Content

Appellants vs Abdul Manan Khan on 24 November, 2022

Author: Anil Kumar Choudhary Bench: Anil Kumar Choudhary
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S.A. No. 274 o

IN THE HIGH COURT OF JHARKHAND AT RANCHI
S.A. No.274 of 2002

(Against the judgment and decree dated 28.08.2002, passed by the Additional District Judge, Simdega in Title Appeal No. 47 of 1994) 1(a) Jubeda Khatoon, wife of late Abdul Kalam Khan 1(b) Zabair Arif 1(c) Javed Maroof 1(d) Taslim Arif 1(e) Tanveer Arif 1(f) Nafees Arif 1(g) Asif Arif 1(h) Salman Arif Sl. No. 1(b) to 1(h) are sons of late Abdul Kalam Khan. All resident of P.O., P.S. & District -Simdega.

2(a) Md. Jamil Akhtar 2(b) Md. Suhail Akhtar Both sons of Abdul Latif Khan, resident of P.O., P.S. & District - Simdega.

2(c) Yasin Parwin, wife of Md. Shamim Khan, resident of Old Lowadih, Maulana Azad Colony, Samlong, P.O., P.S. & District - Ranchi.

2(d) Nasreen Parwin, W/o Md. Salim, resident of Village -Tulin, P.O.

-Jhalda, P.S. -Jhalda, District -Purulia, West Bengal.

. Appellants Versus

1. Abdul Manan Khan, son of Late Abdul Sattar Khan, resident of Simdega Bazar Road, Post Office -Simdega, District -Gumla (Now District -Simdega)

2. Md. Yaseer Arafat

3. Arshad Hussain

4. Md. Afzal Hussain Sons of Abdul Manan Khan, resident of Simdega Bazar Road, P.S. - Simdega, Post Office -Simdega, District -Gumla (Now District Simdega) Respondents

5. Dy. Commissioner, Gumla (Now Simdega)

6. State of Jharkhand (previously State of Bihar) Proforma Respondents

For the Appellants : Mr. Rajeev Ranjan Tiwary, Advocate For the Respondents : Mr. Manjul Prasad, Sr. Advocate : Mr. Arbind Kr. Sinha, Advocate : Mr. Baban Prasad, Advocate PRESENT HON’BLE MR.

JUSTICE ANIL KUMAR CHOUDHARY

By the Court:-

1. Heard the parties.

2. This appeal under Section 100 of the Code of Civil Procedure is directed against the judgment and decree dated 28.08.2002, passed by the Additional District Judge, Simdega in Title Appeal No. 47 of 1994 whereby and where under the learned first appellate court has disposed of the appeal by setting aside the judgment and decree of the learned trial court as it was of the opinion that the lower court has wrongly decided issue nos. 3 & 4 in favour of the plaintiff-respondent.

3. The case of the plaintiff in brief is that the plaintiff and the defendant no.1 & 2 along with their father who died by the time of filing of the suit namely Abdul Satar Khan owned a partnership firm in the year 1957 on oral agreement and ran the business of fire-arms, ammunitions and explosive shop in the name and style of M/s Abdul Satar Khan and Sons. The partnership was a partnership at Will. It was agreed upon at the time of formation of the partnership that on and after the death of any of the partners, remaining partners may continue the partnership and no new partner could be added without the consent of all the surviving partners. All the licenses required for the said business were obtained in the name of Abdul Satar Khan as proprietor and dealer.

Abdul Satar Khan kept the accounts and all the partners shared the profits. After the death of Abdul Satar Khan, the plaintiff and the defendant nos. 1 & 2 remained partners of the partnership firm and continued the partnership business by making the defendant no.1 as the acting partner of the firm. The defendant no.1 used to deal with the business and keep accounts of the firm on behalf of all the partners. Till October, 1987, the partnership ran peacefully. Thereafter the defendant no.1 started neglecting the other partners i.e. the plaintiff and the defendant no.2 and the defendant no.1 did not allow the plaintiff and the defendant no.2 to see the account books and stopped sharing the profits of the partnership firm. The defendant no.1 purposely, willfully and ignoring the objections by the plaintiff and the defendant no.2 committed several breaches of the terms of partnership. Thus it became impossible for the plaintiff to carry on the partnership business. Therefore, the plaintiff wanted to dissolve the partnership. The plaintiff filed the suit with the following prayers:-

(i) Dissolution of the partnership;
(ii) That accounts be taken;
(iii) That a receiver be appointed.

An additional prayer was made by way of amendment of the plaint that if D.C., Gumla has made any order to change the firm name vide letter number 235/D.C. dated 24.03.1988, the same may be declared illegal, arbitrary, unauthorized and not binding upon the plaintiff.

4. The defendants in their joint written statement admitted the existence of the firm in the name and style of M/s. Abdul Satar and Sons. The defendants further pleaded that earlier the name of the firm was Abdul Mazid & Brothers. Later on in the year, 1957 the firm License No. 23/57 was obtained for readymade fireworks and License No. 9/60 was obtained in the year, 1960 in the name of Abdul Manan Khan. Abdul Manan Khan obtained Form No. XIII, License No. 1/69 and Form K License No. 3/73-74 as a new license of the firm namely M/s. Abdul Satar & Sons. The defendants pleaded that during the life time of the father of the plaintiff and the defendants, he separated the plaintiff and the defendant no.1 and the money was divided between both of them and thereafter, the plaintiff started 'Galla-Kirana' shop and the defendant no.1 got, as his share the Arms and Ammunitions Shop. Thus the plaintiff has no claim over the Arms and Ammunitions Shop. After the death of Abdul Satar Khan, the D.C., Gumla informed the proprietor of the firm to close the shop and to produce all the documents as early as possible. At that time, the defendant no.1 swore an affidavit regarding the firm and the contents of that were in the interest of the firm but actually speaking since the plaintiff started a shop during the life time of Abdul Satar Khan, he was not a

partner of the firm. As per the direction of the High Court in C.W.J.C. No. 1072 of 1988(R), the D.C., Gumla changed the firm name and the firm name became M/s. Abdul Manan Khan & Sons by the letter of the D.C. The defendant no.1 has neither misappropriated the firm capital nor he got dishonest intention, hence no cause of action arose for the suit.

5. On the basis of the rival pleadings, the learned trial court altogether settled the following seven issues :

(i) Whether there is any cause of action for the suit?

(ii) Whether the suit has been properly valued at?

(iii) Whether the plaintiff Abdul Kalam Khan is a partner of the firm?

(iv) Whether late Abdul Sattar Khan and his sons, the plaintiff, the defendant no.1 and the defendant no.2 formed a partnership and run a fire arms business under the name of M/s Sattar Khan & Sons and whether at the death of Sattar Khan, the partnership existed and the defendant no.1 was an acting partner of the firm?

(v) Whether the defendant no.1 breached the terms of the partnership by making false statement on 30.11.87 before the Executive Magistrate, Simdega?

(vi) Whether the defendant no.1 dishonestly changed the name of the firm?

(vii) Whether the plaintiff is entitled to get any relief as prayed for?

6. The learned trial court first took up issue no. iv and after considering the evidence in the record came to the conclusion that the plaintiff and the defendant nos. 1 & 2 were partners of the firm M/s Abdul Sattar & Sons and after death of Abdul Sattar, Abdul Manan became the acting partner of the firm, in the name and style of M/s Abdul Sattar & Sons. The learned trial court thereafter took up issue nos. v & vi together and considering the evidence in the record, came to the conclusion that no breach of terms of the partnership of the partners of the firm -M/s. Abdul Sattar & Sons has been committed by the defendant no.1 because in the real sense of term, the firm's name of M/s Abdul Sattar & Sons was not changed rather a new firm namely M/s Abdul Manan Khan & Sons was brought into existence with its new partners. So the learned trial court decided the issue nos. v & vi against the plaintiff. The learned trial court thereafter took up issue no.iii and after considering the evidence in the record came to the conclusion that the plaintiff is the partner of the firm M/s. Abdul Sattar & Sons and decreed the suit in part, only to the extent that the firm M/s. Abdul Sattar & Sons is declared dissolved by the order of the trial court and the defendant nos. 1 & 2 were directed to produce accounts of the assets and liabilities of the firm M/s. Abdul Sattar & Sons before the plaintiff for equal distribution within 60 days from the date of the judgment, failing which, the plaintiff will be at liberty to take a legal recourse for the purpose.

7. Being aggrieved by the judgment and decree passed by the trial court, the defendant no.1 filed Title Appeal No. 47 of 1994 which was ultimately heard and disposed of by the learned first appellate court by the impugned judgment and decree. The learned first appellate court made independent appreciation of the evidence in the record and first took up issue nos. iii & iv which were decided by the trial court in favour of the plaintiff. The learned first appellate court considered that Abdul Sattar died on 26.08.1983. The learned first appellate court also took note of the Ext. 3 which is the affidavit dated 30.11.1987 filed by Abdul Mannan Khan before the Executive Magistrate, Simdega wherein, he solemnly affirmed that the firm M/s Abdul Sattar & Sons has been changed into the firm M/s Abdul Mannan & Sons with the partners Md. Yasar Arafat, Md. Arshad Hussain and Afjal Hussain. The said document suggested that in the year 1987, the name of the firm was changed. The learned first appellate court considered that the plaintiff did not file any objection at the time of changing of the firm name from M/s. Abdul Sattar & Sons to M/s. Abdul Mannan & Sons. The learned first appellate court also took note of the deposition of the P.W.1 - plaintiff -Abdul Kalam Khan to the effect that he was doing separate marketing and subsequently he was separate in mess and he sold house of his share in Ranchi and house of Khunti was sold by all the three

brothers and he also deposed that from 1957 to 1987, he had no account pending with the firm. The learned first appellate court from the documentary as well as oral evidence came to the conclusion that after the change of the firm name from M/s Abdul Sattar & Sons to M/s Abdul Mannan & Sons, license was renewed in the name of M/s Abdul Mannan & Sons. So the evidence in the record goes to show that the plaintiff-respondent had sold his share and house and was doing separate business which suggested that the appellants and respondents were separate. The learned first appellate court also took note of the fact that change of sign board of the firm was in the knowledge of the plaintiff and the plaintiff never objected to the change in the name of the firm. Hence, the learned first appellate court came to the conclusion that the firm -M/s. Abdul Sattar & Sons has been dissolved in the year, 1987 and the new firm M/s. Abdul Mannan & Sons came into existence and from the statement of the plaintiff-respondent, it is obvious that the account of the firm is taken to 1987 and by thus observing the learned first appellate court came to the conclusion that the trial court has decided the

issue nos. iii & iv in favour of the plaintiff wrongly and set aside the judgment and decree of the trial court and disposed of the appeal.

8. At the time of admission of this appeal, vide order dated 18.06.2003, the following substantial question of law was formulated:-

"Whether in absence of prior notice in writing under section 43 of the Indian Partnership Act, the suit for dissolution of partnership and for rendition of accounts by the acting partner was not maintainable?"

9. Mr. Rajeev Ranjan Tiwary, the learned counsel appearing for the appellants submits that a partnership at will can be dissolved in two modes, the first one is in terms of Section 43 of the Indian Partnership Act, 1932 where the partnership is at will, the firm may be dissolved by any partner giving notice to all the partners of his intention to dissolve the firm and in such case, the firm is dissolved from the date mentioned in the notice as the date of dissolution or if no date is mentioned then from the date of communication of the notice and the second mode is dissolution of a partnership between is by court in terms of Section 44 of the Indian Partnership Act, 1932. It is next submitted by Mr. Tiwary that notice is certainly required for dissolution of the firm in terms of Section 43 Indian Partnership Act, 1932 but when the firm is dissolved in terms of Section 44 of the Indian Partnership Act, 1932, no prior notice is required. Hence, the suit of the plaintiff is maintainable in the absence of any prior notice in writing under Section 43 of the Indian Partnership Act, 1932 as the prayer for suit of dissolution of the partnership was made under Section 44 of the Indian Partnership Act, 1932.

It is further submitted by Mr. Tiwary that the learned first appellate court has not properly appreciated the evidence in the record and misdirected itself by arriving at a finding different from the finding of the trial court so far as the issue nos. iii & iv are concerned. Hence, it is submitted that the impugned judgment and decree be set aside.

10. Mr. Manjul Prasad, the learned senior counsel for the respondents at the outset, relying upon the Judgment of the Hon'ble Supreme Court of India in the case of Loonkaran Sethia etc. vs Mr. Ivan E. John and others etc., reported in AIR 1977 SC 336, para -21 of which reads as under:-

"21. A bare glance at the section is enough to show that it is mandatory in character and its effect is to render a suit by a plaintiff in respect of a right vested in him or acquired by him under a contract which he entered into as a partner of an unregistered firm, whether existing or dissolved, void. In other words, a partner of an erstwhile unregistered partnership firm cannot bring a suit to enforce a right arising out of a contract falling within the ambit of Sec. 69 of the Partnership Act. In the instant case, Seth Suganchand had to admit in unmistakable terms that the firm 'Sethiya and Co.' was not registered under the Indian Partnership Act. It cannot also be denied that the suit out of which the appeals have arisen was for enforcement of the agreement entered into by the plaintiff as partner of Sethiya and Co, which was an unregistered firm. That being so, the suit was undoubtedly a suit for the benefit

and in the interest of the firm and consequently a suit on behalf of the firm. It is also to be borne in mind

that it was never pleaded by the plaintiff, not even in the replication, that he was suing to recover the outstandings of a dissolved firm. Thus the suit was clearly hit by Section 69 of the Partnership Act and was not maintainable."

Submits that since admittedly the partnership firm was an unregistered partnership firm, so in view of Section 69 of the Indian Partnership Act, 1932 which reads as under:-

"69. Effect of non-registration.--(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) 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.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set- off or other proceeding to enforce a right arising from a contract, but shall not affect--
(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or a any right or power to realise the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 (2 of 1909), or the Provincial Insolvency Act, 1920 (5 of 1920), to realise the property of an insolvent partner.

