period of the lease of Ambernath Mills. The lease, however, ran into rough weather. On February 12, 1954 the Custodian served notice on the respondent and the two appellants to show cause why the agreement of lease should not be cancelled in accordance with the terms of that agreement on account of the breach of conditions in the matter of payment of instalment of rent and the failure of the respondent and the appellants to deposit or furnish bank guarantee for the amount of Rs. 7,00,000. The respondent and the appellants challenged the validity of the above notice by means of a writ petition and, though they succeeded before a single judge, the appellate bench of the Bombay High Court upheld the validity of the notice. On May 25, 1954 the Custodian cancelled the lease of Ambernath Mills and on June 30, 1954 got possession of the mills. The respondent and the appellants assailed the decision of the appellate bench of the Bombay High Court in this Court, but this Court also took the view as per judgment dated November 10, 1955 that there was no legal infirmity in the notice for the termination of the lease issued by the Custodian. After the above judgment of this Court, whatever hope or expectation the partners of SAMCO had of running Ambernath Mills on lease under the agreement of lease dated August 30, 1952 came to an end and were extinguished.

In the meantime, as already stated earlier, the possession of Ambernath Mills was handed over by the partners of SAMCO to the Custodian on June 30, 1954. On March 10, 1955 the Central Government issued notification under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 for acquiring the Mills. The mills were then advertised for sale. The partners of SAMCO having been thwarted for good in their efforts to get back the mills on lease now made an effort to acquire the ownership of the mills in accordance with clauses 17 to 21 of the agreement of lease. Suit was accordingly brought by the respondent and the appellants for permanent injunction restraining the Central Government and the Custodian from selling the Ambernath Mills to any person other than the partners of SAMCO. The suit was dismissed by the City Civil Court and the appeal filed by the partners of SAMCO too was dismissed by a Division Bench of the Bombay High Court on January 14, 1957. The Division Bench held that the agreement of purchase contained in clauses 17 to 21 of the agreement of lease was indefinite and vague and such agreement of sale was not capable of specific performance. It was further held that in view of notification dated March 10, 1955 the Central Government acquired the mills free from all encumbrances. The rights of the partners of SAMCO which were in the nature of an encumbrance were

A held to be no longer enforceable. No appeal was filed against the above decision of the Bombay High Court. As such, the aforesaid judgment became final. Any expectation which the partners of SAMCO could have of acquiring the ownership of Ambarnath Mills under clauses 17 to 21 of the agreement of lease was also thus dashed to the ground.

B View was expressed by the learned trial judge that the firm of SAMCO stood dissolved on May 25, 1954 when the lease was cancelled. Another date of dissolution, according to the learned judge, could be January 14, 1957 when the suit filed by the partners of that firm against the Custodian and the Central Government for permanent injunction was finally dismissed by the High Court. The appellate bench expressed the view that the firm of SAMCO stood dissolved on C November 10, 1955 when the Supreme Court dismissed the appeal regarding the validity of notice. It is, in our opinion, not necessary to dilate upon this aspect of the matter because in any case there can be no manner of doubt that the firm of SAMCO got dissolved and was not subsisting after August 30, 1957 which was the date on which the period of five years for which the partnership had been formed came to an end. The question as to whether the firm got dissolved earlier D than August 30, 1957 is purely academic and is not of much significance, because in any event in the absence of a contract to the contrary there could be no survival of the firm after August 30, 1957 when the period of partnership expired. Calculating the period of limitation even from that date, the suit for rendition of accounts brought by the appellants on December 20, 1960 was barred by limitation. It is not disputed that the period of limitation for such a suit is three E years from the date of dissolution.

Mr. Desai has referred to letter dated November 17, 1955 addressed by the respondent on behalf of SAMCO to the National Bank of India Bombay requesting for the despatch of three bales of wool tops to Ludhiana. In this letter an assurance was held to the Bank of cordial relations for the future expected business. Reference has also been made by Mr. Desai to the statement of the respondent in cross-examination that up to the end of December 1956 the firm was actively F interested in acquiring the mills. The above letter and statement, in our opinion, would not militate against the inference that the firm stood subsequently dissolved on August 30, 1957. As already mentioned above, no agreement to keep the firm in existence after the expiry of the fixed period of partnership has been proved on the record.

