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Dissolution of Firm under Companies Act, 2013

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Abstract

The paper aims to study how and under what circumstances a dissolution can be affected in a partnership firm and what can be the after effects of dissolution of firm on the partners of the said firm. It can be broadly divided in to two parts. The first part of the study describes the meaning of dissolution of a firm and second part focuses on the various important modes under which partnership firm can be dissolved.

INTRODUCTION

The Indian law of partnership in India relies on the provisions of the English law of partnership. Until land Partnership Act of 1890 was passed, the law of partnership even in England was largely supported on legal decisions and custom. there have been only a few acts of parliament relating on to partnership. The Indian Partnership Act of 1932 (Partnership Act) was the results of a Report of a Special Committee.

Prior to the enactment of the Partnership Act, the law regarding partnership was contained in Chapter XI (sections 239 to 266) of the Indian Contract Act, 1872 (Contract Act). These provisions contained within the Contract Act weren't found adequate. As a result, Chapter XI of the Contract Act was repealed and replaced by the Partnership Act of 1932. The Partnership Act is a comprehensive framework for contractual relationships amongst partners, and therefore the basis for a preferred kind of organization for small businesses. it's interesting to notice that the Partnership Act has not been subject to any significant amendment since its enactment.

The Indian Partnership Act enacted in the Year 1932 defining the law referring to partnership the relation between the persons who have agreed to share the profits of a business carried on by all or any of them acting for all -- makes it obligatory to possess a partnership registered with the Registrar of Firms, failing which the firm is prohibited from enforcing any right in a Court of Law. This Act defines the relationship of partners to one another and to 3rd parties and lays down provisions as regards incoming and outgoing partners, dissolution of a firm, etc. Under the Act partners are sure to keep on the business of the firm to the best common advantage, to be just and faithful to every other and to render true accounts and full information of all things effecting the firm to any partner or its legal representative. A partner is susceptible to indemnify the firm for any loss caused to that by his negligence within the conduct of the business of the firm. A partner is that the agent of the firm for the aim of the business of the firm. The act also

provides for the sale of goodwill of the firm after its dissolution and also the rights of the buyer and seller of the goodwill.
The dissolution of partnership between all the partners of a firm is termed the dissolution of the firm. [Section 39]. - -. As per section 4, Partnership is the relation between persons who have agreed to share profits of business carried on by all or any of them acting for all. Thus, if some partner is changed/added/ goes out, the 'relation' between them changes and hence 'partnership' is dissolved, but the 'firm' continues. Hence, the change is termed as 'reconstitution of firm'. However, complete breakage between relations of all partners is termed as 'dissolution of firm'. After such dissolution, the firm no more exists. Thus, 'Dissolution of partnership' is different from 'dissolution of firm'. 'Dissolution of partnership' is only reconstruction of firm, while 'dissolution of firm' means the firm no more exists after dissolution.

MEANING OF DISSOLUTION OF A FIRM

A firm is not dissolved when one or more partners ends the partnership while other partners still remain, a firm is dissolved only when all the partners stop continuing the business in a partnership. The law regarding retiring partners in the Partnership Act is partially a trade off between strict doctrine of English Common Law which refuses to see anything in the firm name but a collective name for individuals carrying on business in partnership and the mercantile usage which recognizes the firm as a distinct person or quasi corporation.

Matters emerging out of the dissolution of the firm which relate to the settlement of accounts, taking over of the goodwill and assets of the partnership, are the issues managed under 'dissolution of a firm'.

A deed of dissolution should fundamentally cover different issues, which emerge out of dissolution of firm, for example, settlement of accounts, payments due, shutting down or continuation of business. Despite such provisions in a deed of dissolution, it would be obligated to the payment of stamp duty under article 47, Schedule I of the Bombay Stamps Act 1958 and would not be subjected to separate duty on such matters.

In the event that another firm is formed by a contract between the previous partners, it will in any case be a new firm, such contract would follow in the dissolution of the old firm.

MODES OF DISSOLUTION OF A PARTNERSHIP FIRM

A partnership firm can be dissolved in many ways such as by agreement or in court. There are five methods to dissolve a firm stated under sections 40 to section 44 of the Indian Partnership Act.