(4) This section shall not apply--
(a) to firms or to partners in firms which have no place of business in the

territories to which this Act extends, or whose places of business in the said territories are situated in areas to which, by notification under section 56, this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act,1882 (15 of 1882), or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim."

bars a suit for enforcement of any right to sue for dissolution of an unregistered partnership firm or for accounts of a dissolved firm.

11. Mr. Manjul Prasad, the learned senior counsel for the respondents next submits that since the dissolution of a partnership firm at will, can only be made after a notice in writing by any partner to all other partners of his intention to dissolve a firm, so the suit for dissolution of the partnership firm, or for that matter, rendition of accounts of a firm requires notice mandatorily under Section 43 of the Indian Partnership Act, 1932 and admittedly as no prior written notice was issued by the plaintiff of the suit to the other partners of the firm being the defendants of the suit, the suit is not maintainable and the learned first appellate court has rightly set aside the judgment and decree passed by the learned trial court.

12. Drawing attention of this Court to Order XX Rule 15 of the Code of Civil Procedure, 1908 which reads as under:-

"15. Decree in suit for dissolution of partnership.--Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other

acts to be done, as it thinks fit."

It is submitted by Mr. Manjul Prasad, the learned senior counsel for the respondents that it is the mandate of law that where the suit is for dissolution of a partnership or the taking of partnership account, the court before passing the final decree, may pass a preliminary decree declaring the proportionate share of the parties, fixing the day on which the partnership shall stand dissolved or to be deemed to have been dissolved and directing such accounts to be taken and as no date has been mentioned by the learned trial court, as to from which date, the partnership has to be dissolved, hence otherwise also, the judgment and decree of the trial court was not sustainable in law and was liable to be set aside and has rightly been set aside by the first appellate court. Hence, it is submitted that the learned first appellate court having rightly set aside the judgment and decree passed by the trial court, this appeal being without any merit be dismissed.

13. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that the mandate of law as enshrined in the Indian Partnership Act, 1932 for dissolution of a partnership at will is crystal clear. There are two modes of dissolution of a partnership at will, it is relevant at this stage to refer to Section 43 & 44 of the Indian Partnership Act, 1932 which reads as under:-

"43. Dissolution by notice of partnership at will.--(1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

44. Dissolution by the Court.--At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely:--

(a) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;

(b) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;

(c) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;

(d) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with hint;

(e) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), or has allowed it to be sold in the recovery of arrears of land-revenue or of any dues recoverable as arrears of land- revenue due by the partner;

(f) that the business of the firm cannot be carried on save at a loss; or

(g) on any ground which renders it just and equitable that the firm should be dissolved."

The plain reading of the Section 43 & 44 of the Indian Partnership Act, 1932 makes it crystal clear that a notice is mandatory if a partnership at will is dissolved without the intervention of the court as envisaged

under Section 43 of the Indian Partnership Act, 1932 but for the purpose of dissolution of a partnership at will by court in exercise of the power under Section 44 of the Indian Partnership Act, 1932, certainly the law do not mandate any prior notice to be served upon the other partners, but the rider is that the dissolution of a partnership at will by a court cannot be done merely for the purpose of the accounts of the firm is not being shown to one of the partners.

So far as suit for rendition of account is concerned, it is not mandatory to issue legal notice before filing such suit.

14. So far as the contention of Mr. Manjul Prasad, the learned senior counsel for the respondents regarding the suit being not maintainable in view of Section 69 of the Indian Partnership Act, 1932, as the firm is not a registered firm is concerned, Section 69 of the Indian Partnership Act, 1932 envisages suits of two kinds; (i) a suit to enforce a right arising from a contract and (ii) a suit to enforce the right conferred by the provisions of Indian Partnership Act, 1932. In case, a partnership firm is not registered, no suit to enforce a right arising from a contract can be instituted in any court by or on behalf of any person suing as a partner in a firm, against the firm or any person alleged to be a partner in a firm but so far as the suit to enforce the right conferred by the provisions of the Indian Partnership Act, 1932, for example in this case, Section 44 of the Indian Partnership Act, 1932, certainly envisages that the provisions of Sub-section 1 & 2 of Section 69 of the Indian Partnership Act, 1932 shall not affect the enforcement of right to sue for dissolution of the firms of course, under the grounds envisaged under Section 44 of the Indian Partnership Act, 1932 for dissolution of a partnership firm or for accounts of a dissolved firm. In this case, as the plaintiff's case is that the plaintiff sought dissolution of the firm under Section 44(d) of the Indian Partnership Act, 1932, so in the considered view of this Court, Section 69 of the Indian Partnership Act, 1932 is not a bar to file a suit for dissolution of the firm.

So far as the contention of Mr. Manjul Prasad, the learned senior counsel for the respondents, regarding the mandate of Order XX Rule 15 of the Code of Civil Procedure is concerned, it is a settled principle of law that the mere fact that a party goes to the court asking for dissolution of a partnership firm does not operate as notice for dissolution. Hence Rule 15 of Order XX of the Code of Civil Procedure mandates that the court passing a decree for dissolution of a partnership firm must fix a day on which the partnership shall stand dissolved or deemed to have been dissolved but as rightly submitted by Mr. Manjul Prasad though the trial court had passed a decree for dissolution of the partnership but failed to fix any date from which the partnership shall stand dissolved or deemed to have been dissolved nor there is any discussion or material in the judgment of the trial court from which it could be arrived at, as to from which date, the partnership firm concerned was to be dissolved or deemed to have been dissolved. It is relevant in this respect to refer to para -12 & 13 of the Judgment of Hon'ble Supreme Court of India, in the case of Banarsi Das vs. Kanshi Ram and Ors., reported in AIR 1963 SC 1165 which reads as under:-

"12. In the plaint in the present suit, the plaintiff Kundan Lal alleged in para 10 that the partnership being at will it stood dissolved on May 13, 1944, when Sheo Prasad filed Suit No. 105 of 1944 in the court of the Sub-Judge, Lahore. No doubt, as pointed out by the High Court, Banarsi Das has admitted this fact in his written statement at not less than three places. The admission, however, would bind him only in so far as facts are concerned but not in so far as it relates to a question of law. It is an admitted fact that the partnership was at will. Even so, Mr. Veda Vyasa points out the mere filing of a suit for dissolution of such a partnership does not amount to a notice for dissolution of the partnership. In this connection, he relies upon 68, Corpus Juris Secundum, p. 929. There the law is stated thus: The mere fact that a party goes to

court asking for dissolution does not operate as notice of dissolution. He then points out that under O. XX R. 15 of the Code of Civil Procedure, a partnership would stand dissolved as from the date stated in the decree, and that as the Lahore suit was dismissed in default and no decree was ever passed therein it would be incorrect even to say that the partnership at all stood dissolved because of the institution of the suit. On the other hand, it was contended on behalf of some of the respondents that the partnership being one at will, it must be deemed to have been dissolved from the date on which the suit for dissolution was instituted and in this connection reference was made to the provisions of sub-s. (1) of S. 43 of the Partnership Act which reads thus:

"(1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firms".

The argument seems to be based on the analogy of suits for partition of joint Hindu family property with regard to which it is settled law that if all the parties are majors, the institution of a suit for partition will result in the severance of the joint status of the members of the family. The analogy however cannot apply, because, the rights of the partners of a firm to the property of the firm are of a different character from those of the members of a joint Hindu family. While the members of a joint Hindu family hold an undivided interest in the family property, the partners of a firm hold interest only as tenants-in-common. Now as a result of the institution of a suit for partition, normally the joint status is deemed to be severed, but then, from that time onwards they hold the property as tenants-in- common i.e., their rights would thenceforth be somewhat similar to those of partners of a firm. In a partnership at will, if one of the partners seeks its dissolution, what he wants is that the firm should be wound up, that he should be given his individual share in the assets of the firm (or may be that he should be discharged, from any liability with respect to the business of the firm apart from what may be found to be due from him after taking accounts) and that the firm should no longer exist. He can call for the dissolution of the firm by giving a notice as provided in sub-s. (1) of S. 43 i.e. without the intervention of the court, but if he does not choose to do that and wants to go to the court for effecting the dissolution of the firm, he will, no doubt, be bound by the procedure laid down in 0 . 20 R. 15 of the Code of Civil Procedure, which reads thus:

"Where a suit is for the dissolution of a partnership or the taking of partnership accounts, the Court, before passing a final decree may pass a preliminary decree declaring the proportionate share of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, as much, accounts to be taken, and other acts to be done, as it thinks fit."

This rule makes the position clear. No doubt, this rule is of general application, that is, to partnerships at will as well as those other than at will; but there are no limitations in this provision confining its operation only to partnerships other than those at will. Sub-s. (l) of S. 43 of the Partnership Act does not say what will be the date from which the firm will be deemed to be dissolved. For ascertaining that, we have to go to sub-s. (2) which reads thus.

"The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice."

13. Now, it will be clear that this provision contemplates the mentioning of a date from which the firm would stand dissolved. Mentioning of such a date would be entirely foreign to a plaint in a suit for dissolution of partnership and therefore such a plaint cannot fall within the expression "notice" used in the sub-section. It would follow therefore that the date of service of a summons accompanied by a copy of a plaint in the suit for dissolution of partnership cannot be regarded as the date of dissolution of partnership and S. 43 is of no assistance." (Emphasis supplied) Further as mandated by Rule 15 of Order 20 of the Code of Civil Procedure and the facts of this case, this Court is of the considered view that the trial court ought to have passed a preliminary decree declaring the proportionate shares of the parties when it was dissolving the partnership firm.

15. Now coming to the sole substantial question of law as to whether in absence of prior notice in writing under section 43 of the Indian Partnership Act, the suit for dissolution of partnership and for rendition of accounts by the acting partner was not maintainable is concerned, because of the discussions made above, this Court is of the considered view that absence of prior notice in writing under Section 43 of the Indian Partnership Act is not mandatory for a suit for dissolution of a partnership and for rendition of account by the acting partner in terms of Section 44 of the Indian Partnership Act, 1932. So the sole substantial question of law is answered in the negative.

16. Since, the learned first appellate court after appreciation of the evidence in the record has come to a finding of fact answering the issue nos. iii & iv in the negative and against the plaintiff after considering the

evidence in the record and as the finding of fact returned by the learned first appellate court do not suffer from any element of perversity, this Court is of the considered view that there is no justifiable reason to interfere with the judgment and decree passed by the learned first appellate court.

17. In view of the discussions made above, this appeal is dismissed on contest, but under the circumstances without any costs.

18. Let a copy of this Judgment along with Lower Court Records be sent back to the learned court below forthwith.

(Anil Kumar Choudhary, J.) High Court of Jharkhand, Ranchi Dated the 24th November, 2022 AFR/ Sonu-Gunjan/-

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Banarsi Das vs Seth Kanshi Ram & Others(And Connected ... on 17 December, 1962
Equivalent citations: 1963 AIR 1165, 1964 SCR (1) 316, AIR 1963 SUPREME COURT 1165, 1963 SCD 758, 1964 (1) SCR 316, ILR 1963 2 ALL 678

Author: J.R. Mudholkar

Bench: J.R. Mudholkar, Syed Jaffer Imam, N. Rajagopala Ayyangar

PETITIONER:
BANARSI DAS

Vs.

RESPONDENT:
SETH KANSHI RAM & OTHERS(and Connected Appeals)

DATE OF JUDGMENT:
17/12/1962

BENCH:
MUDHOLKAR, J.R.
BENCH:
MUDHOLKAR, J.R. IMAM, SYED JAFFER SUBBARAO, K.
AYYANGAR, N. RAJAGOPALA

CITATION:
1963 AIR 1165 1964 SCR (1) 316 CITATOR INFO :
RF 1991 SC1020 (13)

ACT:
Limitation-Date of dissolution of partnership-Indian Limitation Act, 1908 (9 of 1908), Art. 106-Indian Partnership Act, 1932 (9 of 1932),s. 43C-ode of Civil Procedure, 1908 (Act 5 of 1908), 0.20, r. 15.

HEADNOTE:
The plaintiff filed a suit against his brothers who had for- merly constituted a joint family for a declaration that the partnership which had been formed by them after they ceased to be joint in respect of a sugar mill stood dissolved on May 13, 1944, on which date one of the brothers had filed an

earlier suit for dissolution of the partnership. The earlier suit had been dismissed for default.
The plaintiff in the present suit also prayed for a decree for accounts from defendants I and 2 as well as for the appointment of a Receiver. The trial court decreed the suit, ordered winding up and appointed a Commissioner. It also directed the accounts prayed for. Before the High Court Kanshi Ram who had not filed a written statement and against whom the proceedings in the trial court had been ex- parte contended that the suit was barred by limitation and in any event he should not be called upon to account. The plaintiff contended that the suit was one for distribution of the assets of a dissolved firm and was not barred by limitation. The High Court while noticing that the plea of limitation taken by one of the parties was raised before it for the first time, held that by reason of s. 3 of the Limitation Act it was bound to take notice of the bar of limitation and dismissed the suit. Having decided Kanshi Ram's plea the High Court passed consequential orders with regard to the several appeals by the other defendants. On appeal it was contended in this Court that the question of limitation which was not raised even in the grounds of appeal before the High Court was a mixed question of fact and law and it should not have been entertained by the High Court.
Hold, that the suit for dissolution filed on May 13, 1944, had ended in a dismissal for default, and as such no date
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of dissolution of the partnership as contemplated by 0.20,
r. 15, of the Code of Civil Procedure had been fixed by the Court; the plaint could not be construed as the notice contemplated by s. 43 of the Partnership Act, to terminate the partnership. Even on the assumption that the summons accompanied by the plaint could be said to be the service of notice for dissolution of the partnership, the date of dissolution could only be the date on which the last of the partners was served. With all these questions of fact to be investigated, the High Court had committed an error in treating the question of limitation as purely one of law and allowing it to be raised at the hearing for the first time before it, at the instance of a party who had not filed a written statement and raised an issue on the question before the trial court.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 94 to 97 of 1960.

Appeals from the judgment and order dated March 15, 1956, of the' Allahabad High Court in First Appeals Nos. 172, 364, and 379 of 1954.

