

## **Abdul Jabbar And Ors. vs Audhesh Singh Ram Agyan Singh And Ors. on 9 December, 1952**

**Equivalent citations: AIR1954ALL310, AIR 1954 ALLAHABAD 310**

**Author: V. Bhargava**

**Bench: V. Bhargava**

### **JUDGMENT**

V. Bhargava, J.

1. This second appeal arises out of proceedings under the Encumbered Estates Act. Respondent No. 1 presented an application under Section 4 of the Encumbered Estates Act and, in the written statement filed by him under Section 8 of the Act, he showed certain debts as payable by him, including a debt to a firm, Sheikh Mohammad Hashim Haji Pir Mohammad. A written statement was filed under Section 9 on behalf of the firm by the two partners, Abdul Sattar and Abdul Jabbar, and they also claimed the same amount as had been shown by the landlord applicant in his written statement. When the learned Special Judge came to consider the amount due from the landlord applicant to these creditors, Abdul Sattar and Abdul Jabbar, the question arose whether the claim of Abdul Sattar and Abdul Jabbar could be entertained in view of Section 69 of the Indian Partnership Act. The claim of Abdul Sattar and Abdul Jabbar was in respect of a 'sarkhat' executed in the year 1933, but before the 1st October 1933, by the landlord in favour of the firm, Sheikh Mohammad Hashim Haji Pir Mohammad. The application under Section 4 of the Encumbered Estates Act was presented on the 27th October 1936 and the claim of Abdul Sattar and Abdul Jabbar was made before the learned Special Judge on the 12th August, 1937. Up to that date the firm, Sheikh Mohammad Hashim Haji Pir Mohammad, was not registered, though it was claimed that it had been registered subsequently. The trial court on the 26th May 1943 held that there was no proof that the firm had ever been registered and that consequently the claim was barred under Section 69 of the Indian Partnership Act. The contention on behalf of the partners of the firm that they were protected under Section 74(b) of the Indian Partnership Act was rejected by the trial court on the ground that the right in respect of which the claim had been filed had not accrued to Abdul Sattar and Abdul Jabbar before the commencement of the Partnership Act. On appeal, the learned Judge of the lower appellate Court agreed with the trial court and confirmed the order disallowing the claim of these persons. They have, therefore, come up in second appeal to this Court.

2. The first point that we had to consider in connection with this appeal was whether the proceedings under the Encumbered Estates Act for determination of a claim of a creditor were at all

governed by the provisions of Section 69 of the Indian Partnership Act. This argument had to be considered in view of the language of Subsections (1) and (2) of Section 69 wherein a bar was placed against the institution of a suit only. Our attention has, however, been drawn to Sub-section (3) of Section 69 which makes the provisions of Sub-sections (1) and (2) of that Section applicable even to a claim of set-off or other proceedings to enforce a right arising from a contract. It is obvious that the claim by the appellants in these Encumbered Estates Act proceedings for determination of the liability of the landlord to them and for passing a decree in respect of the amount found due is a proceeding to enforce a right arising from the contract and is fully covered by the language used in Sub-section (1) of Section 69.

3. Normally, Section 69 would bar such a claim unless the person putting forward the claim can rely on the benefit of Section 74 so that the provisions of Section 69 may not be applied to his case. The relevant portions of Section 74 are as follows :

"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....."

4. The contention on behalf of the appellants is that the right to recover the amount in respect of which they have filed the claim before the learned Special Judge accrued to the appellants before the commencement of the Indian Partnership Act and consequently the legal proceeding or remedy in respect of their claim in the Encumbered Estates Act case is not to be governed by the provisions of Section 69 of the Indian Partnership Act.

