SYNDICATE BANK

v.

M/S. R.S.R. ENGINEERING WORKS AND ORS.

MAY 9, 2003

[SHIVARAJ V. PATIL AND K.G. BALAKRISHNAN, JJ.]

Indian Partnership Act,1932; Section 32: Partnership firm—Liabilities of retiring partners against third party—Held:In the absence of an agreement between third party, new firm and retiring partners discharging retiring partners from liabilities or notice thereof by the retiring partners, their liabilities to third party continue.

Creditor adopting reconstituted firm/new firm as debtor—Rights against the old firm—Held: Such an act of adoption of new firm as debtor does not deprive the creditor enforcing his rights against the old firm particularly when there existed no fresh agreement between him and the new firm—In the facts and circumstances of the case priori-assumption that creditor entered into an agreement to discharge retiring partner from liability does not follow.

Words and Phrases: 'Priori-assumption'—Meaning and applicability of.

Plaintiff-appellant, a Bank had filed two suits against the respondent-firms for recovery of certain amount borrowed by the firm from the Bank with interest. The firm was dissolved and taken over by one of the partners. Trial Court decreed the suit against the firm and the owner of the new firm. Appellant-Bank filed appeals praying for decree against all the partners of the old firm. The High Court affirmed the decree of the trial Court.

Hence the present appeals.

It was contended for the appellant-Bank that the loan was availed of by all the partners after jointly executing the requisite documents for getting the loan amount; that dissolution of the firm would not affect the liabilities of partners as inter se agreement between them was not binding on the appellant-bank; and that in view of provisions in the Partnership

A Act the retiring partners of the firm could not escape from their liabilities against the third party.

On behalf of the respondents/partners it was submitted that since notice of dissolution of the firm was given to the appellant-Bank, retiring partners should not be held liable to discharge liabilities of the firm.
B Allowing the appeals, the Court

HELD: 1.1. Under sub-section (2) of Section 32 of the Indian Partnership Act the liability of the retiring partner as against third party would be discharged only if there is an agreement made by the retiring
C partner, with the third party, and the partners of the reconstituted firm. Of course, an agreement could be implied by the course of dealing between such third party and the reconstituted firm, after retirement of a partner. In the instant case, there was no agreement between the appellant-Bank and respondent nos.2 and 3 as regards their liability in respect of the dissolved firm. There is also no evidence to show that there was an implied
D contract between the appellant and respondent no.4, owner of the reconstituted firm, who allegedly agreed to discharge the liabilities of respondent nos.2 and 3. It is also pertinent to note that there was no public notice under sub-Section (3) of Section 32 of the Indian Partnership Act by respondent nos. 2 and 3. Even if there was a public notice, it may not alter the position as the alleged liabilities of respondent nos. 2 and 3 were
E incurred by them prior to the dissolution of the firm.

[217-G, H; 218-A, B]

Thummala Rama Rao and Ors v. *Chodagam Venkateswara Rao and Ors.*, AIR (1963) A.P. 154, distinguished.

F *Lindley and Banks on Partnership* (Sixth Edition) page 358, referred to.

1.2. There is no priori presumption to the effect that the creditors of a firm do on the retirement of a partner, enter into an agreement to
G discharge him from liability. An adoption by the creditor of the new firm as his debtor does not by any means necessarily deprive him of his rights against the old firm especially when the creditor is not a party to the arrangement and then there is no fresh agreement between the creditor and the newly constituted firm. After the creditor has taken a new security for a debt from a continuing partner, it may be a strong evidence of an
H intention to look only the continuing partner for the payment due from

the firm, it has long been recognized that partnership is not a species of joint tendency and that, in the absence of some contrary agreement, there is no survivorship as between partners, at least so far as it concerns their beneficial interests in the partnership assets. Having due regard to these principles, the High Court erred in confirming the judgment passed by the trial court and the plaintiff appellant had every right to proceed against all the defendants in the suit. Hence, the impugned decree is modified to the extent that there shall be a decree against all the respondents in both the suits. [219-D-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1337 of 1995.

From the Judgment and Order dated 7.3.1994 of the Karnataka High Court in R.F.A. No. 631 of 1987.

WITH

C.A. No. 3765 of 1995.

Adarah B. Dial, Ms. Sumati Anand and S. Ravinder Bhat for the Appellants.