Veda Vyasa, R. K. Garg, D. P. Singh, Shiv Shastri and K. K. Jain, for the appellant (in C. As. Nos. 94-96/60) and respondent No. 2 (in C. A. No. 97 of 1960).

Rameshwar Nath, S. N. Andley and P. L. Vohra, for the appellant (in C. A. No. 97/60) respondent No. 2 (in C. A. No. 94/60) and respondent No. 1 (in C. As-. Nos. 95 and 96/60).

K. L. Gossain and Sohan Lal Pandhi for respondent No. 1 (in C. As. Nos. 94 and 97/60) respondent No. 2 (in C. A. No. 95 of 60) and respondent No. 4 (in C. A. No. 96/60). Harbans Singh, for respondent No. 3 (in C. A. No. 94/60). J. P. Agarwal, for respondent No. 4 (in C. A. No. 94160) respondents No. s. 3 and 4 (in C. A. No. 95/60) respondents Nos. I and 3 (in C. A. No. 96/60) and respondents Nos. 3 and 4 (in C. A. No. 97/60).

1962. December 17. The judgment of the Court was delivered by MUDHOLKAR, j.-These are appeals by certificates granted by the High Court of Allahabad under Art. 133 (1) (c) of the Constitution from its judgments dated March 15,1956. The relevant facts are briefly as follows :

The plaintiff Kundanlal and the defendants 1 to 5 Banarsi Das, Kanshi Ram, Kundan Lal, Munnalal, Devi Chand and Sheo Prasad are brothers and formed a joint Hindu Family, till the year 1936. Amongst other properties the family owned a sugar mill at Bijnor in Uttar Pradesh called "Sheo Prasad Banarsi das

Sugar Mills". After the disruption of the family the brothers decided to carry on the business of the said sugar mill as partners instead of as members of -a joint Hindu Family. The partnership was to be at will and each of the brothers was to share all the profits and losses equally. The mill was to be managed by one of the brothers who was to be designated as the managing partner and the agreement arrived at amongst the brothers provided that for the year 1936-37, which began on September 1,1936, the first defendant Banarsi Das, who is the appellant in Civil Appeals 94 to 96 of 1960, was to be the managing partner. The agreement provided that for subsequent years the person unanimously nominated by the brothers was to be the managing partner and till such unanimous nomination was made, the person functioning as managing partner in the previous year must continue. For the years 1941-44, Kundanlal was the managing partner. On May 13,1944, Sheo Prasad defendant No. 5 now deceased, instituted a suit in the court of the Sub-

ordinate judge, First Class, Lahore, for dissolution of partnership and rendition of accounts against Kundanlal and joined the other brothers as defendants to the suit, In the course of that suit the court, by its order dated August 3,1944, appointed one Mr. P.C.Mahajan, Pleader, as Receiver but as the parties were dissatisfied with the order the matter was taken up to the High Court in revision where they came to terms. In pursuance of the agreement between the parties the High Court appointed Kanshiram as Receiver in place of Mr. Mahajan as from April 5,1945. In the meanwhile, the District Magistrate, Bijnor took over the mill under the Defence of India Rules and appointed Kundanlal and his son to work the mill as agents of the U. P. Government for the year 1944-45. This lease was renewed by the Government for the year 1945 46. On August 28,1956, the parties, except Devi Chand, made an application to the Court at Lahore praying that the Receiver be ordered to

execute a lease in favour of Banarsidas for a period of five years. It may be mentioned that this application was made at the suggestion of the District Magistrate; Bijnor. The Subordinate Judge made an order in terms of the application. In September 1946, Banarsidas obtained possession of the mill. It may be mentioned that Sheo Prasad had in the meanwhile applied to the court for distribution amongst the erstwhile partners of an amount of Rs. 8,10,000/(out of the total of Rs. 8,30,000/-) which was lying with the Receiver and suggested that the amount which fell due to Kundanlal and Banarsidas should be withheld because they had to render accounts. However, the aforesaid amount lying with the receiver was distributed amongst- all the brothers and Devichand acknowledged receipt on November 14, 1946. On October II, 1947, the Lahore suit was dismissed for default, the parties having migrated to India consequent on the partition -of the country.

On November 8,1947, Sheo Prasad instituted a suit before the court of Civil judge, Bijnor against his brothers for a permanent injunction restraining Banarsidas from acting as Receiver. The suit, how-

ever, was dismissed on March 3,1948. On July 16, 1948, Sheo Prasad transferred his 1/6th share to Banarsidas and since then Banarsidas has been getting the profits both in respect of his own share as well as in respect of that of Sheo Prasad.

On October 7,1948, the suit out of which these appeals arise was instituted by Kundanlal against all his brothers claiming the reliefs set out in para 29 of the plaint. The reliefs are as follows :

"(a) That it may be declared that the partner-

ship of the Shiv Prasad Banarsi Das Sugar Mills, Bijnor between the parties was dissolved on 13th May, 1944 and if in opinion of the court the partnership is still in existence, the court may be pleased to dissolve it. Valued at Rs. 5000.

(b) That an account be taken from defendants I and 2 or any of them and decree be passed in favour of the plaintiff for the amount that may be found to be due to the plaintiff on account of his share in the assets and profits and sums of money in their possession. Valued at Rs. 500.

(c) That a pendete lite interim Receiver may be appointed for the Seth Shiva Prasad Banarsi Das Sugar

Mills, Bijnor.

(d) Any other relief which the plaintiff may be entitled against any or either of the defendants as the court may deem fit to grant.

(e) Costs may be awarded to the plaintiff." On July 30, 1949 , Banarsidas filed his written statement but none of the other dependents put in an appearance. On Decemberl8,1950, an application which had been made for the appointment of a Receiver was dismissed on the ground that kanshi Ram who had been appointed as Receiver by the Lahore High Court continued to be the Receiver. It may be mentioned that during the pendency of this suit the appellant Banarsidas entered into an agreement with Devchand and Kanshi Ram whereunder he took over all their rights and interests in the said mill for a period of five years commencing from July 1, 1951. On February 19,1951, he made

an application to the court for directing Kanshi Ram to give a lease of the mill to him for a period of five years commencing from July 1, 1951. It may be mentioned that under an earlier arrangement Banarsidas had obtained a lease for a similar term which was due to expire on June 30, 1951. On April 26 1951, one Mr. Mathur was appointed Receiver by the court and in july 1 951, he granted a lease for five years to Kundanlal on certain terms which would be settled by the court. It may be appropriate to mention here that, issues in the suit instituted by Kundanlal were framed on December 7, 1951, and one of the important issues was whether the lease dated September 12, 1946, granted to Banarsidas was void ab initio or wits voidable and in either case what was its effect. On April 2, 1954, the advocate appearing for Kundanlal stated that he did not wish to press this issue and that the only question left was of taking accounts. In view of this concession by the plaintiff, the Court decreed the suit in the following terms:

"1. The suit is decreed for declaration that the S. B. Sugar Mills, Bijnor, stood dissolved with effect from 13th May, 1944. The plaintiff's share is declared to be 1/6th; of defendant No. 1 Seth Banarsi Das as 1/3rd and of defendants 2 to 4 1/6th each.

2. Seth Kanshi Ram is held liable to render accounts to the plaintiff and other defendants in respect of joint stores and lubricants in Exhibits I and 7.

3. Shri P. N. Mathur shall continue to be the receiver till further orders.

4. And it is ordered that Shri Kashi Nath who is appointed Commissioner for the purpose of winding up the affairs of the Mills, in this case, shall prepare accounts of the credits, properties and effects and stocks now belonging to the said mills and then submit the report to the court. After the report has been submitted and objections heard and decided, the court would fix a date for the sale of the assets of the Mills. The Commissioner shall receive instructions from the court from time to time.

Three appeals were preferred before the High Court against this decision. One was by Kanshi Ram, another by Banarsidas and the third was by Munnalal. It may be mentioned here that the suit has been decreed ex-parte against both Kanshi Ram and Munna Lal. It may also be mentioned that even in the appeals the winding up of the partnership business and the appointment of Mr. Kashi Nath as Commissioner for this purpose was not challenged by any party to the appeals. These appeals were heard together and were disposed of by a common judgment by the High Court on March 15, 1958. The High Court, in effect, dismissed the appeals of Banarsidas and Munnalal but granted partially the appeal of Kanshi Ram. As a result of the High Court's decision, Kundanlal's suit stood decreed for declaration that the partnership should be dissolved with effect from May 13, 1944, and that the six brothers had shares in the partnership as found by the trial court. But the suit stood dismissed with regard to other reliefs. As there were three appeals before the High Court, the appellant Banarsidas has preferred three separate appeals for complying with the requirements of the law.

Before the High Court the stand taken by the parties was this : Devichand and Munnalal wanted that the winding up order should be set aside while Kundanlal wanted that it should be upheld but that he should not be asked to render any accounts. Kanshi Ram contended that the suit was barred by time and that at

any rate he should not be called upon to account. The appellant Banarsidas wanted that the winding up order should be maintained and also wanted that accounts should be rendered both by Kundanlal and Kanshi Ram. The ground on which the High Court dismissed the suit was that the suit for accounts was barred by Art. 106 of the Limitation Act. It was, however, contended before the High Court on behalf of the plaintiff that although a suit for accounts and share of profits may be barred by time, the suit in so far as it related to the distribution of the assets of the dissolved firm was not barred by limitation as such a suit falls outside Art. 106 of the Limitation Act. This contention was also rejected by the High Court and it held that not only the claim for accounts and share for profits was time-barred but also the claim for distribution of the assets of the dissolved firm was time-barred. The High Court was alive to the fact that the plea of limitation was not taken by any of the defendants in the trial court but was of the opinion that the plaint itself disclosed that the Suit was barred by time and, therefore, it was the duty of the court under s. 3 of the Limitation Act to dismiss it. It was then contented before the High Court on behalf of the plaintiff that as in none of the appeals preferred before it the appellants had questioned that portion of the decree which granted the plaintiff the relief of a share in the assets of the partnership and therefore it ought not to be interfered with. The High Court, however, resorted to O. 41, r. 33 of the Code of Civil Procedure and held that under this provision, it was competent to it to disallow the claim decreed by the trial court. Upon this view, the High Court allowed Kanshi Ram's appeal, but lost sight of the fact that same order had to be made with regard to the moneys lying in the court.

In his appeal, it was contended by Banarsidas that that portion of the decree which declared the partnership to have been dissolved on May 13, 1944, should be set aside. But the High Court refused to permit him to urge this point in as much as he had admitted in his written statement that the partnership was dissolved on May 13,1944. The High Court also said that the decree which had been passed against Banarsidas in so far as this relief is concerned was a consent decree and that an appeal therefrom is barred by s.96, sub-s. (3), of the Code of Civil Procedure. Upon this view, the High Court dismissed his appeal. Dealing with Munnalal's case, the High Court observed that the only relief sought by him was that Banarsidas should be asked to render accounts for the year 1944-1945, and that as it had already held, while dealing with Kanshi Ram's appeal that this claim was barred by time, his appeal should also be dismissed.

Banarsidas has come up in appeal against the judgments and decrees of the High Court in all the three appeals and his appeals are Civil Appeals Nos. 94 to 96 of 1960. Kundanlal has preferred an appeal from the judgment and decree of the High Court

in Kanshi Ram's appeal, which is numbered Civil Appeal No. 97 of 1960. This judgment governs all these appeal.

The points raised by Mr. Veda Vyasa on behalf of Banarsidas are these :

(1) Under the Partnership Act, the partners are entitled to have the business of the partnership wound up even though a suit for accounts is barred under Art. 106 of the Limitation Act.

(2) Kanshi Ram having been appointed a Receiver by the Court stood in a fiduciary relationship to the other partners and the assets which were in his possession must be deemed to have been held by him for the benefit of all the partners. Therefore, independently of any other consideration, he was bound to render accounts. (3) The question of' limitation was not raised in the plaint or the grounds of appeal before the High Court and as it is a mixed question of fact and law, it should not have been made this foundation of the decision of the High Court.

If it was thought necessary to allow the point to be raised in view of the provisions of s. 3 of the Limitation Act, the courts should at least have followed the provisions of O. 41, r. 25, Code of Civil Procedure, and framed an issue on the point and remitted it for a finding to the trial court. (4) The Court was wrong in holding that limitation for the suit commenced on May 13, 1944.

(5) The High Court was wrong in resorting to the provisions of O.41, r.33, of the code of Civil Procedure.

Before we consider the points raised by Mr. Veda Vyasa, we would like to point Out that at the commencement of the argument, Mr. Veda Vyasa made an offer that if all the parties agreed, Banarsidas was prepared to waive his claim for accounts against Kundanlal and Kanshi Ram provided that the decree of the trial court was restored in other respects. While the learned counsel appearing for those two Parties were willing to accept the offer, two others were not, and, therefore, we must proceed to decide the appeals on their merits. The most important point to be considered is whether the suit was barred by limitation. If the appellants in these appeals succeed on this point, the first, second and fifth points will really not arise for consideration.

In the plaint in the present suit, the plaintiff Kundanlal alleged in para 10 that the partnership being at will it stood dissolved on May 13, 1944, when Sheo Prasad filed suit No- 105 of 1944 in the court of the Sub-Judge, Lahore. No doubt, as pointed out by the High Court, Banarsidas has admitted this fact in his written statement at no less than three places. The admission, however, would bind him only in so far as facts are concerned but not in so far as it relates to a question of law. It is an admitted fact that the partnership was at will. Even so, Mr. Veda Vyasa points out, the mere filing of a suit for dissolution of such a partnership does not amount to a notice for dissolution of the partnership. In this connection, he relies upon 68, Corpus Juris Secundum, P. 929. There the law is stated thus : The mere fact that a party goes to court asking for dissolution does not operate as notice of dissolution., He then points out that under O.20, r. 15, of the Code of Civil Procedure, a partnership would stand dissolved as from the date stated in the decree, and that as the Lahore suit was dismissed in default arid no decree was ever passed therein it would be incorrect even to say

that the partnership at all stood dissolved because of the institution of the suit. On the other hand, it was contended on behalf of some of the respondents that the partnership being one at will, it must be deemed to have been dissolved from the date on which the suit for dissolution was instituted and in this connection reference was made to the provisions of sub-s. (1) of s. 43 of the Partnership Act which reads thus :

"(1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm."