1. Dissolution by Agreement – Section 40
2. Compulsory Dissolution – Section 41
3. Dissolution on the happening of certain contingencies – Section 42

4. Dissolution by notice of partnership at will – Section 43
5. Dissolution by the Court – Section 44

DISSOLUTION BY AGREEMENT

'Contract between the partner' clearly mean a contract previously made; the most probable case is that of a provision in the partnership act articles accommodating dissolution in specific events. Notwithstanding a dissolution provision where in a partnership deed reference is made to the Partnership Act, that where special provision isn't made in the deed the provisions of the Act will apply, it can't be said that a partner cannot request for dissolution of the firm and that the only thing he can do is resign as given by another clause in the deed.[1]

Any situation, for example, mental instability, incompatibility of temperament, or deceitfulness by an express clause be grounds for dissolution of partnership without judicial interference.[2]

The standard is very much settled that it is on the assessment of pertinent reports and facts and conditions that the court must be fulfilled for each case whether there has been a progression or a simple change in the constitution of the partnership. The difference between dissociation and reconstitution is that dissociation ends the partnership while a reconstitution implies the continuation of the partnership under adjusted conditions. In law, there would be no trouble in the dissolution of a firm being followed by the constitution of a new firm by some of the erstwhile partners who may take over the assets and liabilities of the dissolved firm.[3]

In instances of express consent to dissolve the firm between the partners having queries regarding its construction and effect, no issue emerges. Nonetheless, conditions may likewise demonstrate presence of such arrangement and consequential dissolution. It has now been positively concluded that the doctrine of repudiation has a similar pertinence to partnership

[1] *Sheonarain Jaiwal & ors* v. *Kripa Shankar Jaiswal & anor* AIR 1972 Pat 75
[2] Underhill's Principles of the Law of Partnership 11th edn. P 76; citing *Peyton* v. *Mindham* (1971) 3 All ER 1215.
[3] *CIT, West Bengal* v. *M/s Pigot Champan & Co.* AIR 1982 SC 1085,1089

agreements. The repudiation of the partnership by one or more partners, which is acknowledged by the others, would show a implied consent to dissolve the firm. [4] Dissolution may likewise be inferred where the administration by a partner or other partners of an invalid notice to decide if the partnership is acknowledged by the other partners as a valid notice or where the conduct of the partner is inconsistent with the duration of organization. If notice of dissolution was given to the other partner in a partnership at will where the other partner didn't do anything in regard to the notice or partnership business for around three years after the notice, it was held that inability to do anything added up to consent for dissolution.[5]

In the matter of ***P. Venkateswarlu*** v. ***Lakshmi Narshima Rao,*** **AIR 2002 AP 62,** the court held that in case of dissolution of partnership, firm might be dissolved by any partner giving notice in writing to all the other partners of his intentions to dissolve the firm.

COMPULSORY DISSOLUTION

A firm is dissolved when:

1. By the adjudication of all the partners or of all the partners but one as insolvent

2. 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:

Given that, where more than one undertaking is carried on by the firm, the illicitness of at least one will not itself cause the dissolution of the firm in regard of its legal endeavours.

a. All partners or all the partners but one becoming insolvent

Clause a is a new enactment. In substance it is essential culmination of section 34, sub-section (1), under which a partner adjudged insolvent ceases from that date to be a partner. If no partner or only one partner is left it is obvious that there can no longer be a firm. The Supreme Court has held that where one of two partners passes away, the firm naturally ceases and there is no partnership for a third person. In concession to the desires of the partner that has passed away, the partner that is alive may form a partnership with the beneficiary of the perished partner however it would be a new partnership. An arrangement that on the passing of the partner in such partnership firm his/her beneficiary or chosen one would take his place does not make the heir or nominee automatically a partner.[6]

[4] *Hitchman* v. *Crouch Butlet Savage Associates* (1983) 80 LS Gaz 550.
[5] *Kali Ram* v. *Ram Ratan* AIR 1977 NOC 31 (Del)
[6] *CIT Madhya Pradesh* v. *Seth Govindram Sugar Mills* AIR 1966 SC 24.

