

SUPREME COURT OF INDIA

Gwalior Oil Mills

Vs.

Supreme Industries

(B Kirpal and S R Babu JJ.)

21.01.1999

ORDER

B.N. KIRPAL, J.

1. The Appellant is a partnership firm which had filed a suit against the Respondent claiming damages of Rs. 1,13,170/- plus interest thereon.

2. The Appellant firm had been registered with the Registrar of Firms on 29-7-1953. The business of the firm was that of manufacture and dealing in linseed oil and other edible oils. Prior to 1-1-1976, the firm had five partners who were as follows :

1. Naranji Kushaldas Patel
2. Atul Rambhai Patel
3. Jayantilal Naranji Patel
4. Arvind Naranji Patel and
5. Amritlal Chhotubhai Patel

3. The firm was reconstituted w.e.f. 1-1-1976. Two partners, namely, Naranji Kushaldas Patel and Amritlal Chhotubhai Patel retired from the firm and Atul Rambhai Patel continued as a partner. Jayantilal Naranji Patel and Arvind Naranji Patel were partners in their individual capacity but w.e.f. 1-1-1976, they joined as HUF. After the reconstitution of the partnership firm on 23-8-1976, an application was filed by the Appellant with the Registrar of Firms for noting the change in and

the reconstituted firm.

4. On 10-11-1976 and 18-11-1976, the Appellant entered into three contracts with the Respondent whereby the Respondent had agreed to sell to the Appellant expeller linseed oil. When this oil was not supplied, the Appellant filed Suit No. 1004 of 1977 in the High Court of Bombay on 26-5-1977. The claim in the suit was for the aforesaid amount of Rs. 1,13,170/- plus interest and costs.

5. On 28-2-1976, the Registrar of Firms carried out the changes with regard to the re-constitution of the firm pursuant to the application dated 23-8-1976 which had been filed. In the certificate which was issued by the Registrar, it was stated that the newly-added partners were w.e.f. 1-1-1976.

6. In the written statement which was filed by the Respondent, a plea was taken to the effect that the suit was liable to be dismissed in view of the provisions of Section 69 of the Indian Partnership Act, inasmuch as the newly-added partners' names were entered by the Registrar of Firms on 28-2-1978 and, therefore, on the day when the suit was filed, the firm as reconstituted was not duly registered with the reconstituted partners of the firm. A preliminary issue was framed which was as follows :

Whether the suit is liable to be dismissed for the reasons as alleged in para 1(a) of the written statement.

7. The Single Judge of the High Court came to the conclusion that no suit to enforce a right arising from a contract can be instituted in a court by or on behalf of a firm against any third party unless the firm had been registered and the persons suing are or have been shown in the Registrar of Firms as partners in the firm. It was further observed that as the reconstitution was recorded with the Registrar of Firm only on 28-2-1978, therefore, the reconstituted firm was not in existence when the suit was filed. The preliminary issue was decided in favour of the Respondent and, consequently, the suit was dismissed. Hence this appeal by special leave.

8. From the facts enumerated above, it is not in dispute that the firm M/s Gwalior Oil Mills was registered with the Registrar of Firms originally on 29-7-1953. With the passage of time, the firm was reconstituted and as required by Section 63 of the Partnership Act, 1932, changes in the constitution of the partners was recorded with the Registrar of Firms. The said Section requires notice to be given to the Registrar whenever there is a change in the constitution of the firm and that notice is required, inter alia, to specify the date from which the changes have occurred and it is on the said notice being given that the Registrar carries out the act of recording the change in the constitution of the firm. In the instant case, the application under Section 63 was filed on 23-8-1976 but the Registrar made the changes only on 28-2-1978. it however, recorded that the partnership had been reconstituted w.e.f. 1-1-1976.

9. The implication of the registration so granted clearly was that the reconstituted partnership firm came into existence w.e.f. 1-1-1976. In any case, the firm of M/s Gwalior Oil Mills never ceased to be a registered partnership firm. The suit was filed by the firm in 1977 and the partner who filed the plaint, namely, Arvind Naranji Patel was admittedly a partner in the firm in his individual capacity and then as a Karta of his Hindu undivided family. Even if the reconstitution of the firm is ignored, it cannot be said that on 26-5-1977, the registered firm was not in existence.

10. The aforesaid view which we are taking is in consonance with the observations of this Court in *Sharad Vasant Kotak v. Ramniklal Mohanlal Chawda* , dealing with a similar contention, it was

observed as under:

32. We are also not impressed by the arguments of the learned Counsel for the Appellants that if the definition of Section 4 is applied to Section 69(2-A) then unless the names of all the partners find a place in the Register of Firm, the suit filed by the Plaintiff cannot be sustained. The fact that the firm was registered and the Plaintiff's name finds a place in the Register of Firms are not in dispute. The name of the newly introduced partner, of course, does not find a place in the Register of Firms. That means the person whose name does not find a place in the Register of Firms may incur certain disabilities and that will not disable the Plaintiff to press the suit against the firm, which was registered against the persons whose names find a place in the Register of Firms. We are not called upon to decide what are the disabilities of the person, whose name does not find a place in the Register of Firms. For the purpose of Section 69(2-A), the partnership firm will mean the firm as found in the certificate of registration and the partners as found in the Register of Firms maintained as per rule in Form 'G'. The present suit being one for dissolution and accounts by one of the partners, whose name admittedly finds place in the Register of Firms along with the names of the Appellants, the requirements of Section 69(2-A) are satisfied. Section 4 of the Act is also complied with for this limited purpose.

11. We are in agreement with the aforesaid observations and in our view, the decision of the High Court in the instant case was not correct. For the aforesaid reasons, this appeal is allowed and the suit filed by the Appellant is restored and should now be decided as expeditiously as possible. There will, however, be no order as to costs.