The argument seems to be based on the analogy of suits for partition of joint Hindu family property, with regard to which it is settled law that if all the parties are majors, the institution of a suit for partition will result in the severance of the joint status of the members of the family. The analogy however cannot apply, because, the rights of the partners of a firm to the property of the firm are of a different character from those of the members of a joint Hindu family. While the members of a joint Hindu family hold an undivided interest in the family property, the partners of a firm hold interest only as tenants-in-common. Now as a result of the institution of a suit for partition, normally the joint status is deemed to be severed, but then, from that time onwards they hold the property as tenants-in- common i.e., their rights would thenceforth be somewhat similar to those of partners of' a firm. In a partnership at will, if one of the partners seeks its desolution, what he wants is that the firm should be wound tip, that be should be given his individual share in the assets of the firm (or may be that he should be discharged from any liability with respect to the business of the firm apart from what may be found to be due from him after taking accounts) and that the firm should no longer exist. He can call for the dissolution of the firm by giving a notice as provided in sub-s. (1) of s. 43 i.e., without the intervention of the court, but if he does not choose to do that and wants to go to the court for effecting the dissolution of the firm, lie will, no doubt, be bound by the procedure laid down in 0.20, r. of the Code of Civil Procedure, which reads thus:

"Where a suit is for the dissolution of a partnership or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate share of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit."

This rule makes the position clear. No doubt, this rule is of general application, that is, to partnerships at will as well as those other than at will; but there are no limitations in this provision confining its operation

only to partnerships other than those at will. Sub-s. (1) of s. 43 of the Partnership Act does not say what will be the date from which the firm will be deemed to be dissolved. For ascertaining that, we have to go to sub-s. (2) which reads thus :

"The firm is dissolved as from the date men- tioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice."

Now, it will be clear that this provision contemplates the mentioning of a date from which the firm would stand dissolved. Mentioning of such a date would be entirely foreign Lo a plaint in a suit for dissolution of partnership and therefore such a plaint cannot fall within the expression "notice" used in the Sub-Section. It would follow therefore that the date of service of a summons accompanied by a copy of a plaint in the suit for dissolution of partnership cannot be regarded as the date of dissolution of partnership and s. 43 is of no assistance.

Even assuming, however, that the term "notice" in the provision is wide enough to include within it a plaint filed in a suit for dissolution of partnership, the sub-section itself provides that the firm will be deemed to be dissolved as from the date of communication of the notice. It would follow, therefore, that a partnership would be deemed to be dissolved when the summons accompanied by a copy of the plaint is served on the defendant, where there is only one defendant, and on all defendants, when there are several defendants. Since a partnership will be deemed to be dissolved only from one date, the date of dissolution would have to be regarded to be the one on which the last summons was served. Now, if the High Court wanted to give the benefit of the provisions of s. 43 to any of the parties--defendants before it , it should have borne in mind the full implications of those provisions. We have no material on record for ascertaing the date on which the last summons was served in this case. Since that date is not known or could have been known by the High Court, it was in error in holding that the suit was barred by time. The High Court has overlooked the fact that even upon the argument addressed before it on behalf of Kanshi Rain, the question of limitation was not one purely of law but was a mixed question of fact and law and, therefore, it was not proper for it to allow it to be raised for the first time in argument. We are satisfied that what the High Court has done has caused prejudice to some of the parties to the suit and on that ground alone, we would be justified in setting aside its decision. If the High Court felt overwhelmed by the provisions of s. 3 of the limitation Act, it should at least have given an opportunity to the parties which supported the decree of the trial court to meet the plea of limitation by amending their pleadings. After allowing the pleadings to be amended, the High Court should have framed an issue and remitted it for a finding to the trial Court. Instead of doing so, it has chosen to treat the pleading of one of the defendants as conclusive not only on the question of fact but also on the question of law and dismissed the suit. It is quite possible that had an opportunity been given to the defendants, they could have established, in addition to proving the dates on which the summonses were served, that the suit was not barred by time because of acknowledgment in the course of the discussion, the High Court had said that it was not suggested before it by anyone that the claim was not barred by reason of acknowledgments. Apparently, no such argument was advanceb before it on behalf of the plaintiff and the defendant Banarsidas because the counsel were apparently taken by surprise and had no opportunity to obtain instructions on this aspect of the case. We are clearly of opinion that the High Court was in error in allowing the plea of limitation to be raised before it particularly by defendants who had not even filed a written statement in the case. We do not think that this was a fit case for permitting an entirely new point to be raised by a non-contesting party to the suit.

In view of our decision on this point, it would follow that the High Court’s decision must be set aside and that of the trial court restored. We may, however, mention that some of the parties including the appellant Banarsidas and the plaintiff-respondent, Kundenlal as well as the defendant- respondent Kanshi Ram were agreeable to certain variations in the decree. But as there were other parties

besides them to whom these variations are not acceptable, we are bound to decide the appeals on merits. For the aforesaid reasons, we allow the appeals of Banarsidas and Kundanlal and restore the decree of the trial court, but make no order as to costs.

Along with the appeals, we heard two Civil Miscellaneous Petitions, Nos. 1482 of 1962 and 1534 of 1962. The first is to the effect that the lease granted by this Court during the pendency of these appeals should be terminated early. It is said that the reason why the term of five years was fixed was that this Court was seized with the litigation and it was expected to last for five years. But as it happens, it has terminated within about a year and a half and therefore there is no reason for the lease to continue. Apart from the fact that it would not be in the interest of the parties to determine the lease before its expiry we doubt whether we can legally do SO. We, therefore, reject this application. As regards the other application, it is agreed between parties that it should be considered by the Receiver when the assets are distributed. We may also mention that during arguments it was stated before us on behalf of Banarsidas that he had installed some new machinery for the efficient running of the mill and that before the mill is sold he should be allowed to remove the machinery. It was suggested that perhaps it would be in the interest of all the parties if the mill is sold along with the new machinery at the date of sale. The other parties, however said that it would be best if Banarsidas removes the machinery before the expiry of the lease. In the circumstances, we can give no direction in the matter. It will be open to the parties, however, to agree upon the course to be adopted when the Receiver sets about selling the machinery, or if they do not agree, to obtain directions from the High Court.

While we dismiss the Civil Miscellaneous Petitions, we make no order as to costs. Appeals allowed.

Santdas Moolchand Jhangiani And Anr. vs Sheodayal Gurudasmal Massand on 3 February, 1970
Equivalent citations: AIR1971BOM237, (1971)73BOMLR42, ILR1971BOM457, AIR 1971 BOMBAY 237, ILR (1971) BOM 457 73 BOM LR 42, 73 BOM LR 42

JUDGMENT

Nain, J.

1. This is a revision application against an order dated 2nd December, 1969, passed by the learned Civil Judge, Senior Division, Nagpur. By this order he has decided a preliminary issue, being issue No. 8 in the suit, as to whether the document which the parties described as a deed of dissolution of partnership, or, in so far as it pertained to payment or certain amounts of money by the continuing partner to the outgoing partners, it was also a bond within the meaning of Section 2 and Article 13 of Schedule I of the Bombay Stamp Act, 1958.

2. The two plaintiffs and the defendant entered into a partnership under a deed of partnership dated 11th June, 1960 and carried on partnership business in Nagpur and Bhopal in the name and style "Messrs. Oriental Engineering Company". They decided to dissolve this partnership with effect from 1st April, 1966, settle the accounts of the partnership, and provide for the defendant continuing the partnership business, payment of amounts found due to the outgoing partners and several other matters. On 5th July, 1966 they reduced what they called "the terms of dissolution" to writing. The interpretation of this writing which has been described by the parties as a deed of dissolution is the subject-matter of this revision application,

3. It appears that the plaintiffs to whom certain amounts were payable under this document filed a suit for recovery thereof in the Court of the learned Civil Judge, Senior Division, Nagpur. After the issues were framed -- and one of them being as to the proper stamp payable on this document, the learned trial Judge decided that it was not only a deed of dissolution but also a bond and should he stamped as such. He impounded the document under Section 33 of the Bombay Stamp Act, 1958, and asked the plaintiffs to pay the deficit stamp duty and penalty under Section 34 of this said Act before the said document was admitted in evidence. It is against the said order that the present revision application has been filed.

4. In order to appreciate the contentions of the parties, a reference to the terms of the document itself will

be necessary. The parties to it are the two plaintiffs who are the outgoing partners and the defendant who is the continuing partner. The document provides that the partnership subsisting between the parties was dissolved by mutual consent with effect from 1st April, 1966, and the plaintiffs had retired from it and the said business with its goodwill, trade name, benefit of all the contracts, engagements, agencies, quota rights, tenancy rights etc., and the assets and liabilities,

books of accounts and outstandings would belong to the defendant and thence-forward the said business would be his sole proprietary business. This term in effect amounted to a transfer of the right, title and interest of the plaintiffs in the said business to the defendant. The document recites that accounts of the partnership had been settled and a sum of Rs. 30,104.58 P. had been determined to be payable to the plaintiff No. 2. In addition, she was also given a sum of Rs. 10,000/- as what is described as a "solatium". It appears some friends and relations of the plaintiff No. 1 had advanced sums aggregating Rs. 33,986.60 P. to the partnership. The document provides that at the written request of those creditors who had advanced these amounts, the said amount had to he paid to the plaintiff No. 1, In addition, the plaintiff No. 1, was also given a sum of Rs. 15,000/- as a "solatium". We may assume that the word "solatium" stands for the price of the goodwill which was included in the transfer to the defendant. It has been contended that in so far as this document provides for payment of the several amounts to the plaintiff No. 1 and the plaintiff No. 2, it is a bond, Clause 8 of this instrument provides that in consideration of the settlement of accounts and the provisions with regard to the payment of amounts found due to tho two plaintiffs, the plaintiffs assigned to the defendant all their share and interest in the partnership and in the business, goodwill, trade name, import and export licences, tenancy rights, quota rights, property, land assets, book debits and outstandings of the firm to hold the same absolutely. This, as we have stated above, may be construed as a transfer or conveyance of the plaintiffs' right, title and interest in the partnership to the defendant. It appears that except for sums aggregating Rs. 33,986.60 P. brought in by friends and relations of the plaintiff No. 1, the firm had other liabilities which were being taken over by the continuing partner. Clause 9 provides that the defendant would indemnify each of the plaintiffs in respect of those liabilities of the firm. Clause 10 provides that income-tax and sales tax liabilities would be discharged by all the parties in accordance with their shares. Clause 11 provided a negative covenant prohibiting the plaintiffs from carrying on business in the name and style of Messrs. Oriental Engineering Company at Nagpur and Bhopal or elsewhere. In order to enable the defendant to collect the outstandings of the partnership. Clause 12 provides for a power of attorney being granted by the plaintiffs to the defendant to enable him to collect those assets and also to discharge the liabilities of the firm. Clause 18 provides that as the partnership had been dissolved with effect from 1st April, 1966, the document would be deemed to be a ratification of the terms on which the firm was dissolved.

5. It would appear from the aforesaid terms of the deed of dissolution that in so far as it provided for the dissolution of the partnership with effect from 1st April, 1966, it would be a deed of dissolution of partnership. In so far as it conveyed the interest of the plaintiffs to the defendant in the partnership, it may be argued that it was a transfer or conveyance. In so far as it provided for payment of certain amounts to each of the plaintiffs, it may be argued that the document was a bond. In so far the defendant indemnified the plaintiffs in respect of liabilities other than certain spefic liabilities, the document contained an indemnity bond. In so far as it provided that income-tax and sales tax liabilities would be shared equally, it is possible to argue that it was an agreement. In so far as it restricted the plaintiffs from carrying on the business in the name and style of Messrs. Oriental Engineering Company in Nagpur, Bhopal and elsewhere, it may amount to a negative covenant. In so far as the defendant was constituted a lawful attorney of the plaintiffs for the purpose of recovering outstandings and paying liabilities, the document contained a power of attorney. It is, however, contended before us that the document amounted only to a bond, in

addition to being a deed of dissolution in so far as it pertains to payment of certain amounts to each of the plaintiffs. No contention has been raised before us that the deed of dissolution also constitutes several other documents referred to by us hereinabove and that the said document must bear a separate stamp for each of the clauses which pertain to the several matters referred to by us hereinabove.

6. Where several matters are contained in one instrument, what stamp is payable thereon in England has

been dealt with in Halsbury's Laws of England, third Edition, volume 33, paragraph 492, pages 274-275. It is not necessary to set out the said paragraph in its entirety, but it will be sufficient to state the principles therein enunciated in so far as they pertain to the matter before us. The said paragraph provides that except where there is statutory provision to the contrary, every instrument containing or relating to several distinct matters is to be separately charged, as if it were a separate instrument, with duty in respect of each of the matters, and an instrument made for consideration liable to ad valorem duty, and also for other valuable consideration is separately chargeable in respect of each of the considerations. It seems that distinct matters means for this purpose matters which either fall under separate heads of charge or are separate transactions. There is authority for the principle that an instrument, stamped for its leading and principal object, covers everything accessory to that object. There are, further a number of cases in which various instruments, which in respect of their leading characteristic, were either not liable to duty, or if liable were properly stamped, have been held not to be chargeable with any further duty by reason of the inclusion of provisions considered to be merely ancillary to the leading object. Further stamp duty has been attracted where a provision baa been held not to be merely ancillary to another main provision but separate and distinct.

7. In order to determine what is the leading and principal object of the instrument which we are asked to construe, whether the other clauses which it is possible to argue attract separate stamp duty are accessory to that object or not and whether these clauses are ancillary to the leading object or are separate and distinct, must in India depend upon the provisions of the Indian Partnership Act, 1932, and the Bombay Stamp Act, 1958.