As respects insolvency procedures in a foreign nation the view seems, by all accounts, to be that they would cause dissolution, at any rate whenever taken in the nation in which the insolvent is domiciled.[7]

A firm is dissolved by the adjudication of all the partners or of all the partners but one as insolvent.[8] section 34(1) which provides, where a partner in a firm is adjudicated an insolvent, he ceases to b e a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved. In this manner an accomplice is settled an indebted; he stops to be a partner. One of the main reasons, for this is that after adjudication, an insolvent cannot be subject to contract. Essentially out of all partners, one is adjudicated to be an insolvent, the firm is obligatorily dissolved, on the grounds that for partnership, there must be at least two people skilled to contract. Likewise, where there are just two partners in a firm, and one of them passes on, the firm is dissolved and it cannot to be said to be in wishes of expired partner, the remaining partner concedes another new partner, in the eyes of law it is a new partnership.[9]

b. Happening of any event making the business of the firm unlawful

***Esposito* v. *Bowden*[10]** A and B get a ship to sail with cargo to a foreign country. Before they reach the port of the country, a war breaks out between England and the country they're going to. The war continues until after time appointed for loading. The partnership is dissolved.

***Hudgell Yeafes & Co.* v. *Watson*[11]** A is a partner with ten others. Law is reformed and it's now illegal to carry on that business with more than two partners. The partnership is dissolved.

A firm is dissolved 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 on in partnership.[12]

Clause (b) is based on the doctrine of severability. As per this doctrine, there are many parts to a contract and if one of those parts becomes illegal, at that point if the illegal part can be isolated from the legal part then the illegal part shall be void and the legal part will remain valid.

[7] Lindley on Partnership, 15th edn, pp 693-4.
[8] Section 41(a).
[9] See *Erach F.D. Mehta* v. *Minoo F.D. Mehta,* AIR 1971 SC 1653; *Commissioner of Income Tax, M.P*. v. *Seth Govind Ram Sugar Mills,* AIR 1966 SC 24.
[10] (1857) 7 E&B 763.
[11] (1978) QB 451.
[12] Section 41(b).

With the same logic, if a business has different projects or endeavours and if one of the endeavours becomes illegal, if that endeavour can be removed then the other endeavours will remain legitimate.

EFFECTS OF WAR

Wars brought the subject of legality of an alien enemy once more into prominence after many years. Business relations including subjects of a state which has gotten threatening, or people carrying on their business in the domain of such a state, must be considered in the light of two very distinct rules of common law, one as to one rule as to personal disqualification and other rules as to having business relations with enemies. There were significant questions regarding doubts until the full court of appeal dealt with cases early in 1915.[13] The aftereffect of that judgment, and of some others are as per the following:

'Alien enemy' stands for a person who is a resident of an enemy country. A person of the enemy state can reside in the state with a licence from the Crown. The registration of an alien can be done under the Alien Registration Act, 1914.

Exchanges with a foreign business in England are represented by similar principles as trade with an alien person. An organization in a hostile nation is treated in Prize Courts as a foe regardless of the identity of its investors.

In as much as a body corporate might be a partner, it has capacity to take note of that the friendly or hostile character of such a body is not dictated by the place of registration and its official seat, nor by the nationality of its partners. An organization registered here might be an enemy on the off chance that it continues business in an enemy nation, or if its business is heavily influenced by people occupant in the enemy nation.

DISSOLUTION ON 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.
According to section 42, subject to contract between partners, a firm is dissolved on the following contingencies:

BY THE EXPIRY OF FIXED TERM
A firm is dissolved, if constituted for a fixed term, by the expiry of that term.[14]

[13] *Porter* v. *Freudenberg & Co*.
[14] Section 42(a).

It should be observed that Sections 42(a) and 42(b) regarding the completion of one or more endeavours are liable to section 42(c) regarding death of a partner and 42(d) regarding the partner being an insolvent. In the event that any of the partners in deemed insolvent or dies, there is an absence of contract and the partnership is dissolved. Fixed duration of the partnership is not a contrary provision under section 42. After the duration of partnership is over in a fixed term partnership, the partnership can continue with mutual consent. However, in the event that there is no such mutual consent, the partnership is dissolved on the end of the fixed term.

