

Vasantrao Alias Baburao and Another

Vs

Shyamrao and Others

Civil Appeal No. 393 of 1977

(A. C. Gupta, P. N. Shinghal JJ)

28.07.1977

JUDGMENT

GUPTA, J. –

1. 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 9 of 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 Bench, in revision. The High Court having dismissed the revision petition the present appeal has been filed with special leave granted by this Court.

2. It is 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 action for the winding up such a partnership must be in accordance with the procedure prescribed for that purpose in the Companies Act, and the suit instituted in the Court of the Senior Civil Judge was not maintainable. Part X of the Companies Act includes Sections 582 to 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.

It is not disputed that the partnership in question had more than seven members at the time when the suit was instituted. This was therefore an "unregistered company" as defined in Section 582(b). Section 583(1) states that "subject to the provisions of this Part, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in sub-sections (2) to (5)". It is not necessary to refer in any great detail to these sub-sections except to point out that sub-section (4) mentions the circumstances in which an unregistered company may be wound up, and one of the circumstances is that the company has been 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. 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 dissolution of a firm and its winding up on dissolution. The argument for 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 trying the suit shall have to apply the Partnership Act, the suit is not maintainable.

3. 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 that can be claimed in a proceeding under Part X of the Companies Act which provides for the winding up of unregistered companies. However 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 Act does not affect the operation of the Indian Partnership Act. Section 590 states :

Saving and construction of enactments conferring power to wind up partnership, association or company in certain cases. - Nothing in this Part shall affect the operation of any 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 any provisions contained in the Indian Companies Act, 1913 or in any Act repealed by that Act shall be read as references to the corresponding provision, if any contained in this Act.

4. 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 references in any such enactment to any provision in the Indian Companies Act, 1913 or any Act repealed by that Act is not relevant for the present purpose. It is clear that the provisions for winding up of the affairs of a firm which Chapter VI of the Indian Partnership Act

contains besides provisions for the dissolution of partnership are left untouched by Section 590 of the Companies Act, 1956. The cases cited in support of the respective contentions of the parties are not really on the point under consideration except the decision of the Mysore High Court in Pattada Uthayya v. Pattada Somayya [AIR 1955 Mys 149 : (1956) 26 Com Cas 121.] 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 Companies Act, 1956. The learned Single Judge who decided the case held that there was nothing in Section 271 or in the words "any unregistered company may be wound up" appearing in that Section to indicate that the aggrieved party had an option to institute a suit for winding up of an unregistered company. This decision does not take note of sub-section (2) of Section 271 which is similar to Section 590 of the Companies Act, 1956 leaving unaffected the operation of other enactments providing for any partnership, association or company being wound up.

5. The appeal is dismissed with costs.

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