8. Chapter VI of the Indian Partnership Act, 1932; deals with "dissolution of a firm". Section 39 provides that the dissolution of partnership between all the partners of a firm is called the "dissolution of the firm". "Dissolution of the firm" has been defined in some text books as the breaking up or extinction of the relationship which subsisted between all the partners of the firm. Section 40 provides that the firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners. This is the dissolution by agreement. Section 41 provides for compulsory dissolution and Section 42 provides for dissolution on the happening of certain contingencies. Section 43 provides for dissolution of partnership at will by a notice given by any party thereto and Section 44 provides for dissolution by the Court in certain events. These sections provide for dissolution as such. Sections 45 to 55 which also occur in the same Chapter pertaining to dissolution of a firm provide for certain other matters which, in our opinion, arc ancillary to, arising from or dependent on the dissolution or partnership. For example, Section 45 provides for liability for acts of partners done after dissolution. Section 46 provides for the right of partners to have business wound up after dissolution. Section 47 provides for continuing authority

of partners for purposes of winding up. Section 48 provides for the mode of settlement of accounts between partners and states that losses shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits, and that in winding up the assets of the firm are to be utilised first in paying the debts of the firm to third parties, next in paying to each partner rateably what is due to him, from the firm for advances as distinguished from capital contribution, then in paying to each partner rateably what is due to him on account of capital, and lastly, the residue is to be divided among the partners in proportions in which they were entitled to share profits. Section 49 provides for payment of firm debts in priority to separate debts of the partners out of the assets. Sections 53 and 54 provide for restraint on the outgoing partners from using the firm name or the firm property. Section 55 provides for transfer of goodwill after dissolution and the consequent agreements in restraint of trade.

9. It will be noticed from the above arrangement of Chapter VI of the Indian Partnership Act that matters pertaining not only to the fact of dissolution and fixing the date thereof but also matters arising out of the fact of dissolution which pertain to the winding up of the partnership, settlement of accounts, taking over of the goodwill and assets of the partnership, restrictions on the outgoing partners carrying on business in the case of transfer of goodwill to one of them, are all matters dealt with under the subject of "dissolution of a firm". This would at least indicate that in the Indian Partnership Act, the winding up of a partnership has been treated as a part and parcel of the dissolution of partnership and has not been treated as a

distinct, separate or independent matter or transaction. In fact, the fact of winding up is so much dependent on the preceding fact of dissolution that but for dissolution the question of winding up and making other provisions consequent to it, would not arise.

10. A brief reference to some of the provisions of the Bombay Stamp Act 1958, would be necessary. The learned trial Judge has referred to Section 6 of the Bombay Stamp Act which pertains to instruments coming with in several descriptions in Schedule I and the stamp duty being paid on that description which attracts the highest stamp duty. We are in fact not concerned with the section. The learned trial Judge has not held that between a deed of dissolution and a bond the stamp duty paid should be the highest which is chargeable. What ho has decided is that apart from Rs. 30/-, the stamp duty paid on the deed of dissolution, the instrument is also liable to be charged as a bond. This would fall under Section 5 of the Bombay Stamp Act which provides that any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act. We shall later on proceed to consider how Section 5 has been interpreted by the Supreme Court of India and by the other Indian High Courts, and where an instrument is stamped according to its leading and principal object, whether separate stamp duty would be attracted in respect o£ matters that are accessory or ancillary to the leading object, if these accessory and ancillary matters arise out of one had the same transaction. Section 2(c)(ii) gives one of the definitions of the word "bond" and provides that "bond" includes any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another. The contention of the defence in this case is that in so far as the deed of dissolution before us obliges the defendant to pay a certain amount of money to each of the plaintiffs and as the deed of

dissolution is attested by witnesses, it would fall within the definition of a bond in the above provision. Article 13 of Schedule I to the Bombay Stamp Act provides ad valorem stamp duty on bonds, whereas Article 47 of the said Schedule provides a fixed stamp duty of Rs. 30/- on an instrument of dissolution of partnership.

11. The distinction between Sections 4, 5 and 6 of the Indian Stamp Act, 1899, which correspond in terms to Sections 4, 5 and 6 of the Bombay Stamp Act, 1958, has been brought out in the judgment of the Supreme Court in the case of Board of Revenue v. A. P. Benthall, AIR 1956 SC 85. It is observed in the said judgment that the object and scope of Sections 4 to 6 are not the same. Section 4 deals with a single transaction completed in several instruments, and Section 6 with a single transaction which might be viewed as falling under more than one category, whereas Section 5 applies only when the instrument comprises more than one transaction, and it is immaterial for this purpose whether those transactions are of the same category or of different categories. The test laid down by the Supreme Court is that in order to attract the application of Section 5, the whole question is whether the instrument comprises more than one transaction. In the case before us, we will have to determine whether the fact of dissolution of partnership and matters provided for in the instrument as a result or the winding up of the said partnership constitute one transaction or separate transactions, or whether the transaction consists of the dissolution of partnership and the other matters such as those providing for payment of amounts due to outgoing partners on settlement of accounts transfer of interest of outgoing partners, taking over of liabilities and goodwill, indemnity clause, power of attorney and other agreements contained in the said instrument are separate transactions or are merely matters flowing from, dependent on, or accessory to the main object of the dissolution of partnership and ancillary to that leading object.

12. In Ramswarup v. Joti a Full Bench of the Allahabad High Court has reiterated the well established principle that in interpreting a physical enactment like the Stamp Act, an interpretation which is for the benefit of the subject must be accepted. We think this principle is unexceptionable. This judgment further goes on to state that the expression "distinct matters" in Section 5 is equivalent to distinct transactions.

13. In another Full Bench decision of the Allahabad High Court in L.H. Sugar Factory v. Moti , it has been held that in deciding the question whether an instrument does or does not fall within the purview of bond as defined by Section 2(5) of the Indian Stamp Act, the instrument must be considered as a whole and it

is not permissible to divide it into several parts and look at it piecemeal and then to assign each one of such parts to some other article of Schedule I of the Act. In the case in hand, if we were to divide what has been described by the parties as a deed of dissolution into several parts and hold separately that one part amounts to agreement of dissolution of partnership and another part which provides for payment of certain amounts to outgoing partners is a bond, and to hold that the indemnity, power of attorney and agreement clauses would each attract a separate stamp duty under a separate Article of Schedule of that Act, and to hold that in so far as the interest of outgoing partners is transferred to the continuing partner, it is a conveyance, we would be doing exactly what this Full Bench decision of the Allahabad High Court prohibits us from doing. We are in respectful agreement with the principle laid down in that judgment, and in deciding whether the deed of dissolution serves its principal object or whether we should divide the document into several

parts and look at it piecemeal and then to assign each ono of these parts to some other articles of the Stamp Act, we should indeed follow the rule laid down in this judgment.

14. In the case of Secy. to the Commr. of Salt, Abkari and Separate Revenue, Madras, In re, ILR 43 Mad 365=(AIR 1920 Mad 225), a Full Bench of the Madras High Court held that a sale deed in which the vendor mortgages lands not included in the sale as security for the due performance of his covenants need not be stamped both as a sale and a mortgage. At first sight, it would appear that where lands are mortgaged for the due performance of covenants, say for example, covenant for title contained in the sale deed, the transaction would appear to be a distinct and independent transaction and not ancillary to a sale deed. Such a provision is quite unusual in sale deeds, Even so, the Madras High Court decided that the stamp duty would be payable on the sale deed because the sale is the leading object of the instrument.

15. A Division Bench of the Lahore High Court decided in the case of Tej Ram v. Maqbul Shah, AIR 1928 Lah 370 that Section 5 does not apply to a document which embodies different covenants relating to the same transaction. The test is not whether the instrument embodies distinct contracts, but whether it comprises distinct matters. Where the transaction is one and one only, the subject-matter of the agreement being the repayment of the amount advanced, the mere fact that there are two covenants in the deed, the first making certain properties chargeable in the Erst instance, and the second providing that in the event of the sale proceeds of the aforesaid properties being found insufficient, the mortgagee would be entitled to proceed against certain other properties, does not in any way affect the question. In that case, it was urged from the Bar that in reality the document embodied two distinct contracts; one by all the three executants mortgaging a house and its site for Rs. 6,000/-, and the other by two of them whereby they agreed to make one-half share in some shops liable as collateral security for the mortgage debt. Notwithstanding the fact that all the parties were not parties to the second covenant, the Division Bench of the Lahore High Court held that it was one transaction, and it did not matter if all the parties to the first covenant were not parties to the second covenant, and the test was whether the instrument related to the same transaction or whether it embodied distinct contracts.

16. In the case of the Bombay Company Ltd. v. The National Jute Mills Co. Ltd. (1912) ILR 39 Cal 669, Mr. Justice Chitty of the Calcutta High Court had to decide whether an agreement to refer disputes to arbitration contained in a brokers note is required to be separately stamped as an agreement, apart from the stamp payable on the broker’s note. It was argued by the counsel before the learned Judge that the arbitration was not a part of the same proceeding. The learned Judge, however, held that in his opinion, the agreement to refer any dispute whatever arising out of the contract to arbitration is a part of the contract itself, and not a "distinct matter" within the meaning of Section 5 of the Indian Stamp Act. He, therefore, came to the conclusion that no separate stamp on an agreement was payable.

17. In the matter of Hamdarad Dawakhana (Wakf) Delhi, , a Full Bench of the Delhi High Court held that for finding out the true character of an instrument, one has to read the instrument as a whole, and then find out its dominant purpose. A single instrument may embody several purposes, but what is relevant for the purpose of the Act is the dominant purpose of the instrument.

18. In In re Chief Controlling Stamp Authority Hyderabad AIR 1962 Andhra Pradcsh 145 (FB), a document which was a lease deed but was termed by the parties as a rental deed came up for interpretation before a Full Bench of the Andhra Pradesh High Court. The lease deed contained a guarantee by a third party for the purpose of the terms of the lease by the tenant. This would at first sight appear to be a distinct matter. But the Full Bench held that the covenant entered into by the surety was incidental and ancillary to the contract between the lessor and the lessee and formed part of the consideration for operating the lease. The surety clause was an additional term of the lease and formed an integral part of it. The lease and the covenant did not relate to two distinct matters but only to the terms on which the lessor let the building and the lessee took it.

19. Thus the lease and the guarantee formed parts of a single transaction and the document in question was not a multifarious instrument relating to several distinct matters.

20. In interpreting a fiscal enactment like the Bombay Stamp Act, 1958, an interpretation which is for the benefit of the subject must be accepted. An instrument must be read as a whole to find out its dominant object. If is not permissible to divide it into several parts and to look at it piecemeal and then to assign each one of such parts to some other article of Schedule I of the Bombay Stamp Act. Section 5 of the said Act does not apply to a document which embodies different covenants relating to the same transaction. "Distinct matters" in Section 5 means matters which are separate transactions. An instrument stamped for its leading and principal object covers everything accessory to that object and is not to be charged with any further duty by reason of the inclusion of provisions which are merely ancillary to the leading object. Separate duty is payable where a provision is not merely ancillary to the main object but is a separate and distinct transaction.

21. Applying the principles laid down by the Supreme Court and the several Indian High Courts as stated herein-above, we have to ask ourselves the question whether on a true interpretation the dominant purpose of the document which has been described by the parties as a deed of dissolution, and which description is certainly not binding on us, was to record the fact of dissolution of partnership and to provide for matters which were accessory to that object and ancillary to the leading object, or whether the several clauses pertaining to conveyance of interest of outgoing partners, taking over of liabilities by the continuing partner, indemnification of the outgoing partner to realise the outstanding, payment of amounts found clue on settlement of accounts, etc., are separate and distinct matters or they are accessory to the principal object of the instrument. Taking into consideration the fact that the Legislature itself in the Indian Partnership Act has treated the winding up of partnership as a part of its dissolution and the principles laid down which are set out hereinabove, we have no hesitation in coming to the conclusion that the dominant purpose and the leading and principal object of the deed of dissolution was not only to record in one sentence that the partnership was dissolved with effect from a particular date but also to provide for matters which flowed out of the severance of the nexus of partnership and the other things provided are accessory to that object and ancillary to the leading object of the instrument. Reading the document as a whole, we find that the dominant purpose was to provide for the dissolution of partnership and the ancillary purposes Were to provide for matters depending on the dissolution or flowing out of it. In our opinion, the deed of dissolution bears the correct stamp duty according to its principal purpose and its various covenants do not attract the separate stamp duty which they would have

attracted if they have been contained in separate documents. We have also come to the conclusion that the clauses with regard to payment of amounts to the plaintiffs are not required to be stamped as a bond.

22. As against the view above propounded, on behalf of the defendants Mr. Padhye invited our attention to the case of Chinmoyee v. Sankari Prasad, . This was a case of an agreement for dissolution of partnership. The document provided that in lieu of the dissolution Rs. 20,000/- was to be paid by one of the partners to the other out of which Rupees 10,000/- was paid at the time of the execution of the deed of dissolution and the balance of Rs. 10,000/-was to be paid within three months from that date. The document further provided that the colliery property of the mother was kept in charge as security for payment of the above sum of Its. 10,000/-. It was contended that the document was not only a deed of dissolution but in so "far as it pertained to payment of Rs. 10,000/-, it was also a bond. The Division

Bench decided in the judgment of Renupada Mukherjee, J., as follows:--

"The above contention of Mr. Das cannot be accepted, because on an examination of the deed of dissolution I find that" it is not simply a deed for dissolution of a partnership business. It is a composite instrument comprising two distinct matters, one matter being the dissolution of a partnership business and the other matter being an obligation entered into by Anandamoyee to pay Rs. 10,000/- to the plaintiff for which she kept her colliery property under charge. This latter element invests the deed with the character of a bond as defined in Section 2(5)(a) of the Stamp Act." Great reliance was placed on this judgment and it was argued on behalf of the defendant that this judgment directly covered the case in hand. We however, do not think so. It is not merely that the amount found on settlement of accounts was agreed to be paid, but in, addition certain property which was not partnership property was charged with the payment of the suit property. This was a matter wholly extraneous to the partnership or its dissolution. The judgment proceeds to define a bond as denned by the Indian Stamp Act and comes to the conclusion that the clause for payment of Rs. 10,000/- creating a charge amounted to a bond. We do not know what the Division Bench would have decided in the absence of a clause creating a charge. We, however, take the view that this was not lost sight of by their Lordships of the Calcutta High Court and this fact influenced them greatly in coming to the conclusion that the provision with regard to payment of Rs. 10,000/-, was bond. We, therefore, think that this judgment does not come to the help of the defendant.

23. Another case relied upon by the defendant was a Full Bench decision of the Bombay High Court in the matter of Hiralal Navalram, (1908) ILR 32 Bom 505. In that case, by a document the executing party, purporting to be entitled to a share in a going pressing factory, transferred absolutely the whole of that share to the other person interested in the factory in consideration of a certain sum. The High Court held that the document was a conveyance on sale of property. It must be remembered that in that case there was no question of dissolution of partnership involved. It was not that on dissolution of partnership and settlement of accounts some partners were going out and another partner was continuing the business and there was a transfer by the outgoing partner to the

continuing partner, but it was a transfer of a share during the subsistence of the partnership and the question of dominant purpose of the dissolution did not arise in that case arid had not to be decided. We, therefore, hold that the decision in that case has no bearing on the controversy before us.

24. Similarly, in the case of Board of Revenue v. T.M. Madalal Nadar and Co. two persons were carrying on business in partnership. The total capital of the partnership was Rs. 76,000/- out of which Rs. 44,000/- had been contributed by one and Rs. 32,000/-by the other, and long before the dissolution, the latter had received this amount of Rs. 32,000/-, his capital contribution, and thereafter he entered into the deed of dissolution by which the partnership relation between himself and the former was severed. It was held by the Full Bench of the Madras High Court that the payment of Rs. 32,000/- was made not under the deed but during the time when the partnership was in esse. There were, therefore, no elements to render this deed one of conveyance. The document was properly stamped as a deed of dissolution. In that case, the question of certain amounts being found due to the outgoing partner on settlement of accounts and being paid to him and in consideration thereof his transferring his interest in the partnership to the continuing partner neither arose nor was decided, and, therefore, the question whether a clause pertaining to transfer would or would not amount to a conveyance was unnecessary to decide. This decision has also no bearing on the controversy before us.

25. On behalf of the defendant, Mr. Padhye further argued that the relationship of partners had become extinct by an oral agreement on 1st April, 1966, and the deed of dissolution was executed much later on 5th July, 1966 and it provided for matters otter than the mere dissolution of partnership or extinction of the relationship of partners. The intention of the document was, therefore, not to provide for dissolution of the partnership but to secure payment of monies. He also pointed out that what was being paid to the plaintiff No. 1 was not merely the amount found due to him on settlement of accounts but at the request of some of the creditors of the partnership who had perhaps brought in monies at the instance of the plaintiff No. 1, the amounts of those liabilities was being paid to the plaintiff No. 1 and, therefore, this matter was not ancillary to the dissolution. We are afraid we are unable to accept this contention. We do not think that the

intention in writing the deed of dissolution was to secure payment of money. On a reading of the document as a whole, the dominant purpose appears to be dissolution and winding up. Winding up is by itself dependent on and a part of dissolution. The liabilities of the partnership were divided in this case in two parts. Some were taken by the defendant and those that were due to friends and relations of the plaintiff No. 1 were taken over by the plaintiff No. 1 and in lieu thereof he was to be paid those amounts. The providing for two kinds of liabilities in the deed of dissolution stands on the same footing. It does not matter if some of the liabilities were taken over by an outgoing partner and some were taken over by the continuing partner. This is a matter of agreement and arrangement between the parties. The fact that some of the liabilities were taken over by the continuing partner and others by an outgoing partner would not any the less make it a deed of dissolution.

26. Mr. Qazi, the learned Assistant Government Pleader, contended that in Chapter VI of the Indian Partnership Act, Sections 39 to 45 stood apart and were distinct from Sections 46 to 55. He contended that Sections 39 to 45 referred in terms to dissolution of partnership in various Ways therein provided, whereas Sections 46 to 55 related to winding up and not to dissolution. We,

however, find that the entire Chapter VI of the Indian Partnership Act Tom Section 39 to Section 55 has been included in the Chapter heading "Dissolution of a firm". The Legislature obviously intended to make no distinction between dissolution as such and winding up which must necessarily arise from such dissolution. We do not think that Article 47 of Schedule I of the Bombay Stamp Act, 1958, which provides a stamp duty for a deed of dissolution of partnership merely contemplates a one sentence agreement of dissolution providing that the partnership was dissolved and fixing the date of dissolution. We think that such an agreement must of necessity cover other matters which arise directly out of the fact of dissolution, such as settlement of accounts, payment of amounts found due on such settlement, closing down or continuation of business, collection of outstandings and payment of liabilities. For this purpose, a power of attorney and an indemnity clause would also ordinarily be necessary. These are matters that depend upon the fact of dissolution and arise out of that fact and are ancillary thereto. Experience also shows that in deeds of dissolution the mere fact of dissolution of partnership and fixing the date of dissolution are not provided for, but the other matters which are provided in the instrument before us are matters normally provided for in a deed of dissolution. If we were to read each clause of the deed of this instrument separately and to try to find out what stamp duty it attracts under the several Articles of Schedule I of the Bombay Stamp Act, it would work not only a great hardship but would be violating the principle that a fiscal statute must be interpreted in a manner which is beneficial to the subject.

27. For the above reasons, we hold that the deed of dissolution in this matter is not liable to be stamped as a bond, and that its having been stamped as a deed of dissolution is sufficient. The revision application, is, therefore, allowed. The rule is made absolute. In the circumstances of the case, each party shall bear its own costs.

28. Rule made absolute.

THE INDIAN PARTNERSHIP ACT, 1932

ARRANGEMENT OF SECTIONS

SECTIONS

CHAPTER I PRELIMINARY

THE INDIAN PARTNERSHIP ACT, 1932
ACT NO. 9 OF 1932

An Act to define and amend the law relating to partnership.

[8th April, 1932.]

WHEREAS it is expedient to define and amend the law relating to partnership; it ishereby enacted as

follows:—
CHAPTER I PRELIMINARY
1. Short title, extent and commencement.—(1) This Act may be called the Indian Partnership Act, 1932.
1[(2) It extends to the whole of India 2[3***].]
(3) It shall come into force on the 1st day of October, 1932, except section 69, which shall come into force on the 1st day of October, 1933.
2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—
(a) an“act of a firm” means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm;
(b) “business” includes every trade, occupation and profession;
(c) “prescribed” means prescribed by rules made under this Act;
(d) “third party”, used in relation to a firm or to a partner therein, means any person who is not a partner in the firm; and
(e) expressions used but not defined in this Act and defined in the Indian Contract Act, 1872 (9 of 1872), shall have the meanings assigned to them in that Act.
3. Application of provisions of Act 9 of 1872.—Theunrepealed provisions of the Indian Contract Act, 1872 (9 of 1872), save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to firms.
STATE AMENDMENT
Goa, Daman and Diu
In exercise of the powers conferred by sub-section (2) of Section 3 of the Goa, Daman and Diu (Laws) No. 2 Regulation, 1963, the Lieutenant Governor hereby appoints the 15th March 1964, as the date on which the provisions of the Acts mentioned in the Schedule below shall come into force in the Union Territory of Goa, Daman and Diu.

1. The Indian Partnership Act, 1932.

SCHEDULE

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu.
[Published in the Official Gazette Series I No. 11 dated 12-3-1964] (w.e.f. 22nd January 1964)

1. Subs. by the A. O. 1950, for sub-section (2).
2. Subs. by Act 3 of 1951, s. 3 and the Schedule, for “except Part B States”.
3. The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10- 2019).

CHAPTER II
THE NATURE OF PARTNERSHIP
4. Definition of “partnership”, “partner”, “firm” and “firm name”.—“Partnership” is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually “partners” and collectively “a firm”, and the name under which their business is carried on is called the “firm name”.
5. Partnership not created by status.—The relation of partnership arises from contract and not from status;
and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business

6. Mode of determining existence of partnership.—In determining whether a group of personsisor is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

Explanation 1.—The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.
Explanation 2.—The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business;
and, in particular, the receipt of such share or payment—
(a) by a lender of money to persons engaged or about to engage in any business,
(b) by a servant or agent as remuneration,
(c) by the widow or child of a deceased partner, as annuity, or
(d) by a previous owner or part owner of the business, as consideration for the sale of the goodwill or share thereof,
does not of itself make the receiver a partner with the persons carrying on the business.
7. Partnership at will.—Where no provision is made by contract between the partners for the duration of their partnership or for the determination of their partnership, the partnership is “partnership at will”.
8. Particular partnership.—A person may become a partner with another person in particular adventures or undertakings.

CHAPTER III
RELATIONS OF PARTNERS TO ONE ANOTHER

9. General duties of partners.—Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.
10. Duty to indemnify for loss caused by fraud.—Everypartner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.
11. Determination of rights and duties of partners by contract between the partners. Agreements in restraint of trade.—(1) Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be expressed or may be implied by a course of dealing.

Such contract may be varied by consent of all the partners, and such consent may be expressed or may be implied by a course of dealing.
(2) Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.
12. The conduct of the business.—Subject to contract between the partners—
(a) every partner has a right to take part in the conduct of the business;
(b) every partner is bound to attend diligently to his duties in the conduct of the business;
(c) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners; and
(d) every partner has a right to have access to and to inspect and copy any of the books of the firm.
13. Mutual rights, and liabilities.—Subject to contract between the partners—
(a) a partner is not entitled to receive remuneration for taking part in the conduct of the business;
(b) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;
(c) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits;
(d) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent. per annum;
(e) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him—
(i) in the ordinary and proper conduct of the business, and
(ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and
(f) a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

14. The property of the firm.—Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.
Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.
15. Application of the property of the firm.—Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.
16. Personal profits earned by partners.—Subject to contract between the partners,—
(a) if a partner derives any profits for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;
(b) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

17. Rights and duties of partners—after a change in the firm, after the expiry of the term of the firm, and—where additional undertakings are carried out.—Subject to contract between the partners,—
(a) where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;
(b) where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the incidents of partnership at will; and
(c) where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.
CHAPTER IV
RELATIONS OF PARTNERS TO THIRD PARTIES
18. Partner to be agent of the firm.— Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm.
19. Implied authority of partner as agent of the firm.—(1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.
The authority of a partner to bind the firm conferred by this section is called his “implied authority”.
(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—
(a) submit a dispute relating to the business of the firm to arbitration,
(b) open a banking account on behalf of the firm in his own name,
(c) compromise or relinquish any claim or portion of a claim by the firm,
(d) withdraw a suit or proceeding filed on behalf of the firm,
(e) admit any liability in a suit or proceeding against the firm,
(f) acquire immovable property on behalf of the firm,
(h) transfer immovable property belonging to the firm, or
(g) enter into partnership on behalf of the firm.
20. Extension and restriction of partner’s implied authority.—The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner.
Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.
21. Partner’s authority in an emergency.—A Partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.
22. Mode of doing act to bind firm.—In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.
23. Effect of admissions by a partner.—An admission or representation made by a partner concerning the

affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.
24. Effect of notice to acting partner.—Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

25. Liability of a partner for acts of the firm.—Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.
26. Liability of the firm for wrongful acts of a partner.—Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.
27. Liability of firm for misapplication by partners.—Where—
(a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or
(b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm,
the firm is liable to make good the loss.
28. Holding out.—(1) Anyone who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.
(2) Where after a partner's death the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not itself make his legal representative or his estate liable for any act of the firm done after his death.
29. Rights of transferee of a partner's interest.—(1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.
(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assetsof the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.
30. Minors admitted to the benefits of partnership.—(1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.
(2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.
(3) Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act.
(4) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in section 48:
Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the Court shall proceed with the suit as one for dissolution and for settling accounts between the partners, and the amount of the share of the minor shall be determined along with the shares of the partners.
(5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice

that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm:

Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.
(6) Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the persons asserting that fact.
(7) Where such person becomes a partner,—
(a) his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and
(b) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.
(8) Where such person elects not to become a partner,—
(a) his rights and liabilities shall continue to be those of a minor under this section up to the date on which he gives public notice,
(b) his share shall not be liable for any acts of the firm done after the date of the notice,
and
(c) he shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section (4).
(9) Nothing in sub-sections (7) and (8)shall affect the provisions of section 28.

CHAPTER V

INCOMING AND OUTGOING PARTNERS

31. Introduction of a partner.—(1) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.
(2)Subject to the provisions of section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.
32. Retirement of a partner.—(1) A partner may retire—
(a) with the consent of all the other partners,
(b) in accordance with an express agreement by the partners, or
(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.
(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.
(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the r etirement:
Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.
(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

33. Expulsion of a partner.—(1) Apartner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.
(2)The provisions of sub-sections (2), (3)and (4)of section 32 shall apply to an expelled partner as if he were a retired partner.
34. Insolvency of a partner.—(1) Where a partner in a firm is adjudicated an insolvent he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.
(2)Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.
35. Liability of estate of deceased partner. — Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

36. Rights of outgoing partner to carry on competing business. Agreements in restraint of trade.—(1) An outgoing partner may carry on a business competing with that of the firm and he may advertise such business, but, subject to contract to the contrary, he may not—
(a) use the firm name,
(b) represent himself as carrying on the business of the firm, or
(c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.
(2) A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits; and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such agreement shall be valid if the restrictions imposed are reasonable.
37. Right of outgoing partner in certain cases to share subsequent profits.—Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent. per annum on the amount of his share in the property of the firm:
Provided that whereby contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.
38. Revocation of continuing guarantee by change in firm. —A continuing guarantee given to a firm, or to a third party in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.
CHAPTER VI DISSOLUTION OF A FIRM
39. Dissolution of a firm.—The dissolution of partnership between all the partners of a firm is called the “dissolution of the firm”.
40. Dissolution by agreement.—A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

41. Compulsory dissolution.—A firm is dissolved—
(a) by the adjudication of all the partners or of all the partners but one as insolvent, or
(b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership :
Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.
42. Dissolution on the happening of certain contingencies.—Subject to contract between the partners a firm is dissolved—
(a) if constituted for a fixed term, by the expiry of that term;
(b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;
(c) by the death of a partner; and
(d) by the adjudication of a partner as an insolvent.
43. Dissolution by notice of partnership at will.—(1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.
(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.
44. Dissolution by the Court.—At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely:—
(a) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;

(b) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;
(c) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;
(d) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with hint;
(e) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), or has allowed it to be sold in the recovery of arrears of land-revenue or of any dues recoverable as arrears of land- revenue due by the partner;
(f) that the business of the firm cannot be carried on save at a loss; or
(g) on any ground which renders it just and equitable that the firm should be dissolved.
45. Liability for acts of partners done after dissolution.—(1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution:
Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.
(2) Notices under sub-section (1) may be given by any partner.