G Reference has also been made on behalf of the appellants to the consent given by the respondent on behalf of SAMCO on November 13, 1957 to the award of Rs. 18,00,000 by Mr. Morarji Desai in favour of the Custodian against SAMCO. It is urged that this document would go to show that the firm of SAMCO had not been dissolved before that date. We are unable to agree. The arbitration proceedings had been started as a result of application under section 20 H of the Arbitration Act filed on April 21, 1955 when SAMCO was in existence and was a running concern. The arbitration proceedings related to a claim of the Custodian of Rs. 30,00,000 on account of the price of stocks of raw material, stores and other movables as well as

about the arrears of rent. Counter-claim had also been made by SAMCO against the Custodian for a sum of Rs. 17,67,080 as per written statement dated December 18, 1956 filed in arbitration proceedings. The consent which was given by the respondent on November 13, 1957 was with a view to get the dispute between SAMCO with the Custodian finally settled. This was a necessary step for the purpose of winding up the affairs of SAMCO and to complete transaction of arbitration proceedings which had been begun but remained unfinished at the time of dissolution. According to section 47 of the Indian Partnership Act, after the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise. The word "transaction" in section 47 refers not merely to commercial transaction of purchase and sale but would include also all other matters relating to the affairs of the partnership. The completion of a transaction would cover also the taking of necessary steps in connection with the adjudication of a dispute to which a firm before its dissolution is a party. The legal position in this respect has been stated on page 251 of Lindley on Partnership (Thirteenth Edition) as under :

"Notwithstanding a dissolution each partner can pay, or receive payment of, a partnership debt; for it is clearly settled that payment by one of several joint debtors, or to one of several joint creditors, extinguishes the debt irrespective of any question of partnership. So, again, it has been held that a continuing or surviving partner may issue a bankruptcy notice in the firm name in respect of a judgment obtained before the dissolution, and that notice to him of the dishonour of a bill of exchange is sufficient, and that he can withdraw a deposit or sell the partnership assets, or pledge them for the purpose of completing a transaction already commenced, or of securing a debt already incurred, or the over-draft on the partnership current account at the bank."

The proposition, in our opinion, cannot be disputed that after dissolution, the partnership subsists merely for the purpose of completing pending transactions, winding up the business, and adjusting the rights of the partners; and for these purposes, and those only, the authority, rights, and obligations of the partners continue (*see* page 573 of Halsbury's Laws of England Third Edition Vol. 28). We would, therefore, hold that the consent given by the respondent on November 13, 1957 to the award of Mr. Desai would not detract from the conclusion that the firm of the parties stood dissolved on the expiry of the fixed period of partnership, viz., August 30, 1957.

The proposition of law referred to by Mr. Desai that a dissolution does not necessarily follow because a partnership has ceased to do business would not be of any material help to the appellants because we are not basing our conclusion of the dissolution of the firm of the parties upon the fact that the partnership had ceased to do business.

- A On the contrary, we have arrived at the above conclusion in accordance with the principle of law that a firm constituted for a fixed term shall stand dissolved, in the absence of a contract to the contrary, on the expiry of that term. Likewise, the appellants can derive no help from the decision of the Judicial Committee in *Sathappa Chetty & Ors. v. S. N. Subrahmanyam Chetty & Ors.*⁽¹⁾ The said case did not relate to a firm constituted for a fixed term and no question arose in that case of a firm dissolving on the expiry of the fixed term of partnership.
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- C Our attention has also been invited to the correspondence between the first appellant and the respondent during the period from June to September, 1957. These letters reveal that the first appellant entertained hopes and expectation of deriving some benefit in case the respondent succeeded in acquiring the Ambernath Mills. The exact nature of the benefit was not, however, specified in the letters. The respondent in his replies while not belying those hopes and expectations took care not to make any commitment. After, however, the respondent succeeded in acquiring the mills, there developed a coolness in his attitude towards the first appellant. This circumstance must necessarily have caused disappointment and disillusionment to the first appellant. The respondent, it seems, kept some kind of carrot dangling before the first appellant during the delicate stage of his negotiations with the Government for the acquisition of the mills lest the first appellant did something to sabotage those efforts. After acquisition of the mills by the respondent, his attitude changed and he gave a cold rebuff to the first appellant. The above conduct of the respondent may have a bearing on the question of the award of costs, but it cannot affect our decision on the point as to whether the suit is within limitation or not.
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We, therefore, dismiss the appeal but in the circumstances without costs.

P.B.R.

Appeal dismissed.

(1) AIR 1927 P.C. 70.