

# BOMBAY HIGH COURT

Bombay Cotton Export Import Co

Vs.

Bharat Suryodaya Mill Co. Ltd

Appeal No. 371 of 1954, C.S. No. 46 of 1951

(Shah and Miabhoy, JJ.)

17.02.1958

## JUDGMENT

### **Shah, J.**

1. This is an appeal by the Bombay Cotton Import Export Company claiming to be a registered firm carrying on business as merchants and commission agents in Bombay challenging a decree dismissing their suit for a decree for Rs. 1,42,634-13-4 against the Bharat Suryodaya Mills Co. Ltd. The plaintiffs' suit was dismissed by the learned trial Judge on the view that the plaintiffs not being a registered firm at the date when the suit was instituted, the suit was barred by Section 69(2) of the Indian Partnership Act, 1932.

2. The plaintiffs carried on business in cotton in Karachi prior to the partition of India. The plaintiffs applied for registration under the Indian Partnership Act, 1932, to the Registrar of Firms at Karachi for registration of their firm, stating that they were carrying on business in Karachi and in Bombay. The plaintiffs were accordingly registered on 13-1-1947 as a partnership under the Indian Partnership Act, 1932. The plaintiffs filed this suit in the Court of the Civil Judge, S.D. Ahmedabad, on 9-3-1951 against the defendants for a decree for Rs. 1,42,634-13-4 being the price of certain cotton bales sold to the defendants. It appears that the plaintiffs, subsequent to the institution of the suit, got themselves registered on 15-3-1951 with the Registrar of Firms in Bombay as a firm under the Indian Partnership Act, 1932, as amended by the Adaptation of Laws Order, 1950. The defendants contended that the plaintiffs were at the date of the suit not a registered firm and the subsequent registration of the plaintiffs as a firm in Bombay did not assist the plaintiffs in avoiding the bar of Section 69(2) of the Partnership Act. We may at once observe that this Court has held in *Prithvising v. Hassanalji*<sup>1</sup>, that the institution of certain suits by a partnership is barred by Section 69(2) of the Indian Partnership Act, unless the partnership is registered at the date of the institution and the initial defect cannot be cured by registration of the partnership subsequent to the date of the suit. If, therefore, the defendants are right in the contention that they have raised that there was no valid registration of the plaintiffs' firm prior to the date of the institution of the suit on the authority of the case in 52 Bom LR 862, the plaintiffs' suit must be dismissed. But the plaintiffs contend that they were registered in Karachi prior to the partition of India, as a firm under the Indian Partnership Act and that they

were entitled to

<sup>1</sup>52 Bom LR 862

rely upon that registration to avoid the bar of Section 69 of the Indian Partnership Act. Section 69 of the Indian Partnership Act, by Sub-Section (2), provides :

"No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm."

The expression 'registered' has not been defined in the Act. But by Section 58, the contents of an application for registration have been prescribed and by Section 59 of the Act, it is provided that

"when the Registrar is satisfied that the provisions of Section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms and shall file the statement."

3. In 1947 the plaintiffs applied under Section 58 to the Registrar of Firms appointed under the Indian Partnership Act, 1932 for registration as a firm and they were duly registered. The Indian Partnership Act undoubtedly applied to Karachi in January 1947 and the plaintiffs were properly registered as a firm in January 1947. But the defendants contend that after partition of British India as it then was, the plaintiffs relying upon the registration by the Registrar at Karachi - cannot sue to recover a debt in a Court in India without in the first instance obtaining registration afresh from a Registrar appointed under the Indian Partnership Act in operation at the date of the suit and otherwise competent in that behalf. In other words, it is urged that a valid registration made under the Partnership Act IX of 1932 prior to the date of the Partition by a Registrar functioning in an area which has, by partition, ceased to be part of India, became ineffective by reason of the partition and no firm which was registered by a Registrar in an area which is not now a part of India can, relying upon that registration, even if made under, the Indian Partnership Act, 1932, in a suit filed in a Court in India avoid the bar of Section 69. In our view, this contention of the defendants cannot be sustained. The Partnership Act was enacted in the year 1932 and it was, when passed, applicable to what was then British India. The province of Sind and the town of Karachi were then part of British India. It is undisputed that a Registrar of Firms was appointed in Karachi under Section 57 for the registration of firms and to that Registrar an application was made by the plaintiffs for registration of their firm. It is true that after the Partnership Act No. IX of 1932 was passed, there have been considerable adjustments from time to time in the territorial extent of its application. When passed, the Act was made applicable to the Province of Burma as well, but when Burma was separated from India, it ceased to be applicable. Similarly, when the partition took place, the Partnership Act No. IX of 1932 which remained in operation in the Dominion of India ceased to be applicable to the territories which formed part of the Dominion of Pakistan. By the Adaptation of Laws Order 1950 and by the merger of the territories of Indian States and the enactment of the Application of Laws Act, the statute is made applicable to the newly added territories to the Union of India. But the territorial re-adjustments made from time to time affecting the territorial extent of the applicability of the Act cannot, in our judgment, affect registrations which were properly and validly made by the Registrar of Firms duly appointed under the Act and exercising powers there under. By the Indian Independence Act (10 and 11 Geo. 6, Ch. 30), by Section 2, the two Dominions of India

and Pakistan were set up and by Section 9 authority was given to the Governor-General, inter alia to make adaptations and modifications in the Government of India Act, 1935 and the Orders in Council, rules and other instruments made there under and by Section 18 provision was made to continue the existing laws in the two new Dominions. By Sub-Section (3) of Section 18, it was provided :

