

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No. 2813 of 2016 (O&M)
Date of decision:3.6.2016

Baljeet Singh

... Appellant

versus

Balwant Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr.Munish Gupta, Advocate,
for the appellant

...

AMOL RATTAN SINGH, J.

This is the second appeal filed by one of the defendants in a suit filed by the plaintiff (respondent No. 1 herein).

The suit filed by the respondent No.1-Balwant Singh, was for seeking recovery of Rs. 4,60,787/-, essentially from M/s Malwa Commission Agents, of which the appellant is shown to be a partner, along with Tarlochan Singh, (presently respondent No. 2 (i) herein). The firm, M/s Malwa Commission Agents, is impleaded as respondent No. 2 in this appeal, by the appellant.

2. The facts, as taken from the judgment of the Additional Civil Judge (Sr. Divn.), Jagraon, are that on 20.11.2006, the aforesaid firm, through its partner, i.e. the present appellant, Baljeet Singh, had taken an amount of Rs. 3,78,461/- in cash from the respondent-plaintiff, in order to propagate the “business of Commission Agency”, for the sale and purchase

of agricultural produce and other merchandise.

The aforesaid amount was stated to have been taken by the appellant under the seal of the firm, with the appellants' signatures thereupon. On the memorandum-cum-receipt, there was a recital that the aforesaid amount, along with interest @ of 1.5% per month, would be payable "on the crop season". However, the business of the firm came to a stand still and the partners failed to return the loan amount with the interest, as per the plaintiff.

Consequently, the suit was filed seeking recovery of the aforesaid principal amount of Rs.3,78,464/- along with interest of Rs. 82,323/-, the total amounting to Rs.4,60,787/-.

3. Upon notice issued, the firm having been impleaded in its own capacity, through its partners as defendants No. i and ii, the two partners, i.e. the appellant and present respondent No. 2 (i), Tarlochan Singh, filed separate written statements.

Tarlochan Singh admitted that defendant No. 1 was a firm, in which he and the appellant were partners, but pleaded that the plaintiff had never remained a customer of the firm at any time and any alleged loan amount taken by the appellant from the plaintiff, was without the knowledge and permission of Tarlochan Singh. It was further stated that the terms and conditions of the partnership agreement dated 10.07.1994, spelt out in Clause 10 thereof, that none of the partners was authorized to raise a loan on behalf of the firm, unless so authorized in writing by the other partner.

Hence, it was contended by respondent-Tarlochan Singh that no such permission having been taken from him by the appellant, any loan

taken from the plaintiff, would be a loan taken by the appellant in his personal capacity. Hence, neither the firm nor Tarlochan Singh were liable to repay the same.

It was further contended that though appellant had issued the plaintiff a Hundi on the letter pad and stamp of the firm, yet the loan amount was never used for the benefit of the firm.

4. The present appellant, (defendant No. ii in the suit), filed his written statement taking a preliminary objection that he was not a partner in the defendant firm and that Tarlochan Singh was the sole proprietor thereof. The appellant, in fact, contended that he was only working as a Manager under Tarlochan Singh and had left his service much prior to the institution of the suit.

It was further contended by the present appellant in his written statement, that the alleged receipt/memorandum dated 20.11.2006 (relied upon by the plaintiff), was inadmissible in evidence and in any case, it was signed by him only as the Manager of the firm and he was, therefore, not individually liable for any repayment, with only Tarlochan Singh being so liable (along with the firm).

5. On the aforesaid pleadings, the following issues were framed by the learned Civil Judge:-

“1. Whether the plaintiffs is entitled to recover the suit amount alongwith interest from the defendant on the basis of receipt dated 20.11.2006? OPP

2. Whether the suit is not maintainable? OPD

3. Whether defendant No. 2 executed the receipt in

*favour of the plaintiff as manager of defendant firm and not
as a partner? OPD*

4. *Relief”*

6. Upon an appraisal of the evidence before it, the learned Civil Judge found that in fact Rs. 3,78,464/- had been taken as a loan from the plaintiff by the firm through its partner, i.e. the appellant on 20.11.2006, with the appellant having been inducted into the firm as a partner in 1997.

It was further held that in terms of Section 20 of the India Partnership Act, 1932, that both the partners were equally liable to discharge the liability of the firm and as such, the suit was decreed in favour of the plaintiff, holding the defendant partnership firm, through the present appellant and present respondent No. 2 (i), were jointly and severally liable to pay the loan amount of Rs. 3,78,464/- to the plaintiff, along with interest @ 9% per annum, running from the date of the execution of the memorandum-cum-receipt, till the filing of the suit, and thereafter @ 6% per annum till the date of realization of the decretal amount.

7. The present appellant filed an appeal against the aforesaid judgment and decree and respondent No. 2 (i), Tarlochan Singh, along with the firm M/s Malwa Commission Agents, through him (Tarlochan Singh), also filed a separate appeal against the judgment of the learned Additional Civil Judge.

