

M.O.H. Uduman And Ors vs M.O.H. Aslum on 13 November, 1990

Equivalent citations: 1991 AIR 1020, 1990 SCR SUPL. (2) 663, AIR 1991 SUPREME COURT 1020, 1991 (1) SCC 412, (1991) IJR 469 (SC), (1991) 1 JT 138 (SC), 1991 (1) JT 138, 1991 (1) UJ (SC) 203, (1991) 1 MAD LJ 46, (1990) 2 MAD LW 642, (1994) 1 BANKLJ 392, (1991) 2 CIVLJ 371, (1991) 1 CURCC 1

Author: K. Ramaswamy

Bench: K. Ramaswamy, L.M. Sharma

PETITIONER:
M.O.H. UDUMAN AND ORS.

Vs.

RESPONDENT:
M.O.H. ASLUM

DATE OF JUDGMENT 13/11/1990

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
SHARMA, L.M. (J)

CITATION:
1991 AIR 1020 1990 SCR Supl. (2) 663
1991 SCC (1) 412 JT 1991 (1) 138
1990 SCALE (2) 1045

ACT:
Indian Partnership Act, 1932 : Sections 39 and 40 and
French Civil Code Article 1865--Duration of partnership
provided for--Then not partnership at will--Rights of part-
ners--What are--Contract of partnership to be read as a
whole.

HEADNOTE:
The appellants/defendants 1-3 and the respondent/plain-
tiff are sons of the 4th appellant/defendant--their mother.
Their father M.O. Hassan Kuthus Marican started the proprie-
tary concern M/s Hassan Tithus Marican doing import and
export and other business in Pondicherry on July 20, 1962, a
partnership consisting of the appellants the respondent and

the father Ex. B1 was constituted and was registered as per the provisions of the French Law and the business was carried on. By relinquishment deed Ex. B2 dated August 1, 1968 their father retired from the partnership. Thereafter the appellants and the respondent continued the business in terms of Ex. B2.

Due to some misunderstanding arisen in 1973, the respondent in May 1978 laid the suit for dissolution of the partnership and for accounting etc.

As per the respondent the partnership is at will and by issue of notice dissolving the partnership, it stood dissolved with effect from the date of the receipt of the notice by the appellants. Whereas the appellants contended that under the French Law, the partnership is not at will, the contract operates as law and that in terms of contract Ex. B1 & Ex B2 the respondent has to relinquish his share in favour of the appellants and take the value thereof without dissolving the firm.

The Trial Court held that the partnership is not at will. So the suit for dissolving the partnership was not maintainable and that for accounting etc. other remedies are left open. The suit was dismissed, and was affirmed on appeal by a learned single Judge.

The Division Bench held that the partnership is at will and the respondent can seek its dissolution. It was further held that the rights of

664

the parties are governed by the Indian Partnership Act (9 of 1932) and the suit was maintainable. Accordingly the appeal was allowed and the suit was restored to file and the Trial Court directed to try the suit on merits expeditiously. Hence this appeal.

Appeal Allowed, the Court,

HELD: The only question that needs decision is whether the partnership in question is a partnership at will. The trial court and the Learned Single Judge held in favour of the appellants but the Division Bench held that the Indian Partnership Act would apply because the Pondicherry (Laws) Regulation 7 of 1963 was made in exercise of the powers under Article 240 of the Indian Constitution extending the Partnership Act to Pondicherry/Union Territory on and from October 1, 1963. Sec. 69 had come into force from July 1, 1964. Though Ex. B1 was made in accordance with the Civil Code of France 1804, the cause of action to lay the suit had arisen to the respondent in 1978 by which time the 'Act' was in operation. Thereafter rights and remedies of the parties are to be regulated by the provisions of the Act. [667E-G]

According to the appellants the provisions of the French Civil Code and the Code of Commerce touching partnership do have a bearing to cull out the intention of the parties manifested in the relevant clauses of the Partnership deed Ex. B1 and B2 which suggest that the partnership in question is not at will but one in perpetuity. The respondent con-

tended that there is no express embargo in the French Law to treat a partnership at will. The contract is treated as law. Clause IV treats the partnership as at will. But the partnership at will cannot be put to an end if the notice of dissolution was not issued in good faith and at an opportune moment. [668A-B]

Article 1865 of the French Civil Code postulates that a partnership ends under 5 conditions (1) expiration of time of partnership, (2) termination of the business, (3) death of any partner, (4) insolvency of anyone of the partners, and (5) one or more partners have expressed a desire to cease being in partnership, Article 1869 provides that a partnership can be dissolved at the will of the partners but does not apply to partnership where the duration has been fixed. Article 18 of the Code of Commerce provides that the contract is regulated by the Civil Law and by the agreements of the parties. Article 1134 makes that the agreement legally formed take the place of law and for those who have made them. The contract can be rescinded only with their mutual consent for the reasons authorised by law and done in good faith. [668C-D; F-H]

665

A conjoint reading of the provisions of the French Civil Code, Code of Commerce clearly manifest that normally a partnership ends on happening of one of the five events mentioned in Article 1865. If the contract is time bound partnership ends by the expiration of time for which the partnership was made. Undoubtedly, partnership at will can be put to an end by the issue of notice provided it was issued in good faith and at an opportune moment but is subject to the terms of the contract between the parties. Since the parties are governed by Indian Partnership Act, the rights of the parties are to adjudicated accordingly.

The High Court on consideration of the relevant clauses of the deed and section 7 of the 'Act' held that partnership is at will. CI. 4 and 5 state that the partnership will be brought to an end at will but at the same time state that partnership will continue till there are two partners. [669B-E; H]

Section 7 of the 'Act' deals with partnership at will contemplating two exceptions': (a) when partnership is for specified period, (b) where there is a provision in the contract for the determination of the partnership. Section 32(1) deals with the retirement of the partner either with consent or according to an express agreement (c) where the partnership is at will, by giving notice in writing to all of his partners of his intention to retire. Section 40 gives right to the partners to dissolve the partnership by agreement with the consent of all the partners or in accordance with the contract between the partners. Under Section 43 when partnership is at will, the firm may be dissolved by any partners giving notice in writing to all the other partners of his intention to dissolve the firm which stands

dissolved by operation of sub section (2) thereof from the date mentioned in the notice and if no date is mentioned from the date of Communication of the notice. [670G; 671A; B; D-E]

It is a settled cannon of construction that a contract of partnership must be read as a whole and the intention of the parties must be gathered from the language used in the Contract by adopting harmonious construction of all the clauses contained therein. The cardinal principle is to be as certain the intention of the parties to the contract through the words they have used, which are key to open the mind of the makers. It is seldom that any technical or pedantic rule of construction can be brought to bear on their construction. [671G-H]

The contract of partnership in the instant case, is consistent with the French Civil Code. But since the parties are governed by the provisions of the 'Act', it would apply to the facts of the case and the rights are to be adjudicated accordingly. [674H]

666

The duration of the partnership has been expressly provided in the deed, namely, that the partnership will continue "till there are two partners" and that, therefore, it is not a partnership at will. Thereby the respondent has no right to dissolve the partnership except to seek accounting for the period in dispute or his right to withdraw or retire from partnership and to take the value of his share in the partnership either by mutual agreement or at law in terms of the partnership deeds Ex. B1 and B2. [674B-C]

JUDGMENT: