

RAJASTHAN HIGH COURT

Vijay Kumar

Vs.

Punjab and Sindh Bank
C.F.A. No. 10 of 1990

(Prakash Titia, J.)

01.05.2002

JUDGEMENT

Prakash Titia, J.

1. This is an appeal against the judgment and decree dated 28-9-89 passed by the Court of Addl. Distt. Judge No. 1, Sriganganagar in civil original suit No. 19/77 (41/77) by which the learned trial Court decreed the suit for Rs. 13,216.39 against the defendant No. 3/appellant with interest @ 15% per annum till the date of decree and @ 6% per annum subsequent to passing the decree till the realization of amount along with cost of the suit.

2. The brief facts of the case are that the plaintiff originally filed the suit against all the defendants including the appellant who is defendant No. 3 in the original suit. The suit was decreed by the trial Court *ex parte* on 19-12-79 for the above mentioned same amount with same interest i.e. @ 15% per annum till the date of decree (19-12-79), thereafter 6% per annum till the date of realization of amount. The defendant Vijay Kumar submitted an application for setting aside the *ex parte* decree. That application was dismissed by learned Addl. Distt. Judge No, 1, Sriganganagar vide order dated 1-8-82, against which defendant Vijay Kumar preferred SBCMA No. 264/82 which was allowed by this Court by order dated 12-5-83 and the decree against only defendant No. 3, present appellant was set aside and the decree against rest of the defendants was maintained. The trial Court after the above order of High Court dated 12-5-83, proceeded with suit against the defendant No. 3, Vijay Kumar and ultimately again passed the decree dated 26-9-89 against defendant No. 3, Vijay Kumar also holding that defendant No. 3 was partner of the firm and is liable for amount.

3. In this appeal, learned counsel for the appellant vehemently submitted that there cannot be two decrees in one suit. Since the trial Court granted the decree against the firm on 19-12-79, therefore, no other decree can be granted against defendant No. 3 and it will amount to granting decree against defendant No. 3 in personal capacity, therefore, the judgment and decree of trial Court dated 26-9-1989 deserves to be set aside. The learned counsel for the appellant submitted that on facts, finding of trial Court is wrong so far as it relates to holding defendant No. 3 as partner of defendant No. 1 firm. In addition to above, learned counsel for the appellant submitted that if decree dated 19-12-79 and 26-9-1989, both will remain in force, then there will be two different decrees in the same transaction. Under the decree of 19-12-79, if it is held that defendant No. 3 Vijay Kumar was also partner, then Vijay Kumar is liable being partner of the firm for the interest @ 15% till 19-12-79, but in view of decree dated 26-9-89, the defendant/appellant Vijay Kumar will be liable for interest @ 15% per annum till 26-9-89 which is award of interest 6% more against the defendant alone than the earlier awarded interest in the decree dated 19-12-79.

4. After considering the arguments and perusing the judgment, I find that there is direct evidence of witness P.W. 2 Bhawant Singh, who categorically stated that Chalti Devi, Vijay Kumar, Krishan Kumar and Krishna Devi are partners of the firm. The form showing the opening of account was filled in the presence of PW. 2. It is also stated by PW. 2 that on Ex. 5, there is signature of Bachhan Singh marked at A to B. On Ex. 4, there are signatures of Chalti Devi at A to B and Vijay Kumar at C to D respectively. These signatures were made in the presence of witness PW-2 Bhawant Singh. He also proves the signatures over Ex. 8 dated 10-2-76. According to this witness, normally Vijay Kumar was dealing the account of firm. In cross-examination, nothing has come out so as to make this witness unreliable. The documents in this case have double exhibit marking of the number which appears to be because of re-trial of the matter. On Ex. 6, mark of 12-11-79 was again exhibited on 1-2-88. In this document, there are signatures of Chalti Devi as also appellant Vijay Kumar. It is significant to mention here that appellant as also rest of the partners of defendant No. 1 firm are having relations with each other. The defendant No. 4 is also brother of appellant Vijay Kumar who has not challenged the judgment and decree against the firm. I also perused the statement of DW-1 Vijay Kumar, who stated that he never signed Ex. 4, but at the same time, admitted his relations with Smt. Chalti Devi. When there is direct evidence of signature of Vijay Kumar, then mere word of mouth of denial by the defendant Vijay Kumar is not sufficient to hold that Ex. 4 does not

contain the signature of defendant Vijay Kumar. If defendant was not partner of the firm then there was no occasion for him to sign the document. Not only this, it is clear from the application for loan itself Ex. 5, that name of Vijay Kumar was shown in the application and even if one of the partners signs the document on behalf of defendant No. 1 putting the seal of firm, then normally it is on behalf of all the partners unless it is proved, otherwise by speaking evidence, therefore, the document Ex. 3 (2-12-88) also proves that Vijay Kumar was disclosed to be the partner of the firm on the very beginning, therefore, in view of the evidence available on record, I do not find any illegality in holding that Vijay Kumar is partner of above firm.

5. So far as conflict between two decrees i.e. decree dated 19-12-79 and 26-9-89 are concerned, there is force in the submission of learned counsel for the appellant. Once it is held that defendant is partner of the firm M/s. National Medical Agency (defendant No. 1), then liability will follow which is against the firm as held by trial Court in the judgment and decree dated 18-12-79. There cannot be two different liabilities of one firm. One is for some of partner and another for some of the partner or one of the partner. In view of decree dated 19-12-79, which is part of record of present case, the firm and its partners are liable for interest @ 15% per annum up to 19-12-79 only, whereas in view of decree dated 26-9-89, only Vijay Kumar who is said to be the partner of the firm, alone will be liable to interest @ 15% per annum but up to 26-8-89 almost more than 9 years extra from the liability found in the decree dated 19-12-79 which cannot be allowed to stand, therefore, decree dated 26-9-89 is modified only upto the extent of award of interest and it is held that appellant defendant No. 3 Vijay Kumar is also liable to amount of Rs. 13216.38 for this transaction as partner of the firm. The defendant No. 3, appellant Vijay Kumar will be liable to interest @ 15% per annum till 19-12-79 and @ 6% per annum till the date of realization of amount by the plaintiff, therefore, appeal of the appellant is partly allowed so far it relates to relief of interest is concerned. Rest of the appeal is dismissed. No order as to costs.

Order accordingly.