ON COMPLETION OF ADVENTURES OR UNDERTAKINGS

Subject to contract between he partners a firm is dissolved if constituted to carry out one or more adventures or undertakings, by the completion thereof.[15]

In cases where an organisation has undertaken one or more endeavours and there is no fixed term for partnership, section 42 (b) is applied in such cases. **In such cases the endeavours and the nature of the partners are considered.** In the event that it is discovered that the firm was comprised for at least one undertaking, the partnership is dissolved on the completion of at least one endeavours depending on the case. If the partners install flourmill, oil factory, etc, the subject of finish of undertaking doesn't emerge and Section 42(b) does not apply.

Gheru Lal Parekh* v. *Mahadeo Das Maiya[16]

The partnership was formed for the trade of sale and purchase of wheat. Under it speculative transactions were to be entered for the trade of wheat in future. After the deleviry of a piece of merchandise, the contract was ended before time. Supreme Court questioned if it was valid to immediately dissolve the firm. The Supreme Court held that the firm was most certainly not dissolved. It would be dissolved only after the realization of the assets.

Where a firm was established for a particular endeavour to supply certain amount of grain and the contract was prematurely terminated after supply of a part of the grain, it was held that the firm didn't reach an end and was dissolved only after the final realization of assets.

BY THE DEATH OF A PARTNER

Subject to the contract between the partners a firm is dissolved by the death of a partner.[17]

The explanation behind this rule is that an organization is not an "individual person", it is just a gathering of people and the name of the firm is just the aggregate name of the people who

[15] Section 42(b).
[16] AIR 1959 SC 781
[17] Section 42 (c).

comprise the firm. As such, the name of the firm is a method of portraying the people who have consented to carry on the business.[18] The difference between continuing of business and member of the firm who can carry on the business is recognized by law. According to section 37, the firm is dissolved if a partner dies. In the event that there are remaining partners, another new partnership is formed. So is the situation when a new partner is conceded into partnership or a partner decides to retire. In all such cases another new partnership is formed.

Commissioner Of Income Tax, Madhya Pradesh, Nagpur v. *Seth Govindram Sugar Mills Ltd.*[19]

After the demise of Kalooram Todi, his sons Govindram and Gangaprasad established a joint Hindu family which possessed a lot of property in Jaora State and a sugar mill called "Seth Govindram Sugar Mills" at Mahidpur Road in Holkar State. In the year 1942 Bachhulal filed a case against Govindram for partition and obtained a decree. At the appointed time the property was separated and a final decree was made. After dividing the property Govindram and Bachhulal together worked the Sugar Mills at Mahidpur. After the demise of Govindram in 1943, Nandlal, Govindram's son, and Bachhulal as kartas of their joint families, formed a partnership on September 28, 1943, of the Sugar Mills. Nandlal passed away on December 9, 1945, leaving the three widows and the two minor children in the parentage. After the passing of Nandlal, Bachhulal continue business of the Sugar Mills in the name of "Seth Govindram Sugar Mills".

For the appraisal year 1950-51, the said firm applied for registration on the premise of the agreement of partnership dated September 28, 1943. The Income-tax Officer wouldn't enroll the association on the ground that after the demise of Nandlal the organization was dissolved and from that point Bachhulal and the minors could be dealt with as it were as an association of persons. He made another request evaluating the income of the firm as that of an association of persons. Against the said orders, two claims - one being the Appeal No. 21 of 1955-56 against the order denying registration and the other being Appeal No. 24 of 1955-56 against the order for appraisal were filed to the Appellate Assistant Commissioner.

Both the appeals were dismissed. In the allure against the request for appraisal, the Appellate Assistant Commissioner comprehensively considered the inquiry whether there was any organization between the individuals from the two families after the demise of Nandlal and arrived at the resolution that indeed just as in law such organization didn't exist. Two separate advances, being Income-tax Appeal No. 8328 of 1957-58 and Income-tax Appeal No. 8329 of 1957-58, preferred to the Income tax Appellate Tribunal against the orders of the Appellate Assistant Commissioner were dismissed.

The decision of the high court was that the assessment year 1949-50 the firm was within the meaning of s. 16(1)(b) of the Income tax act and therefore was assessed as a partnership firm.