Nikhil Nayyar and Mrs. Urmila Sirur for the Respondents.

The Judgment of the Court was delivered by.

K.G. BALAKRISHNAN, J. The plaintiff appellant filed two suits against the respondents. First respondent in both the suits is a partnership firm engaged in engineering works. Respondent nos. 2 to 4 are its partners. In the first suit, namely, O.S. No. 1921/80 which was filed for recovery of Rs. 59,775.95 with interest thereon, the plaintiff alleged that for the purpose of expansion of industry of the respondents, a loan of Rs. 40,000 was sanctioned in favour of the respondents on 5.12.1974. The loan was to be re-paid after 9 months in instalments. The respondents had also executed the requisite documents in favour of the plaintiff bank. Respondent nos. 2 and 3 in their written statement admitted that the respondents had borrowed Rs. 40,000/- from the appellant, but they contended that the first respondent firm was dissolved and the fourth respondent took over the entire liability and, therefore, they are not liable for the suit claim. The Trial Court passed the decree only against Respondent-1 and Respondent-4 for the suit claim.

The appellant filed a Regular First Appeal No. 632/87 before the High

A Court and prayed that decree shall be passed against all the respondents as all of them had joint and several liability. This plea was rejected by the High Court and the High Court affirmed the decree of the trial court. Aggrieved by the same, Civil Appeal No. 3765 of 1995 is filed.

In O.S. No. 1922/80 filed against these respondents, the plaintiff alleged
B that these respondents were given an overdraft facility to the extent of Rs. 20,000/- by the appellant bank and that the respondents availed that facility and committed default in paying the amount due from them and, therefore, the appellant filed the suit for recovery of Rs. 35,157.68/- with interest thereon. The respondents raised similar contention that the partnership was dissolved
C and the fourth respondent had taken over the entire liability and that the respondent nos. 2 and 3 stood absolved of the suit liability. The Trial court accepted this contention and passed a decree in favour of the plaintiff against respondent nos. 1 and 4. Aggrieved by the same, the appellant filed a Regular First Appeal being RFA No. 631/87 before the High Court and the High Court affirmed the trial court decree by its judgment and aggrieved by the
D same, Civil Appeal No. 1337 of 1995 is filed.

We heard learned Counsel for the appellant and also the learned Counsel for the respondents. The learned Counsel for the respondents contended that by virtue of Dissolution Deed dated 26.7.1976, R1 partnership firm was dissolved and the fourth respondent took over the entire liability and, therefore,
E the trial Court was justified in passing the decree against respondent nos. 1 and 4. The respondents also contended that notice of dissolution of the firm was given to the plaintiff, but the appellant bank did not raise any objection and, therefore, it was urged that under Section 32(2) of the Indian Partnership Act, 1932, respondent nos. 2 and 3 are not liable for any payment under the
F suit. The learned Counsel for the appellant, on the other hand, contended that the loan was availed of by these respondents in the year 1974 and respondent nos. 2 to 4 jointly executed various documents and they have admitted the execution of these documents. It was further contended that the dissolution of the partnership on 28.7.1976 will not affect their liability to discharge the suit claim and inter se arrangement between the partners, namely, respondent
G nos. 2, 3 & 4 is not binding on the appellant bank. The contention of the appellant is that in view of sub-Section 3 of Section 32 of the Indian Partnership Act, 1932, the respondent nos. 2 and 3 cannot escape the liability as regards the suit claims made by the appellant.

H At the time when the appellant advanced the money to the first

respondent firm, respondent nos. 2, 3 & 4 were its partners. They admitted that they executed the requisite documents in favour of the appellant. Thereafter the firm was alleged to have been dissolved on 28.7.1976. The contesting respondents have no case that any public notice was given about the retirement of respondent nos. 2 and 3 from the firm as envisaged under Section 32(3) of the Indian Partnership Act. Respondent nos. 2 and 3 have contended that the appellant was aware of the dissolution of the partnership but that by itself will not absolve the liability of the retiring partners. Section 32 of the Indian Partnership Act, 1932, reads as follows:-

"32. Retirement of a partner. (1) A partner may retire,-

(a) with the consent of all the other partners,

(b) in accordance with the express agreement by the partners, or

(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement;

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm."