46. Right of partners to have business wound up after dissolution.—On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.
47. Continuing authority of partners for purposes of winding up.—After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:
Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.
48. Mode of settlement of accounts between partners. —In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed: —
(a) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.
(b) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:—
(i) in paying the debts of the firm to third parties;
(ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;
(iii) in paying to each partner rateably what is due to him on account of capital; and
(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.
49. Payment of firm debts and of separate debts.—Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first, in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.
50. Personal profits earned after dissolution.—Subject to contract between the partners, the provisions of clause (a) of section 16 shall apply to transactions by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before

its affairs have been completely wound up:
Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.
51. Return of premium on premature dissolution. —Where a partner has paid a premium on entering into partnership for a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, he shall be entitled to repayment of the premium or of such part thereof as may be reasonable, regard being had to the terms upon which he became a partner and to the length of time during which he was a partner, unless—
(a) the dissolution is mainly due to his own misconduct, or
(b) the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.

52. Rights where partnership contract is rescinded for fraud or misrepresentation.—Where a contract creating partnership is rescinded on the ground of the fraud or misrepresentationofany of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—
(a) to a lien on, or a right of retention of, the surplus or the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him;
(b) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and
(c) to be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts of the firm.
53. Right to restrain from use of firm name or firm property.—After a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up:
Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.
54. Agreements in restraint of trade.—Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits; and notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such agreement shall be valid if the restrictions imposed are reasonable.
55. Sale of goodwill after dissolution. Rights of buyer and seller of goodwill. Agreements in restraint of trade.—(1) In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.
(2) Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but, subject to agreement between him and the buyer, he may not—
(a) use the firm name,
(c) represent himself as carrying on the business of the firm, or
(c) solicit the custom of persons who were dealing with the firm before its dissolution.
(3) Any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits, and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such agreement shall be valid if the restrictions imposed are reasonable.
CHAPTER VII REGISTRATION OF FIRMS
56. Power to exempt from application of this Chapter.—The1[State Government of any State] may, by notification in the Official Gazette, direct that the provisions of this Chapter shall not apply to 2[that State] or to any part thereof specified in the notification.
57. Appointment of Registrars.—(1) The State Government may appoint Registrars of Firms for the purposes of this Act, and may define the areas within which they shall exercise their powers and perform their duties.

1. Subs. by the A.O. 1937, for “G. G. in C.”.
2. Subs. ibid., for “any province”.

(2) Every Registrar shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

STATE AMENDMENT

Goa, Daman and Diu

In exercise of power conferred under sub-section (1) of Section 57 of the Indian Partnership Act, 1932 (IX of 1932) (hereinafter referred to as the Act), the Government of Goa, in supersession of all earlier Notifications which may have been issued in the context and which may render to be contradictory to present Notification hereby appoints the Officers shown in Column No. II of the table below as Registrar of Firms who shall exercise, perform and discharge the powers, functions and duties of the Registrar under the Act within the jurisdiction mentioned in Column No. III of the table below:–

Sr. No.	Designation of Officer	Jurisdiction
I	II	III
1.	Civil Registrar-cum-Sub-Registrar, Pernem	Pernem Taluka
2.	Jt. Civil Registrar-cum-Sub-Registrar-I, Bardez	Bardez Taluka
3.	Civil Registrar-cum-Sub-Registrar, Bicholim	Bicholim Taluka
4.	Civil Registrar-cum-Sub-Registrar, Sattari	Sattari Taluka
5.	Jt. Civil Registrar-cum-Sub-Registrar-I, Tiswadi	Tiswadi Taluka
6.	Jt. Civil Registrar-cum-Sub-Registrar-I, Ponda	Ponda Taluka
7.	Civil Registrar-cum-Sub-Registrar, Dharbandora	Dharbandora Taluka
8.	Jt. Civil Registrar-cum-Sub-Registrar-I, Mormugao	Mormugao Taluka
9.	Jt. Civil Registrar-cum-Sub-Registrar-I, Salcete	Salcete Taluka
10.	Civil Registrar-cum-Sub-Registrar, Quepem	Quepem Taluka
11.	Civil Registrar-cum-Sub-Registrar, Sanguem	Sanguem Taluka
12.	Civil Registrar-cum-Sub-Registrar, Canacona	Canacona Taluka

This Notification shall come into force with immediate effect.

(Published in the Official Gazette Series I No. 49(Extraordinary) dated 7-3-2019) (w.e.f. 8/42/2018-LD(Estt)/469 dated 6-03-2019)

58. Application for registration.—(1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating—

(a) the firm name,

(b) the place or principal place of business of the firm,

(c) the names of any other places where the firm carries on business,

(d) the date when each partner joined the firm,

(e) the names in full and permanent addresses of the partners, and

(f) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in thisbehalf.

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm name shall not contain any of the following words, namely:—

“Crown”, “Emperor”, “Empress”, “Empire”, “Imperial”, “King”, “Queen”, “Royal”, orwords expressing or implying the sanction, approval or patronage of1*** Government 2***,except 3[when the State Government] signifies 4[its] consent to the use of such words as part of the firm name by order in writing 5***.

STATE AMENDMENT

Goa, Daman and Diu

The Government of Goa is hereby pleased to levy a non-refundable processing fee of Rs. 1,000/- (Rupees one thousand only) for processing the documents for registration of Partnership Firm under the Indian Partnership Act, 1932 (Central Act 9 of 1932).

This Order shall come into force with effect from the 1st day of April, 2017.

(Published in the Official Gazette Series I No. 52 (Extraordinary-2) dated 31-3-2017) (w.e.f. 8-5-2017-LD(Estt.) (C)/407 dated 31-3-2017)

Uttarakhand

Substitution of section 58.—In the Indian Partnership Act, 1932, (hereinafter referred to as the Principal Act) section 58 shall be substituted as follows, namely:-

58. Application for registration.—(1) The registration of a firm may be effected at any time by uploading on the website following statement in the prescribed online form and accompanied with prescribed fees to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, stating.—

(a) the firm name,

(b) the place or principal place of business of the firm,

(c) the names of any other places where the firm carries on business,

(d) the date when each partner joined the firm,

(e) the names in full and permanent addresses of the partners, and

(f) the duration of the film.

The statement shall be digitally signed by all the partners or by their agents specially authorized in this behalf.

(2) The applicant, signing the statement shall also upload to the website, verifying the statement recorded in the online format mentioned in sub-section (1), verifying it in the affidavit certified by the Notary on the non-judicial stamp paper of Rs. 10/.

(3) The desired enclosed shall also be uploaded on website, by the applicant.

(4) A firm name shall not contain the word Union, State, Land Mortgage, Land development, Cooperative, Gandhi, Reserve Bank or any of the words expressing or implying the sanction, approval or patronage of Government, except when the State Government signifies its consent to the use of such words as part of the firm name by order in writing.

(5) The prescribed fee of registration shall be submitted online after the online approval given by the Registrar.

1. The words “the Crown or the Central Government or any Provincial” omitted by the A. O. 1950. The words “the
CentralGovernment or any Provincial Government or the Crown Representative” were subs. by the A. O. 1937 for “the G. of I. or a L. G.”

2. The words “or the Crown Representative” omitted by the A.O. 1948.

3. Subs. by the A.O. 1937, for “when the G.G. in C.”.

4. Subs.ibid. for “his”

5. The words “under the hand of one of the Secretaries to the G. of I.” omitted, ibid.

(6) After submitting the prescribed registration fee the digitally signed registration certificate may be downloaded from the website by the applicant.

[Vide Uttarakhand Act 5 of 2019, s. 2]

Rajasthan

Amendment of section 58, Central Act IX of 1932.—For sub-section (3) of section 58 of the Indian Partnership Act, 1932 (Central Act IX of 1932), hereinafter referred to as the principal Act, the following sub-sections shall be substituted, namely :-

"(3) No firm shall be registered by a name which, in the opinion of the State Government, is undesirable.

(4) Except with the previous sanction in writing of the State Government, no firm shall be registered by a name which contains any of the following words, namely:-

(a) ’Union’, ’State’, ’President’, ’Republic’ or any word expressing or implying the sanction, approval or patronage of the Central or any State Government ; and

(b) ’Municipal’, ’Chartered’ or any word which suggests or is calculated to suggest connection with any municipality or other local authority:

Provided that nothing in this sub-section shall apply to any firm registered before the date of the commencement of the Indian Partnership (Rajasthan Amendment) Act, 1971."

[Vide Rajasthan Act 10 of 1971, s. 2]

59. Registration.—Where 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.

STATE AMENDMENTS

Karnataka

Amendment of section 59A.—In section 59A of the Indian Partnership Act, 1932 (Central Act IX of 1932), in sub-section (1), for the words “by reason of the reorganization of States”, the words, figures and brackets “by reason of the addition of the Bellary District to the State of Mysore under the Andhra State Act, 1953 (Central Act XXX of 1953), or of the reorganization of States under the States Reorganisation Act, 1956 (Central Act 37 of 1956)” shall be substituted.

[Vide Karnataka Act 19 of 1961, s. 2]

Maharashtra

Amendment of section 59A-1 of IX of 1932.-In section 59A-1 of the Indian Partnership Act, 1932 (IX of 1932), in its application to the State of Maharashtra (hereinafter referred to as "the principal Act"), for the words "one hundred rupees" the words "one thousand rupees" shall be substituted.

[Vide Maharashtra Act 16 of 2018, s. 2]

Goa, Daman and Diu

As required under the Ease of Doing Business, Government of Goa, Law (Establishment) Division and Registration Department hereby mandates “Registration of Partnership Firms” shall be accepted and processed Online only without requiring the applicant to submit a physical copy of the application or associated supporting documentation including executed deed of Partnership. The department staff (all Sub-Registrar Officers) are hereby instructed to process application through the online mode only. Further, it is also mandated that all queries against applicants, applications (if any) should be submitted to the applicants only once and within 7 days of receipt of the application.

This Notification shall come into force with effect from 8th of March, 2019.

This issues in supersession to earlier Notification of even number dated 11-12-2018 and all the Partnership Firms registration initiated under Online Partnership Registration Web Application/Website (https://partnership.goa.gov.in).

(Published in the Official Gazette Series I No. 49(Extraordinary) dated 7-3-2019) (w.e.f. 8/8/2018-LD(Estt)/470 dated 7th March 2019.)

60. Recording of alterations in firm name and principal place of business.—(1) When an alteration is made in the firm name or in the location of the principal place of business of a registered firm, a statement may be sent to the Registrar accompanied by the prescribed fee, specifying the alteration, and signed and verified in the manner required under section 58.

(2) When the Registrar is satisfied that the provisions of sub-section (1) have been duly complied with, he shall amend the entry relating to the firm in the Register of Firms in accordance with the statement, and shall file it along with the statement relating to the firm filed under section 59.

61. Noting of closing and opening of branches.—When a registered firm discontinues business at any place or begins to carry or business at any place, such place not being its principal place of business, any partner or agent of the firm may send intimation thereof to the Registrar, who shall make a note of such intimation in the entry relating to the firm in the Register of Firms, and shall file the intimation along with the statement relating to the firm filed under section 59.

62. Noting of changes in names and addresses of partners.—When anypartner in a registered firm alters his name or permanent address, an intimation of the alteration may be sent by any partner or agent of the firm to the Registrar, who shall deal with it in the manner provided in section 61.

63. Recording of changes in and dissolution of a firm. Recording of withdrawal of a minor.—(1) When a change occurs in the constitution of a registered firm any incoming, continuing or outgoingpartner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorised in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall make a record of the notice in theentry relating to the firm in the Register of Firms, and shall file the notice along with the statement relating to the firm filed under section 59.

(2) When a minor who has been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become a partner, and the firm is then a registered firm, he, or his agent specially authorised in this behalf, may give notice to the Registrar that he has or has not become a

partner, and the Registrar shall deal with the notice in the manner provided in sub-section (1)
64. Rectification of mistakes.—(1) The Registrar shill have power at all times to rectify any mistake in order to bring the entry in the Register of Firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter.
(2) On application made by all the parties who have signed any document relating to a firm filed under this Chapter, the Registrar may rectify any mistake in such document or in the record or note thereof made in the Register of Firms.
65. Amendment of Register by order of Court.—A Court deciding any matter relating to a registered firm may direct that the Registrar shall make any amendment in the entry in the Register of Firms relating to such firm which is consequential upon its decision; and the Registrar shall amend the entry accordingly.
66. Inspection of Register and filed documents.—(1) The Register of Firms shall be open to inspection by any person on payment of such fee as may be prescribed.
(2) All statements, notices and intimations filed under this Chapter shall be open to inspection, subject to such conditions and on payment of such fee as may be prescribed.
67. Grant of copies.—The Registrar shall on application furnish to any person, on payment of such fee as may be prescribed, a copy, certified under his hand, of any entry or portion thereof in the Register of Firms.