[18] *Dulli Chand Lakshminarayan* v. *CIT, Nagpur,* AIR 1956 SC 354.
[19] AIR 1966 SC 24.

"*The death of any of the parties shall not dissolve the partnership and either the legal heir or the nominee of the deceased partner shall take his place in the provisions of the partnership*."[20]

According to Section 31 of the Partnership Act,
(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.***

Under s. 31 of the Partnership Act if there was a contract between the partners, an individual other than the partners could be presented as a partner of the organization without the approval of the existing partners. Ss. 42 and 31 of the Partnership Act, would prompt the conclusion that two partners of a firm could by agreement enlist a third individual into their partnership after the demise of one of them.

Section 42(c) of the Partnership Act can be applied to a partnership where there are multiple partners. The firm is dissolved in the event that one of them dies; yet in the event that there is a contract between the partners that the surviving partners will proceed with the firm. On the other hand, in the event that one of the two accomplices of the firm passes on, the firm naturally will be dissolved, from that point, there is no partnership for an outsider to be presented in that and, hence, it is no use for applying clause (c) of s. 42 to such a circumstance. It very well might be that as per the desires of the expired partner the surviving partner may go into another new partnership with the beneficiary of the expired partner which would establish a new partnership.

In this light Section 31 of the Partnership Act conforms to Sec. 42. That section just perceives the legitimacy of a contract between the partners to present a third person without the consent of the of the existing partners. It does not apply to a firm with two partners that is dissolved by the death of one of the partners. In such occasion no new partnership can be inducted in the partnership without the consent of other partners.

DISSOLUTION BY NOTICE OF PARTNERSHIP AT WILL

According to **section 43** of the Indian Partnership Act, 1932:

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

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

[20] Clause (3) of the partnership deed

Notice is needed to be recorded as a hard copy in writing, as can be seen in the English Act, section 32 (c) . A notice contemplated under this provision must be explicit and be communicated to all the partners. On the off chance that before such notice becomes employable an occasion happens which dissolves the organization, the notice would be redundant since there would then there would be no partnership on which it can work. In the event that there is an agreement that the partnership will be dissolved by mutual consent only, this right stands excluded.

Under section 43(1), any one of the partners can dissolve the partnership by giving notice if the following conditions are met:

1. Must be in writing
2. Must express the intention of the partner to dissolve the firm.
3. Notice must be given to all the partners.

Under Section 43(1), filing a suit is not held to be a valid notice. In the case of ***Banarsi Das* v. *Seth Kashiram*[21].** One of the partners filed a suit earlier in the Court of Lahore for dissolution of partnership and was dismissed for default. During the partition the parties were migrating to India. In another suit a declaration was sought that the firm was dissolved on 13 May 1944 when the initial; suit was filed. It was held for partition of joint Hindu family property as to which it is settled law that if all the members are majors, the institution of suit will result in the severance of the joint status of the family was irrelevant under section 43(1) on the grounds that the rights of the partners of a firm to the property of the firm are of an alternate character from those of individuals from a joint Hindu family.

In ***Mc Leod v. Dowling***,[22] it was held that if before such notice becomes valid an event happens which dissolves the partnership, the notice would no longer be needed since there would exist no organization on which it can work.

In ***Banarsi Das v. Seth Kashiram.*[23]** The plaintiff Kundanlal and the defendants Banarsi Das, Kanshi Ram, Kundan Lal, Munnalal, Devi Chand and Sheo Prasad are siblings and started a Joint Hindu Family till the year 1936. Among different assets the family were owners of a sugar mill at Bijnor named "Sheo Prasad Banarsi Das Sugar Mills". After disputed in the family the siblings chose to carry on the business of the said sugar factory as partners rather than as individuals from a Joint Hindu Family. Every one of the siblings was to share all the profits and losses. The plant was to be overseen by one of the siblings who were to be assigned as the managing partner and the agreement was that for the year 1936-37, which started on September 1, 1936, the first respondent Banarsi Das, who is the appealing party was to be the managing partner.