"Save as otherwise expressly provided in this Act, the law of British India and of the several parts thereof existing immediately before the appointed day shall, so far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other Legislature or other authority having power in that behalf."

Evidently, the Partnership Act remained in operation by virtue of Section 18, Sub-Section (3). By the adaptation of Laws under the Adaptation of Laws Order 1950 and the Constitution, the Partnership Act has continued to remain in operation.

4. Undoubtedly, registration of a firm carrying on business in the Dominion of India after partition by a Registrar appointed by the Dominion of Pakistan will not in a suit filed by the firm on a contract avoid the bar of Section 69(2) of the Indian Partnership Act. After the partition, an application for registration of partnership to be effective in India has to be Submitted to a Registrar within the territory of India and registration of the firm in the Dominion of Pakistan or elsewhere after the date of partition will not enable the firm to avoid the bar of Section 69 in a suit filed in a Court in, India. But, in our judgment, a previous registration already effected under the Partnership Act, 1932, is not rendered invalid either by the provisions of the Indian Independence Act, 1947, or by the Adaptation of Laws Order, 1950, or by the Constitution.

5. Section 69 restricts the jurisdiction of a Civil Court to entertain a suit on a contract by a firm unless the firm is registered and the names of the parties are shown in the Register of Firms as partners of the firm. In the present case, the firm was registered and it is not disputed that the names of the partners were shown in the Register of Firms by the Registrar of Karachi and unless that registration is statutorily invalidated, the plaintiffs are entitled in a suit on a contract in a Court within the Dominion of India to rely upon that registration even after the commencement of the Constitution and the circumstance that the Registrar, who initially had authority to register the firm, has, since the date of the setting up of the two Dominions, become incompetent to register afresh the firm under the Act in force in India is not, in our judgment, ground for holding that the previous registration is invalidated.

6. Mr. Advani on behalf of the defendants contended that in order to ascertain whether the requirement of Section 69(2) is complied with, the Court must ascertain whether the Registrar who registered the firm was at the date of the institution of the suit competent to register, that firm if an application had been submitted to him. Counsel put strong reliance in support of that contention upon the expression "is registered" in Section 69(2). Evidently, the expression "is registered" is used in the present perfect tense, i.e. as meaning "has been and continues to remain registered." If the firm has been validly and properly registered, in our judgment that registration will remain operative in the absence of some statutory provision which affects or invalidates that

registration.

7. Reliance was placed by Mr. Advani also upon the definition of the expression 'India' occurring in the Adaptation of Laws Order, 1950, in Clause (28) of the General Clauses Act, 1897, as meaning :

"(a) as respects any period before the establishment of the Dominion of India, British India together with all territories of Indian Rulers then under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler and tribal areas; (b) as respects any period after the establishment of the Dominion of India and before the commencement of the Constitution, all territories for the time being included in that Dominion; and (c) as respect any period after the commencement of the Constitution all territories for the time being comprised in the territory of India"

and it was contended that the provisions relating to registration of firms under the Indian Partnership Act read in the light of Section 28 of the Adaptation of Laws Order, 1950, indicated that the registration of a firm obtained prior to the date of the setting up of the two Dominions became ineffective since the date of the partition. It was urged that an act done by a competent authority prior to the date of partition in an area which, under the Indian Independence Act is not since the partition a part of India, must be regarded as impliedly rendered invalid by the partition. We do not think that it is necessary for us, to demonstrate the futility of the argument presented in this wide form, to enter upon an examination of its applicability redacts done in exercise of powers conferred by diverse statutes in force in undivided India. We are concerned in this case with a procedural provision which affects the jurisdiction of Courts to entertain suits on contracts and that provision must be strictly construed. If a firm was duly registered under the Partnership Act by an authority competent in that behalf, in our judgment, the registration will avail the firm in filing a suit notwithstanding the readjustments which have since been made in the territorial operation of the Act and the circumstance that, by reason of political changes, the authority who had initially registered the firm is not now an authority if he were called upon to register the firm afresh competent to register the same, is not, in our judgment, a ground for holding that the registration is rendered invalid or vacated.

8. On that view, the learned trial Judge was, in our view, in error in dismissing the plaintiffs' suit. We, therefore, set aside the decree passed by the learned trial Judge and remand the suit for trial according to law. Respondents to pay the costs of this appeal. Costs in the trial Court will be costs in the cause.

Suit remanded.