Under sub-Section (2) of Section 32, the liability of the retiring partner as against third party would be discharged only if there is an agreement made by the retiring partner, with the third party, and the partners of the reconstituted firm. Of course, an agreement could be implied by the course of dealing between such third party and the reconstituted firm, after retirement of a

A partner. In the instant case, there was no agreement between the appellant bank and respondent nos. 2 and 3 as regards their liability in respect of the dissolved firm. There is also no evidence to show that there was an implied contract between the appellant and respondent no. 4 who allegedly agreed to discharge the liabilities of respondent nos. 2 and 3. It is also pertinent to note that there was no public notice under sub-Section (3) of Section 32 of the B Indian Partnership Act by respondent nos. 2 and 3. Even if there was a public notice, it may not alter the position as the alleged liabilities of respondent nos. 2 and 3 were incurred by them prior to the so called dissolution of the firm.

C The Division Bench wrongly placed reliance on the decision of the *Andhra Pradesh High Court in Thummala rama Rao and Ors.* v. *Chodagam Venkateswara Rao and Ors.*, AIR 1963 A.P. 154. That was a case where the suit was filed based on three promissory notes executed by three of the partners of a firm. Prior to the execution of the pro-notes, defendants 6, 7, 8 & 10 had retired from the partnership and the same was duly published in D newspaper. It was in that context that the Court held that if a retiring partner who has not given notice in the mode specified under Section 72, wants to escape liability for any subsequent acts on behalf of the firm, it can only be on the basis of some other rule of law and not on the ground that public notice was given in a manner different from that prescribed under Section 72. It was further stated that the rule that makes a retiring partner liable for acts E done on behalf of the firm after retirement is based on estoppel, because the persons deal with it in the belief that all the partners of the firm still continue; but when the third parties in fact knew that some of the partners have in fact retired from the partnership, there is no scope for the application of the rule of estoppel to make the partners who had already retired, liable for the F subsequent acts on behalf of the firm.

In the instant case, at the time when the partners entered into the agreement for overdraft facility, they were the members of the partnership firm; so also defendants 2 to 4 jointly executed an agreement and obtained loan from the bank. Subsequent retirement of defendants 2 and 3 is of no G consequence unless there is a subsequent contract between these members of the partnership firm and the plaintiff. The law on this aspect is succinctly made clear in the celebrated book *"Lindley & Banks on Partnership (Sixteenth Edition)"* and at page 358, it is stated as under:

H "It is perhaps self evident that a creditor's rights will not normally be prejudiced by an agreement transferring an accrued liability from

one partner to another unless the creditor is made a party to the agreement or assents to its operation. Otherwise the agreement will, as regards him, be strictly res inter alios acta. Lord Lindley illustrated this proposition for the following example:

— let it be supposed that a firm of three members, A,B, and C is indebted to D; that A retires, and B and C either alone, or together with a new partner, E, take upon themselves the liabilities of the old firm. D's right to obtain payment from A, B and C is not affected by the above arrangement, and A does not cease to be liable to him for the debt in question. But if, after A's retirement, D accepts as his sole debtors B and C, or B, C, and E (if E enters the firm), then A's liability will have ceased, and D must look for payment to B and C, or to B, C and E, as the case may be."

There is no a priori presumption to the effect that the creditors of a firm do, on the retirement of a partner, enter into an agreement to discharge him from liability. An adoption by the creditor of the new firm as his debtor does not by any means necessarily deprive him or his rights against the old firm especially when the creditor is not a party to the arrangement and then there is no fresh agreement between the creditor and the newly constituted firm. After the creditor has taken a new security for a debt from a continuing partner, it may be a strong evidence of an intention to look only the continuing partner for the payment due from the firm.

It is also important to note that it has long been recognised that partnership is not a species of joint tenancy and that, in the absence of some contrary agreement, there is no survivorship as between partners, at least so far as it concerns their beneficial interests in the partnership assets.

Having due regard to these principles, the High Court erred in confirming the judgment passed by the trial court and the plaintiff appellant had every right to proceed against all the defendants in the suit. Hence, the appeals are allowed and the impugned decree is modified to the extent that there shall be a decree against all the respondents, namely respondents 1 to 4, in both the suits.

The appeals are allowed with costs.

S.K.S. Appeals allowed.