[21] AIR 1963 SC 1165; (1964) 1 SCR 316.
[22] (1927) 43 TLR 665.
[23] AIR 1963 SC 1165

Kundanlal was the managing partner for three years from 1941 to 1944. On May 13, 1944, Sheo Prasad respondent No. 5 presently dead, initiated a suit in the court of the Subordinate Judge, First Class, Lahore, for dissolution of partnership and interpretation of accounts against Kundanlal and joined the siblings as respondents to the suit. In the course of that suit the court dated August 3, 1944, designated one Mr. P. C. Mahajan, Pleader, as Receiver yet as the parties were disappointed with the order the matter was taken up to the High Court for revision on where they settled. For the arrangement between the parties the High Court selected Kanshiram as Receiver in spot of Mr. Mahajan as from April 5, 1945. The District Magistrate, Bijnor assumed control over the plant under the Defense of India Rules and selected Kundanlal and his son to work the plant as agents of the U.P. Government for the year 1944-45. The Government for the year 1945-46 renewed the lease. On August 28, 1956, both the parties other than Devi Chand, made an application to the Court at Lahore requesting that the Receiver may order a lease in favour of Banarsidas for the term of five years. It very well might be referenced that this application was made at the recommendation of the District Magistrate; Bijnor. The Subordinate Judge made a request regarding the application. In September 1946, Banarsidas acquired ownership of the factory. Sheo Prasad had applied to the court for appropriation among the previous partners for an amount of Rs. 8,10,000 (out of the total Rs. 8,30,000) which was lying with the Receiver and recommended that the sum which fell because of Kundanlal and Banarsidas ought to be retained in light of the fact that they needed to deliver accounts. Be that as it may, the previously mentioned sum lying with the recipient was circulated among all the siblings and Devichand recognized receipt on November 14, 1946. On October 11, 1947, the Lahore suit was dismissed for default as both the parties have moved to India resulting on the partition of the nation.

On November 8, 1947, Sheo Prasad filed a suit in the court of Civil Judge, Bijnor against his siblings for a permanent injunction controlling Banarsidas from acting as Receiver. The suit was dismissed on March 3, 1948. On July 16, 1948, Sheo Prasad transferred his 1/sixth stake to Banarsidas and from that point forward Banarsidas has been getting the benefits and profits both in regard of his own share and of that of Sheo Prasad.

On July 30, 1949, Banarsidas filed a statement however none of the respondents put in an appearance. On December 18, 1950, an application for the appoinment of a Receiver, was dismissed on the ground that Kanshi Ram who had been selected as Receiver by the Lahore High Court kept on being the Receiver. It could be referenced that during the awaiting of this suit the appealing party Banarsidas made an agreement with Devichand and Kanshi Ram where under he assumed control over the entirety of their rights and interests in the said sugar mill for a term of five years starting from July 1, 1951. On February 19, 1951, he made an application to the court for guiding Kanshi Ram to give a lease of the plant to him for a term of five years beginning from July 1, 1951. under a previous agreement Banarsidas had gotten a lease for a similar duration, which was expected to lapse on June 30, 1951. On April 26, 1951, one Mr. Mathur was selected Receiver by the court and in July 1951, he granted a lease of five years to Kundanlal on terms given by the court. It could be proper to specify here that issues in the suit organized by Kundanlal were outlined on December 7, 1951, and one of the

significant issues was whether the lease dated September 12, 1946, allowed to Banarsidas was void ab initio or was voidable and in either case what was its effect.

Contentions of Banarsidas:

1. Under the Partnership Act, the partners are qualified for have the business of the partnership wound up despite the fact that a suit for accounts is barred under Article 106 of the Limitation Act.

2. Kanshi Ram having been named a Receiver by the Court remained in a fiduciary relationship to other partners and the assets, which were in his ownership, must be considered to have been held by him for the good of all the partners. He was therefore bound to render accounts.

3. The issue of limitation was not brought up in the complaint before the High Court and as it is a mixed question of fact and law, it ought not have been settled on the foundation of the verdict of the High Court. In the event that it was thought important to permit the points to be brought up in perspective on the provisions of section 3 of the Limitation Act, the courts ought to at any rate 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 wasn't right in holding that limitation for the suit started on May 13, 1944.

