**SUPREME COURT OF PAKISTAN**
(Appellate Jurisdiction)

**PRESENT:**
Justice Munib Akhtar
Justice Shahid Waheed
Justice Musarrat Hilali

(AFR)
**CIVIL APPEAL NO.499 OF 2017**

[On appeal against the judgment dated 19.01.2017 passed by the Peshawar High Court, Peshawar, in RFA No.65-P of 2012]

***Nadir Khan*** ***...Appellant(s)***

**VERSUS**

***Qadir Hussain & others*** ***...Respondent(s)***

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|---|---|---|
| For the Appellant(s) | : | Syed Mastan Ali Zaidi, ASC<br>Mr. Mehmood A. Sheikh, AOR |
| For Respondent No.1 | : | Mr. Ismail Khan Khalil, ASC |
| For Proforma Respondents No.2-3 | : | Ex-parte |
| For Proforma Respondents No.4-6 | : | Mr. Fida Gul, ASC |
| Date of Hearing | : | 24.11.2023 |

**JUDGMENT**

***Musarrat Hilali, J.***— Through this appeal, Nadir Khan, Appellant/Plaintiff has assailed the judgment of the Peshawar High Court dated 19.01.2017, whereby R.F.A.No.65-P/2012 filed by Respondent No.1/Defendant No.3 was accepted to his extent.

2. Brief facts of the matter are that the Appellant/ Plaintiff (**the Appellant**) invested substantial financial resources into the business operations of the present Respondents with an understanding that such investment would yield profits and corresponding compensatory returns, as per the details stated in the agreement (Ex.PW-1/3) made between the Appellant and the Respondents on 01.03.2003. Subsequent to the Appellant's demand for repayment of the invested sum, the Respondents sold a factory "Rock Pharmaceutical" realizing proceeds amounting to Rs. 32,00,000/-. This sum was disbursed to the Appellant.

However, it is imperative to highlight that a more considerable outstanding obligation, quantified as Rs. 2,38,00,000/- persisted. In the face of consistent refusals by the Respondents to settle the residual amount, the Appellant instituted legal proceedings by filing a Suit for Recovery of Rs.2,38,00,000/- along with profits against the Respondents before the Civil Judge XVII, Peshawar. Only Respondent No.1/Defendant No.3 (**the Respondent**) elected to contest the suit and filed written statement. As the other Respondents had not contested the suit, hence were proceeded against ex-parte. The learned Civil Judge, after framing of issues and recording of evidence passed a preliminary decree in favour of the Appellant and against the Respondents to the tune of Rs. 2,38,00,000/-., which was set-aside by the Appellate Court in the RFA filed by the Respondent before the High Court. The said judgment of the High Court, is now under challenge in the instant proceedings.

3. The learned counsel for the Appellant contended that the preliminary decree passed by the learned Civil Judge is in accordance with Section 32 (1)(c) of the Partnership Act, 1932 (**the Act**) but that the High Court had completely failed to appreciate the relevant provisions of Act and decided the case by placing reliance on Section 32 (2) of the Act. In support of his contention, learned ASC placed reliance on **Muhammad Hanif Abbasi v. Imran Khan Niazi and others** [PLD 2018 SC 189] and **Attaullah Khan v. Ali Azam Afridi and others** [2021 SCMR 1979].

4. Against that, the learned ASC for the Respondent contended that the Respondent had separated himself from the business on 06.09.2004. To this effect, he referred to an agreement/ undertaking dated 06.09.2004 (Ex.PW-1/2). He further contended that as per clause 4 of the agreement, nobody will ask neither to the Respondent nor to his legal heirs in his life time as well as after his death for any payment. Further, clause 5 provides that all the Chief Executives, Directors, Partners of both the businesses will be fully responsible in their life time as well as after their death, their legal heirs will be responsible to pay all the liable amount of different people. Hence, in the wake of renunciation of the Respondent, he cannot be made liable for any

payment whatsoever and has supported the judgment rendered by the High Court.

5. Heard counsel for the parties and perused the record.

6. We have noted that the learned Civil Judge vide judgment dated 13.01.2012, held the Respondent liable to pay the suit amount and passed a preliminary decree in favour of the Appellant against the Respondents to the extent of Rs. 2,38,00,000/-. Admittedly, the Appellant (3rd party) was the sufferer as he made huge investment in the firm. Since in the instant case no deed of contract has been brought on record determining the period of partnership and determination of partnership, therefore, the High Court observed that the provision of Section 7 of the Act would apply, which reads as under:

> ***"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".*

7. Section 32 of the Act lays down the procedure of retirement from a partnership at will and for safe administration of justice, it is essential to have a look at the relevant provisions of the Act, which are reproduced as follows:

> ***"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.*
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> ***(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 retirement: 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".*

8. The High Court has rightly declared the nature of partnership as partnership at will under Section 7 of the Act,

however, it has erred in deciding the manner of retirement of the Respondent. Therefore, it is crucial to interpret the above provisions to determine whether the Respondent effectively retired by adhering to the requirements enshrined in Section 32 of the Act. Section 32 (1) (c) of the Act explicitly mentions the pre-condition of issuing a notice by a retiring partner in writing to all other partners of his intention to retire, which was not issued by the Respondent/ retiring partner. The High Court in its reasons applied the procedure of retirement of a partner as given in Section 32 (2) of the Act, which says that where a retiring partner has the obligation of entering into an agreement with third party and partners of reconstituted firm to discharge him from the liabilities of a partnership before retirement, which agreement is also not available in this case. Further, even if the Respondent had fulfilled the requirements of Section 32 (1) (c) and Section 32 (2) of the Act, he would still not be discharged from the liabilities against third party until a public notice is given by him or by any partner of the reconstituted firm as required under Section 32 (3) of the Act but no such public notice was issued in this case.

9. The High Court, while setting-aside judgment of the learned Civil Judge dated 19.01.2017, held that as the Appellant was a witness to Shahadat Nama dated 19.02.2004 (Ex.DW-1/1) and agreement dated 06.09.2004 (Ex.PW-1/2) and had not disputed signatures on the said documents, therefore, he had impliedly accepted the exoneration of the Respondent from the joint business being an attesting witness. We have perused Shahadat Nama dated 19.02.2004 (Ex.DW-1/1) and the agreement dated 06.09.2004 (Ex.PW-1/2) wherein we find that the Respondent, proforma Respondent No.2 and proforma Respondent No.7 were parties whereas the Appellant and proforma Respondent No.6 were only witnesses which does not fulfil the requirement of Section 32 (2) of the Act ibid and does not discharge the Respondent from liabilities as when the law requires that a particular thing should be done in a particular manner it must be done in that manner and not otherwise. Hence, the agreement Ex.PW-1/2 is not entered into as provided in Section 32 (2) of the Act, which cannot be termed as a valid contract and is of no help to the Respondent.

10. For what has been discussed above, we find that the judgment passed by the High Court is not legally sustainable and agree with the well-reasoned judgment and decree of the Trial Court which is based on proper appreciation/application of the relevant provision of law. Consequently, this appeal is allowed and the impugned judgment dated 19.01.2017 passed by the Peshawar High Court is set aside and consequently the judgment and decree of the Trial Court is restored.

ISLAMABAD
APPROVED FOR REPORTING
Hashmi

ANNOUNCED IN OPEN COURT ON 26.1.2024.