

Vishnu Chandra vs Chandrika Prasad Agarwal And Ors. on 18 November, 1982

Equivalent citations: AIR1983SC523, 1982(2)SCALE1078, (1983)1SCC22, 1982(14)UJ882(SC), AIR 1983 SUPREME COURT 523, 1983 (1) SCC 22, 1983 ALL. L. J. 488, 1983 BBCJ 14, 1983 UJ (SC) 882, 1982 UJ(SC) 882

Bench: D.A. Desai, R.B. Misra

ORDER

1. Special Leave granted.
2. At the request of the parties we proceeded to hear the matter on merits. We heard Dr. Y.S. Chitaley for the appellant and Mr. S.C. Birla for the respondents.
3. Appellant as plaintiff filed a suit for dissolution of partnership and rendition of accounts of a firm styled as 'Shyam Bracketing Udyog' having its principal place of business at Etah in the State of Uttar Pradesh. The trial Court in this suit granted relief of dissolution of firm effective from November 23, 1976, and passed a preliminary decree for taking accounts. The defendants after an unsuccessful appeal to the first appellate Court approached the High Court in second appeal. The High Court allowed the appeal, set aside the concurrent findings and dismissed the plaintiff's suit with costs throughout. Hence this appeal by special leave.
4. Plaintiff appellant filed the suit for dissolution of firm and rendition of accounts alleging that the partnership was a partnership at will and by the notice and by institution of the suit the firm stood dissolved effective from November 23, 1976. The respondents resisted the suit alleging that the partnership is not a partnership at will. Two questions that were agitated before the High Court were: "(i) whether the partnership was a partnership at will or for a fixed duration; (ii) whether the respondent (appellant before us) was entitled for retirement from the partnership or for dissolution of the firm itself." After an elaborate discussion and after specifically referring to Clauses 7, 18 and 20, both amended and unamended, of the instrument of partnership the High Court held that the partnership was not a partnership at will. We do not propose to examine this contention. What was pressed before us was the second contention canvassed before the High Court.
5. The second contention is whether the plaintiff is entitled to retire from the partnership. To begin with it would be advantageous to refer to Clause 18 of the instrument of partnership. It reads as under:
 18. That if any partner wants to dissociate from the partnership business then he can dissociate after serving one month notice to remaining partners, but in that event the partnership business will not come to an end. If the majority of the partners do not agree to work with other partner then in that event the majority partners will have

the right to seek explanation from that partner and, if think fit and justifiable, may expelled him from the partnership business.

Before proceeding further it is also advantageous to note that in the concluding portion of para 20 of the instrument of partnership it was provided that: 'no partner will separate from the partnership business till one year from the beginning of the business, and if he will dissociate then his capital will not be given till the end of one year'. These two clauses leave no room for doubt that a partner can dissociate from the firm. Section 32(1) provides, inter alia, that a partner may retire --(b) in accordance with an express agreement by the partners. A partnership business is run in accordance with the terms of the contract of partnership. The terms inter alia; envisage a situation that a partner can retire from partnership. The expression used in Clause 18 that a partner may dissociate from the partnership envisages a situation where a partner wants to retire from business. The contract of partnership also envisages a situation where a partner may be expelled from the partnership. But that situation need not be examined. The only point on which the parties are at variance is whether a partner can retire from the partnership and the expression, 'that if any partner wants to dissociate from the partnership business', comprehends a situation where a partner wants to retire from the partnership. Therefore, it does appear that the contract of partnership permits a partner to retire from the partnership, Unfortunately the High Court examined the contention from an angle impermissible in that while examining the second contention the High Court proceeded to appreciate the contention put forward on behalf of the plaintiff' appellant whether there was a breach of the contract of partnership. No where while examining the contention whether it is open to the partner to retire from partnership, the absolute right to dissociate from business as conferred by Clause 18 has been gone into by the High Court. The High Court negated the contention observing that non-payment of Rs. 250/- p.m. to the plaintiff and non supply of 1/4 of production to him could not be an adequate ground for dissolution--of partnership under Section 44 of the Indian Partnership Act,; 1932 ('Act'for short). Maybe, the High Court may be right in that if dissolution is sought under Section 44 of the Act alleging that there has been a breach of the contract of partnership. That is not the plaintiff's- contention when he prayed for a decree on the ground that he may be permitted to retire from the partnership. The High Court fell into error in not examining the contention whether the plaintiff appellant is entitled to retire from the partnership without dissolving the firm. Clause 18 of the contract of partnership clearly comprehends a situation where a partner may retire from an ongoing partnership after giving one month's notice. That is what is clearly intended by the expression that in the event of retirement bf" a partner the partnership business will not come to an end. Clause 18 provides for two independent contingencies. The first part of it confers a right on the partner to retire from partnership as envisaged by Section 32(1)(b) of the Act. The second part of Clause 18 provides for the consequence of such retirement by providing that even on such retirement the partnership will neither be dissolved nor the business will come to an end. In other words, without dissolving the firm and continuing the ongoing business, a partner may retire from the partnership, a situation clearly comprehended by Section 32 and incorporated as a term of contract of the partnership between the parties to the contract. With great respect, the High Court did not examine the matter from this angle and fell into an error in believing that the plaintiff sought dissolution on two grounds; (i) that the partnership is a partnership at will; and (ii) that dissolution is sought under Section 44. The implication of Section 32 of the Act completely escaped the notice of the High Court and that is why we are constrained to interfere in this matter.

6. It was contended that even if a partner is entitled to retire from the partnership as per the terms incorporated in Clause 18 of the contract of partnership, it has to be read along with the provision made in Clause 20 which provides that,, no partner will separate from the partnership business till one year from the beginning of the business and if he will dissociate then his capital will not be given till the end of one year. A mere reading of the clause shows that there was no embargo on the right to retire from the partnership conferred by Clause 18 even during the period of one year from the commencement of the business but it only provided for a consequence which will ensue on the action of the party. A combined reading of Clause 18 and 20 would unmistakably show that a partner may retire from the firm after giving one month's notice, that he should not retire within a period of one year but if he does retire within a period of one year the capital invested by him will not be refundable to him till the expiry of the period of one year. This right to retire from partnership may not be exercised till a period of one year but there is not a complete embargo on the exercise of such a right conferred by Clause 18. The High Court was, therefore, in error in holding that the plaintiff was not entitled to seek retirement from the firm.

7. The partnership business commenced on December 1, 1975. The period of one year would expire on November 30, 1976. Plaintiff sought dissolution effective from November 23, 1976. His request was thus under Clause 20 premature by a period of seven days. At best, if the Court thinks fit the retirement may be made effective from November 30, 1976, but on this technical ground the relief cannot be denied. At best the capital would become refundable as envisaged by Clause 20, after November 30, 1976, But in any view of the matter the plaintiff is entitled to a relief for a declaration that he has retired from the partnership without dissolution of the firm from the date of institution of the suit and the accounts may be made till that date and necessary preliminary decree will have to be made.

8. Accordingly this appeal is allowed and the judgment of the High Court is set aside. The suit of the plaintiff is decreed as under:

9. In substitution of the decree made by the trial Court it is hereby decreed that plaintiff has retired from the firm 'Shyam Bracketing Udyog, Etah,' effective from the date of institution of the suit. The partnership firm is not dissolved. Accounts to be taken up to and inclusive of the day preceding the date of institution of the suit. A preliminary decree to that effect be drawn up. The trial Court to appoint Commissioner and to take follow up action.

Under the circumstances there will be no order as to costs through- out.