5. The High Court wasn't right in resorting on the provisions of O. 41, r. 33, of the Code of Civil Procedure.

***RATIO DECIDENDI*:**

“The word "notice" in the provision is sufficiently wide to incorporate inside it a complaint documented in a suit for dissolution of partnership, the sub-section itself gives that the firm will be dissolved as from the date of correspondence of the notice. It would follow, accordingly, that a partnership would be considered to be dissolved when the order to appear by the court accompanied by a copy of the complaint is served on the respondent. Since a partnership will be dissolved from the date of dissolution would need to be regarded to be the one on which the last summons was served.”

FINAL DECISION:

The Supreme Court held that the High Court's decision must be dismissed and that of the trial court restored. Banarsidas and Kundanlal and Kanshi Ram were in terms with specific variations in the decree. As there were other parties to whom these varietions were not

adequate, we are bound to choose the requests on merits. For these reasons, we permit the appeals of Banarsidas and Kundanlal and reestablish the decree of the trial court.

DISSOLUTION BY COURT

According to section 44 of the Partnership Act, the reasons listed below are the grounds for dissolution by court order:

a. A PARTNER BECOMING OF UNSOUND MIND

At the suit of a partner, the court may dissolve a firm on the ground that a partner has become of unsound mind, in which case the suit may well be brought as well by the next friend of the partner who has become of unsound mind as by any other partner.[24]

Since an individual of unsound mind cannot perform the duties of a partner, it is in the interest of the organization to dissolve the organization.

b. A PARTNER BECOMING PERMANENTLY INCAPABLE

At the suit of a partner, the court may dissolve a firm on the ground that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner.[25]

In the event that the disability is impermanent or does not influence the duties of the partner, the firm can't be dissolved. For instance, there is crack of the bone of leg and there is each probability of it being redressed and healed or where a partner becomes paralyzed and is recovering by treatment, under such grounds, the firm cannot be dissolved. To dissolve the firm the disability must be permanent.

c. PARTNER GUILTY OF CONDUCT LIKELY TO AFFECT PREJUDICIALLY THE CARRYING ON OF THE BUSINESS

At the suit of a partner, the court may dissolve a firm on the ground 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.[26]

TWO ASPECTS OF SECTION 44(C):

1. The court will not order the dissolution of the firm, if the suit is filed by the partner who is guilty and is held liable which is likely to affect prejudicially the carrying on of the business.

[24] Section 44(a), The Indian partnership Act, 1932.
[25] Section 44(b), The Indian Partnership Act, 1932.
[26] Section 44(c), The Indian Partnership Act, 1932.

2. To dissolve the firm on this ground, it is vital that the partner must be held liable of a conduct which keeping in see the nature of the business is probably going to influence prejudicially the carrying on of the business. If the partner in question is held liable of wrongful act, the simple fact that his duration in the firm will be detrimental for the firm will not suffice to dissolve the firm.

In ***Snow v. Milford***[27] a firm ran a business of bankers. A partner of the firm named Milford was liable of adultery with a few ladies and as a consequence of this his wife had left him. Other partners recorded as suit for dissolution of the firm on the ground of the said misconduct of Milford.

The court dismissed the suit stating that it is unreasonable to conclude that the client's money is not secure in light of the fact that one of the partners of the firm is liable of adultery. Despite the fact that the court denounces adultery of an individual however this cannot be a ground for the dissolution or ousting the partner.

d. WILLFUL OR PERSISTENT BREACH OF AGREEMENT RELATING TO THE BUSINESS OR MANAGEMENT OF THE AFFAIRS OF THE FIRM.

At the suit of a partner, the court may dissolve a firm on the ground 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 him.[28]

Under section 44(d) it is important that there is willful and persistent breach of agreements regarding the matters of the firm or the decorum of the partner is that it isn't sensibly practicable for other partners to carry on business with him/her. On the off chance that the breach is not wilful, a single breach will not suffice the dissolve a firm. Steady or persistent conduct of animosity between the partners making the participation between them difficult, constant refusal by one partner to do his/her job, one partner constantly denouncing the other accomplice of wrongdoing in the firm, and make wrong accounts and not to enter the receipts, are some instances of grounds on which the firm might be dissolved.

e. TRANSFER OF THE WHOLE INTEREST IN THE FIRM BY A PARTNER TO A THIRD PARTY

At the suit of a partner the court may dissolve a firm on the ground 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

[27] (1868) 18 LT 142.
[28] Section 44 (d), The Indian Partnership Act, 1932.