STATE AMENDMENT
Uttarakhand
Substituted of section 67.—In Principal Act, section 67 shall be substituted as follow, namely:--
67. Grant of copies.—The Registrar shall on online application furnish to any person, on payment of such fee as may be prescribed , a copy digitally certified under his hand of any entry or portion thereof in the register of firms.
[Vide Uttarakhand Act 5 of 2019, s. 3]
68. Rules of evidence.—(1) Any statement, intimation or notice recorded or noted in the Register of Firms shall, as against any person by whom or on whose behalf such statement, intimation or notice was signed, be conclusive proof of any fact therein stated.
(2) A certified copy of an entry relating to a firm in the Register of Firms may be produced in proof of the fact of the registration of such firm, and of the contents of any statement, intimation or notice recorded or noted therein.
STATE AMENDMENT
Uttarakhand
Amendment of section 68.—In Principal Act, sub-section (1) of section 68 shall be substituted as follows, namely:--
68. Rules of Evidence:--(1) Any statement, intimation or notice recorded or noted in the register of Firms shall, as against any person by whom or on whose behalf such statement, intimation or notice was digitally signed, be conclusive proof of any fact therein stated.
[Vide Uttarakhand Act 5 of 2019, s. 4]
69. Effect of non-registration.—(1) No suit to enforce a right arising from a contract or conferred by this Act shall be institutes in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.
(2) No suit to enforce a tight 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.
(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect—
(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or a ay right or power to realise the property of a dissolved firm, or
(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 (2 of 1909), or the Provincial Insolvency Act, 1920 (5 of 1920), to realise the property of an insolvent partner.
(4) This section shall not apply—
(a) to firms or to partners in firms which have no place of business in 1[the territories to which this Act

extends], or whose places of business in 2[the said territories] are situated in areas to which, by notification under 3[section 56], this Chapter does not apply, or
(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882 (15 of 1882), or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

1. Subs. by Act 3 of 1951, s. 3 and the Schedule, for “Part A States and Part C States”.
2. Subs. by s. 3 and the Schedule, ibid.,for “such States”.
3. Subs. by Act 24 of 1934, s. 2 and the First Schedule, for “section 55”.

STATE AMENDMENT
Maharashtra
Substitution of section 69A of IX of 1932.--For section 69A of the principal Act, the following section shall be substituted, namely:--
"69A. Charges for delay in compliance of section 60, 61, 62 or 63.--If any statement, intimation or notice under section 60, 61, 62 or as the case may be, 63, in respect of any registered firm is not sent or given to the Registrar, within the period specified in that section, the Registrar may, make suitable amendments in the records relating to the firm, upon payment of charges for delay in sending or giving the same, at the rate of rupees two thousand per year or part thereof in respect of the period between the date of expiry of the period specified in that section and the date of making the payment.”.
[Vide Maharashtra Act 16 of 2018, s. 3]
70. Penalty for furnishing false particulars.—Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particular which he knows to be false or does not believe to be true, or containing particulars which he knows to be incomplete or does not believe to be complete, shall be punishable with imprisonment which may extend to three months, or with fine, or with both.
71. Power to make roles.— (1) The 1[State Government] 2[may by notification in the Official Gazette make rules] prescribing the fees which shall accompany documents sent to the Registrar of Firms, or which shall be payable for the inspection of documents in the custody of the Registrar of Firms, or for copies from the Register of Firms:
Provided that such fees shall not exceed the maximum fees specified in Schedule I.
(2) The State Government may 3[also] make rules—
(a) prescribing the form of statement submitted under section 58, and of the verification thereof;
(b) requiring statements, intimations and notices under sections 60, 61, 62 and 63 to be in prescribed form,and prescribing the form thereof;
(c) prescribing the form of the Register of Firms, and the mode in which entries relating to firms are to be made therein, and the mode in which such entries are to be amended or notes made therein;
(d) regulating the procedure of the Registrar when disputes arise;
(e) regulating the filing of documents received by the Registrar;
(f) prescribing conditions for the inspection of original documents;
(g) regulating the grant of copies;
(h) regulating the elimination of registers and documents; •
(i) providing for the maintenance and form of an index to the Register of Firms; and
(j) generally, to carry out the purposes of this Chapter.
(3) All rules made under this section shall be subject to the condition of previous publication.
4[(4) Every rule made by the State Government under this section shall be laid, as soon as it is made, before the State Legislature.]
CHAPTER VIII SUPPLEMENTAL
72. Mode of giving public notice.—A public notice under this Act is given—
(a) where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by

1. Subs. by the A.O. 1937, for “G.G. in C.”.
2. Subs. by Act 20 of 1983, s. 2 and the Schedule, for “may make rules” (w.e.f. 15-3-1984).
3. Ins. by the A.O. 1937.
4. Ins. by Act 20 of 1983, s. 2 and Schedule (w.e.f. 15-3-1984).

notice to the Registrar of Firms under section 63, and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business, and
(b) in any other case, by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.
73. [Repeals.] Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Schedule.
74. Savings.—Nothing in this Act or any repeal effected thereby shall affect or be deemed to affect—
(a) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or
(b) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or anything done or suffered before the commencement of this Act, or
(c) anything done or suffered before the commencement of this Act, or
(d) any enactment relating to partnership not expressly repealed by this Act, or
(e) any rule of insolvency relating to partnership, or
(f) any rule of law not inconsistent with this Act.

SCHEDULE I MAXIMUM FEES
[See sub-section (1) of section 71.]

Document or act in respect of which the fee is payable	Maximum fee
Statement under section 58……..	Three rupees.
Statement under section 60……..	One rupee.
Intimation under section 61……..	One rupee.
Intimation under section 62 ……..	One rupee.
Notice under section 63…….	One rupee.
Application under section 64…….	One rupee.
Inspection of the Register of Firms under sub-section (1) of section 66……	Eight annas for inspecting one volume of the Register.
Inspection of documents relating to a firm under sub-section (2) of section 66……..	Eight annas for the inspection of all documents relating to onefirm.
Copies from the Register of Firms	Four annas for each hundred words of part thereof.

STATE AMENDMENTS
Karnataka

Amendment of Schedule I.—In schedule I to the Indian Partnership Act, 1932 (Central Act 9 of 1932),—
(1) for the words “Three rupees” and “Four annas”, where they occur, the words “one hundred rupees”, and “one rupees”, shall respectively be substituted;
(2) for the words “One rupee” appearing against “Statement under section 60”, the words, “fifty rupees”, shall be substituted;
(3) for the words “One rupee” appearing against “Intimation under section 61,” “Intimation under 62” and “Notice under section 63” and “application under section 64,” the words “Twenty five rupees” shall respectively be substituted.
(4) for the words, “Eight annas” appearing against “Inspection of the Register of Firms under sub- section (1) of section 66”, the words, “Twenty rupees”, shall be substituted;
(5) for the words, “Eight annas”, appearing against “Inspection of documents relating to a firm under sub-section (2) of section 66”, the words “Ten rupees” shall be substituted.

[Vide Karnataka Act 1 of 1987, s. 2].

STATE AMENDMENT
Kerala
Substitution of new Schedule for Schedule I.-In the Indian Partnership Act, 1932 (Central Act 9 of 1932), for Schedule I, the following Schedule shall be substituted, namely
“SCHEDULEI
MaximumFees
[See sub-section (1) of section 71]

Document or act in respect of which the fee is payable Maximum fee
Statement under section 58 Five hundred rupees.
Statement under section 60 Two hundred rupees.
Intimation under section 61 Two hundred rupees.
Intimation under Section 62 Two hundred rupees
Notice under section 63 Two hundred rupees
Application udner section 64 Two hundred rupees
Inspection of the Register of Firms under sub-section
(1) of section 66 Fifty Rupees for inspecting one volumn of theRegister.
Inspection of documents relating to a firm under sub- section (2) of section 66 One hundred rupees for the inspection of all documents relating to one firm.
Copies from the Register of Firms One hundred rupees for each hundred words or a part thereof.”
[Vide Kerala Act 32 of 2013, s. 2]
Kerala
Substitution of new Schedule for Schedule I.-In the Indian Partnership Act, 1932 (Central Act 9 of 1932), for Schedule I, the following Schedule shall be substituted, namely:-
“SCHEDULE I
Maximum Fees
[See sub-section (1) of section 71]

Document or act in respect of which the fee is payable Maximum fee
Statement under section 58 Fifteen rupees
Statement under section 60 Five rupees
Intimation under section 61 Five rupees
Intimation under section 62 Five rupees
Notice under section 63 Five rupees
Application under section 64 Five rupees
Inspection of the Register of Firms under sub-section
(1) of section 66 Two rupees for inspecting one volume of the Register
Inspection of documents relating to a firm under sub- section (2) of section 66 Two rupees for the inspection of all documents relating to one firm
Copies from the Register of Firms Fifty paise for each hundred words or part thereof.”

[Vide kerala Act 25 of 1973, s. 2]

Rajasthan
Substitution of Schedule I to the Central Act IX of 1932. – In Schedule I of Indian Partnership Act, 1932 (Central Act IX of 1932), for Schedule I, as existing in the application thereof to the State of Rajasthan, the following shall be substituted, namely:-
"SCHEDULE-I
Maximum Fees
[See sub-section (1) of Section 71]

Document or Act in respect of which the fee is payable. Maximum Fee
1 2 3

1. Statement under Section 58 Hundred Rupees
2. Statement Under Section 60 Thirty Rupees
3. Intimation Under Section 61 Thirty Rupees
4. Intimation Under Section 62 Thirty Rupees
5. Notice Under Section 63 Thirty Rupees
6. Application Under Section 64 Thirty Rupees
7. Inspection of the Register of Firms Under
Sub-Section (1) of Section 66 Twenty Ruppes for inspection of one
volume of register
8. Inspection of documents relating to a firm under sub-section (2) of Section 66 Twenty Rupees for inspection of all documents relating to one firm

9.
Copies from the Register of Firms
Six Rupees for each hundred words or part thereof."

[Vide Rajasthan Act 8 of 1996, s. 2]
Substitution of new Schedule for Schedule I to Central Act IX of 1932.— For Schedule I to the principal Act, the following Schedule shall be substituted, namely:-

"SCHEDULE I
Maximum Fees.
(See sub-section (1) of section 71)

Document or act in respect of which the fee is payable.
1 Maximum fee.

2
1. Statement under section 58. Fifteen rupees.
2. Statement under section 60. Five rupees.
3. Intimation under section 61. Five rupees.
4. Intimation under section 62. Five rupees.
5. Notice under section 63. Five rupees.
6. Application under section 64. Five rupees.
7. Inspection of the register of firms Two rupees, for inspecting under sub-section (1) of section 66. one volume of Register.
8. Inspection of documents relating to a firm Two rupees for inspection under Sub-section (2) of section 66. of all documents relating
to one firm.
9. Copies from the register of firms . Two rupees for each
hundred words or part thereof."

[Vide Rajasthan Act 10 of 1971, s. 2]
Substitution of Schedule I to the Central Act IX of 1932.-In Schedule I of Indian Partnership Act, 1932 (Central Act IX of 1932), for Schedule I, as existion in the application thereof to the State of Rajasthan, the following shall be substituted, namely:—
"SCHEDULE-I
Maximum Fees
[See sub-section (1) of section 71]

S.
No. Document or act in respect of which the fee is payable Maximum Fee
1. 2. 3.
1. Statement under section 58 Three hundred rupees

2. Statement under section 60 One hundred rupees
3. Intimation under section 61 One hundred rupees
4. Intimation under section 62 One hundred rupees
5. Notice under section 63 One hundred rupees

6. Application under section 64 One hundred rupees
7. Inspection of the Register of firms under sub-section (1) of section 66 One hundred rupees for inspection of one volume of Register
8. Inspection of documents relating to a firm under sub- section (2) of section 66 One hundred rupees for inspection of all documents
relating to one firm
9. Copies from the Register of firms Fifteen rupees for each hundred
words or part thereof."

[Vide Rajasthan Act 7 of 2007, s. 2]
Gujarat
Substituted of Schedule of I of 9 of 1932.—In the Indian Partnership Act, 1932 (9 of 1932), in its application
“SHEDULE I MAXIMUM FEES
(See sub-section (1) of section 71)

Document or act in respect of which the fee is payable Maximum fee
Statement under section 58 Three hundred rupees
Statement under section 60 One hundred fifty rupees
Statement under section 61 One hundred fifty rupees
Statement under section 62 One hundred fifty rupees
Notice under section 63 One hundred fifty rupees
Application under section 64 One hundred fifty rupees
Inspection of the Register of Firms under sub-section /1) of section 66 Fifty rupees for inspecting one volume of the register
Inspection of documents relating to a firm under sub-section /2) of section 66 Fifty rupees for inspection of all documents relating to one firm
Copies from the Register of Firms Fifty rupees for each hundred words or part thereof.".
[Vide Gujarat Act 25 of 2019, s. 2]

SCHEDULE II—[Enactments Repealed.] Rep. by Repealing Act, 1938 (1 of 1938), s. 2 and the Schedule.

THE ISSUE:
DISSOLUTION OF PARTNERSHIP
RELEVANT SECTIONS
Section 39: This section defines the dissolution of a firm as the termination of the partnership between all partners. After dissolution, there is no longer a fiduciary relationship between the partners. The firm’s assets, shares, accounts, and liabilities are settled according to Sections 48 to 51 of the Act1.
Section 40 to 44: These sections elaborate on the different ways in which a partnership firm can be dissolved:
Dissolution by Agreement (Section 40): Partners can mutually agree to dissolve the firm without court intervention. This can occur when all partners consent to the dissolution.
Compulsory Dissolution (Section 41): Certain circumstances, such as the insolvency of a partner or the occurrence of specified contingencies, may lead to compulsory dissolution.
Dissolution on the Happening of Certain Contingencies (Section 42): The firm dissolves when specific events or conditions mentioned in the partnership agreement occur.
Dissolution by Notice of Partnership at Will (Section 43): In partnerships at will (where no fixed term is

specified), any partner can give notice to dissolve the firm.
Dissolution by the Court (Section 44): The court can order dissolution based on various grounds, including partner misconduct, incapacity, or persistent breach of partnership terms.

CASE LAWS:

_____
_____