The decision of this question depends on the interpretation of the words "before the commencement of this Act" used in Clause (b) of Section 74. The right to claim the debts, which are the subject-matter of this appeal, accrued to the appellants sometime before the 1st October 1933 and after the 1st October 1932. This fact is not contested by either party. The question is whether a right which accrued during the period between the 1st October 1932 and the 1st October 1933 must be deemed to have accrued before the commencement of the Indian Partnership Act or subsequent to its commencement. The argument arises because, under sub-section (3) of Section 1 of the Act, it is laid down that the Act 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. It was contended that the words "commencement of this Act" used in Clause (b) of Section 74 must mean the commencement of the whole Act, including every single provision of it, and not merely a part of it; and since Section 69 did not come into force up to 1st, October, 1933, it ought to be held that the commencement of this Act for purpose of Section 74 was on the 1st day of October, 1933, There are two reasons why this argument cannot be accepted. Firstly the language of Section 1(3) itself indicates that the legislature laid down that the Act was to come into force on the 1st day of October, 1932, with one exception,

viz., that Section 69 was to come into force on the 1st day of October, 1933. Even if the Act was to come into force with the exception of one provision of the Act, it must be held that the Act did come into force on that date, though subject to that exception.

When the legislature lays down that the whole Act is not to come into force on the same date, this intention can be expressed in various ways. Firstly, the legislature may lay down that the Act would come into force on a certain date with the exception of one or more provisions specified to the exception; secondly, it may lay down that certain provisions of the Act are to come into force on one specified date and the remainder of the Act on some other date; and thirdly, it may lay down that certain provisions or parts of the Act are to come into force on one date and other provisions or parts of the Act on another date. In the latter two cases, it may be possible to urge that the Act cannot be held to commence on the earlier date on which certain provisions or parts of the Act are to come into force, but, in this case, it is unnecessary for us to express any opinion on this argument. In the first case, however, the language itself indicates that the Act as such is to commence on the date specified and the mere fact that an exception is made in the case of some provisions of the Act would not change the date of commencement of the Act. The language used in Section 1(3) of this Act clearly indicates that the Act itself was to come into force on the 1st day of October, 1932, and that must be held to be the date of the commencement of the Act even though there was an exception in respect of one provision of the Act. We therefore, uphold the contention of the learned counsel for the respondents that the words "commencement of this Act" used in Sub-section (b) of Section 74 refer to the coming into force of the Act on the 1st day of October, 1932, as laid down in Sub-section (3) of Section 1, even though this was to be subject to an exception in respect of one section

5. The second ground, which appeals to us, is that, if the interpretation sought to be put on behalf of the appellants is accepted, the effect would be that the whole Act would become ineffective & inoperative up to 1-10-1933. Under Section 74, nothing in the Act would affect anything done or suffered or any right, title, interest, obligation or liability acquired, accrued or incurred or any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability if it happened before the 1st of October, 1933. On the interpretation sought to be put on behalf of the appellants, the result would be that Section 74 would, in effect, suspend the operation of all provisions of the Act up to the 1st of October, 1933, and the provision made by the legislature that the Act was to come into force on the 1st day of October, 1932, would become meaningless and ineffective.

6. Learned counsel for the appellants further contended that, if it could not be held by us that the words "commencement of this Act" in Section 74 are to be read as meaning commencement of the Act as a whole including Section 69, we may, at least, hold that the commencement of the Act, for purposes of Section 69, took place on the 1st of October, 1933, though it may have taken place, for purposes of other provisions of the Act, on the 1st of October, 1932. We do not see how this contention can be accepted because the words "commencement of the Act" occur in Section 74 and not in Section 69 and, in that Section these words can signify only one single date. The commencement of the Act mentioned in Section 74 could take place either on the 1st day of October, 1932, or, on the 1st day of October, 1933, but not on both dates. There can be only one date for the commencement of one Act. There can be different dates for the commencement of different parts of the Act. If the words, that have to be interpreted, mention "the Act" and not "parts of the Act", only

one date can be determined for the commencement of the Act. In this case, as we have said earlier, on a correct reading of the language of Sub-section (3) of Section 1 as well as on other considerations, the only correct interpretation is that, for purposes of Section 74, the Act commenced on the 1st day of October, 1932. Consequently, the appellants, whose claim is in respect of rights acquired after the 1st of October, 1932, are governed by the provisions of Section 69 of the Indian Partnership Act and this provision is clearly applicable to this case.