49 of Order XXI of the First Schedule to the Code of Civil Procedure, 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.[29]

In the event that a partner transfers his entire interest to a third party he/she will have no interest left in the firm and thus, any of the partners can get the firm dissolved by filing a suit on this ground. Such a transferee doesn't in this manner become a partner in the firm. It doesn't entitle the transferee, during the continuation of the firm to meddle in the direct of the business, or to assess the books of the firm, however qualifies the transferee just for get portion of profits of the transferring partner and the transferee will acknowledge the record of profits consented to by the partners.In the event that the firm is dissolved or if the transferring partner stops to be a partner in the firm, the transferee is entitled, to get the portion of the assets of the firm to which the transferring partner is entitled, and to determine the share, to an account as from the date of the dissolution.

In ***Commissioner of Income Tax*** v. ***Sunil J. Kinariwala***[30] the Hon'ble Supreme Court held that when the partner assigns 50 % of his share in a partnership firm in favour of trust, the case of such assignment couldn't be treated as one of sub-partnership.

f. PERPETUAL LOSS

At the suit of a partner, the court may dissolve a firm on the ground that the business of the firm cannot be carried on save at a loss.[31]

As indicated by the meaning of the partnership given in Section 4, the main goal of partnership is to make profit. If the conditions of the firm are such that the company cannot make a profit and the business cannot be carried on, the court on this ground can dissolve the firm and spare at misfortune. Each firm is set up to achieve a specific target and if the conditions are in favour of the main goal that it is beyond the realm of imagination to expect to achieve that objective, the cure in such cases is to dissolve the firm.

g. JUST AND EQUITABLE

At the suit of partner, the court may dissolve a firm on the ground that it is just and equitable that the firm should be dissolved.[32]

Segment 44(g) gives extremely wide powers to the court. When a case is brought to the court under section 44(g), the court needs to choose whether it would be 'just and equitable', to dissolve the firm and such issues can't be left for the award of the arbitration.[33]

[29] Section 44 (e), The Indian Partnership Act, 1932.
[30] AIR 2003 SC 668.
[31] Section 44(f).
[32] Section 44(g).
[33] *Nainder Singh Randhava* v. *Hasrdial Singh Dhillon*, AIR 1985 P&H 41; See also *Kalpana Kothari* v. *Sudha Yadav*, (2002) 1 SCC 203; AIR 2002 SC 89.

Under segment 44(f), the court needs to conclude as per its discretion however this discretion cannot be confined by rigid or inflexible rules. The court needs to utilize its prudence on the premise of facts of the case. For instance, in one case 4 out of 9 partners wished to dissolve of the firm and their stake in the firm were 7/9. There was no cooperation and mutual confidence between the accomplices. There were numerous and long-continuing debates among them. The court held that it would be just and equitable to dissolve firm.

When the administration of the firm is under the defendants and they were maintaining the business appropriately and the business was profitable, the court would not dissolve the firm on the simple ground that the plaintiff was abusing the agreement and was making blocks in the administration of the business by the defendants. The court will order dissolution on the suit of a partner who himself is liable for misconduct. Under Section 44(g), the court has powers consider that it would be just and equitable to dissolve the firm the court may consider the occasions resulting to the filing of the suit.

Conclusion

The firm is dissolved when all the partners of a firm is called the "dissolution of the firm". Thus we can conclude that the firm is dissolved when all the partners stop carrying on the partnership business. If some partners dissociate from the firm and the remaining partners continue the business of the firm, the firm is not dissolved. The dissolution of a firm is distinct from the retirement of a partner because in latter situation others or remaining partners continue the business of the firm and the firm is not dissolved. Thus dissolution of partnership between all the partners of a firm is called dissolution of the firm. The dissolution of the partnership brings about a change in the relations between partners but partnership between them does not completely end. The partnership continues for the purpose of realization of assets or properties of the firm. Further, 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.

References

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