7. Learned counsel for the appellants referred us to several decisions of this Court as well as of other High Courts, but in none of those cases was the point, which has arisen in this appeal, raised or decided. Reference was made by learned counsel to the cases of -- 'Ram Gopal Srinivas v. Net Ram', AIR 1941 All 178 (A), -- 'Danmal Parshottam Dass v. Babu Ram Chhotelal', AIR 1936 All 3 (B), -- 'Jamal Usnian v. Firm Umar Haji Karim Shop', AIR 1943 Nag 175 (C) and -- 'Soonoiram Ramniranjandas v. Junjilal', AIR 1938 Bang 273 (FB) (D). In all these cases, the only question, that came up for decision, was whether Section 74 applied to suits instituted before the commencement of the Act or to suits instituted after the commencement of the Act and almost every Court held that Section 74 was applicable even to suits instituted after the commencement of the Act, provided the right in respect of which the suit was filed had accrued before the commencement of the Act. In none of the cases did any occasion arise to consider the question as to what was the date of the commencement of the Act for purposes of applying Section 74. Learned counsel quoted before us the views of Sulaiman, C. J., in -- 'AIR 193G All 3 (B)', which were as follows:

"Undoubtedly it is a significant fact that as provided in Section 1(3), Section 69 came into force one year after the coming into force of the Partnership Act. The reasonable inference is that the enforcement of this Section was deliberately postponed in order to give unregistered firms a reasonable chance to get themselves registered before the Section began to operate against them. Accordingly if there were nothing else in the Act, it would be a legitimate conclusion that Section 69 would apply to all suits filed after the expiry of the period of one year. But there is also a possibility that the intention was to allow time to people, trading, under the name of an unregistered firm, to come to know of the drastic change in the law, which should affect all contracts entered into after the expiry of that period."

From these words learned counsel infers that Sulaiman, C. J., intended to lay down that the Partnership Act only affected contracts entered into by unregistered firms after the expiry of the period of one year during which Section 59 was not in force, whereas the rest of the Act was in force. So that the contract on which the appellants have based their claim in these Encumbered Estates Act proceedings would not be governed by Section 69 as having been entered into during that period of one year in which Section 69 was not in force. We do not think that the learned Chief Justice ever intended to lay down this principle and, if he did, we must say with respect that we find ourselves unable to agree with it. The first inference drawn by the learned Chief Justice that the enforcement of Section 69 was deliberately postponed in order to give unregistered firms a reasonable chance to get themselves registered before the Section began to operate clearly follows from the provisions of Sections 1(3), 69 and 74; but this inference does not lead to the further position that there was any intention, in postponing the enforcement of Section 69, to grant any concession to the unregistered

firm? to continue to enter into fresh contracts during the period while Section 69 had not come into force and to enforce those contracts even subsequently without any registration. A reading of all the provisions of the Act and the scheme of the Act can, in our opinion, leave no doubt that Section 74 was not intended to make. Section 69 inapplicable to cases relating to rights arising out of contracts entered into after 1st October 1932 and consequently in this case the claim of the appellants had to be disallowed on the ground that their firm was an unregistered one and the contract was entered into in the name of the firm.

8. Learned counsel for the appellants put forward an alternative argument, viz., that the firm of the appellants had been registered subsequent to the filing of their claim before the learned Special Judge & prior to the dismissal of it. by him. But this argument cannot be accepted in view of the finding of fact given by the trial court, which was not challenged in the lower appellate court. In the trial court, though an opportunity was afforded to the appellants, they failed to produce satisfactory evidence to show that their firm had been registered and the learned Special Judge ultimately held that there was no proof that the firm of the appellants had ever been registered up to the date of his decision. This finding of fact was not challenged by the appellants in their memorandum of appeal before the lower appellate court and consequently the learned Judge of the lower appellate court had no occasion to reconsider that finding. In this Court the appellants have sought to raise this ground in their grounds of appeal. Since this ground relates to a question of fact which was not raised before and decided by the lower appellate court, we cannot permit it to be raised in this Court

9. The appellants also sought to adduce documentary evidence in support of the contention that the firm had been registered. The application for admitting this additional evidence has to be rejected as evidence is sought to be given in respect of an issue which the appellants are not entitled to raise in second appeal and which we Have refused to entertain.

10. On these findings, the appeal fails and is dismissed with costs.