Both the appeals were heard together by the learned first appellate Court and eventually, after considering the evidence led before the lower Court and the pleadings and arguments, held that in view of Clause 10 of the partnership deed (Ex. P-3 before the lower Court), Baljeet Singh, i.e.

the present appellant, alone would be liable to repay the loan taken from the plaintiff, in view of the fact that it was not proved by him that the loan availed from the plaintiff was upon any consent given by the other partner, i.e. Tarlochan Singh. Thus, it would have to be treated as a loan taken by the appellant in his individual capacity. Hence, having held as above, the appeal filed on behalf of the firm and by Tarlochan Singh was allowed, whereas the first appeal filed by the present appellant was dismissed, holding that Baljeet Singh alone was liable to make the repayment of the loan and the interest awarded thereupon by the lower Court.

8. Before this Court, learned counsel for the appellant submits that though presently the appellant cannot wriggle out of the liability of the firm, i.e. defendant No.1 before the Courts below, to discharge its liability qua the plaintiff, as set up in the suit filed by the plaintiff, however, the appellants' stand in reply to the suit was that, as a matter of fact, the partnership had actually ceased to exist, though no formal proceedings or writing was conducted in that respect.

Consequently, learned counsel submits that if it is held that for the transaction in question, the appellant alone is held liable with a finding against him, as has been given by the learned first appellate Court, and that the second partner in the firm, i.e. Tarlochan Singh (respondent No. 2 (i) herein), is not liable to pay the loan amount at all, it would debar the appellant from even taking any such plea in a suit filed by him for rendition of accounts, to show that the loan taken was actually used for the benefit of the firm.

9. Since the contention of the learned counsel is in respect of an

estoppel against him to prove the liability of the firm, as the loan taken was for the benefit of the firm, that argument is being dealt with first.

I am not in complete agreement with the learned counsel on that issue, in view of the fact that, admittedly, the loan was taken without the consent of the second partner, Tarlochan Singh, and thus, whether it was a partnership firm, or as contended by the appellant even before the Courts below, that it was actually a proprietorship firm and he was only a Manager thereof, in such an eventuality also, obviously, he could not have taken a loan without the consent of the proprietor. However, that assertion was actually never proved, with the Courts below holding that the present appellant factually remained a partner. The learned Courts below have held to the effect that in the absence of any instrument showing a dissolution of the partnership firm, the appellant continued as a partner, (even though it is contended that the second partner, i.e. Tarlochan Singh, showed himself to be a proprietor in some documents submitted by him to some authorities etc).

10. In any case, presently no evidence is shown to have been led, to prove that the appellant was only a Manager in the firm. Hence, even if the appellant is able to show, independently, on account of Tarlochan Singh's conduct, that the firm was actually functioning as a proprietorship firm and not as a partnership firm, that would not authorise him to have taken a loan, in any capacity, without the consent of Tarlochan Singh; therefore, the contention of the appellant in that respect cannot be accepted.

11. Coming to the provisions of the Partnership Act, which have not been referred to by the lower appellate Court.

No doubt, Sections 25 and 26 thereof foist the liability of any partner, acting for the firm, including wrongful acts of such partner, upon the firm; however, in the present case, it is not disputed that there was no written consent by the other partner of the firm, nor any resolution of the firm, i.e. respondent No.2 (i) herein, in terms of Clause 10 of the agreement between the two partners, by which the appellant was authorized to take a loan from the plaintiff.

That being the admitted position, (at least qua the fact that there was no written consent as was required under Clause 10 of the deed), I find no error in the judgment of the learned appellate Court in holding that even though the loan was taken under the stamp of the partnership firm, it was actually an individual act by the plaintiff, without sanction of the firm or from the other partner.

12. Also, admittedly at least in the present *lis*, the appellant was not able to show that the loan amount taken from the plaintiff was used towards the benefit of the firm.

Sections 19 and 20 of the Indian Partnership Act, 1932, need to be looked at in this regard:-

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 immoveable property on behalf of the firm,
- (g) transfer immovable property belonging to the firm, or
- (h) 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 partner.

13. The last part of the above provision in any case cannot be taken advantage of by either the appellant or respondent No.2 (i), Tarlochan Singh, because by no stretch of imagination can it be contended by either, that the plaintiff-respondent No.1, did not know that the person he was dealing with, i.e. the appellant, was not a partner in M/s Malwa Commission Agents; because the document dated 20.06.2011 was issued by the appellant, with the stamp and seal of the firm upon it. Also, the plaintiff could not have had any knowledge whether there was any restriction in the partnership deed between the appellant and respondent No.2 (i) to the effect that either partner could not take a loan without the written consent of the other.

Therefore, the question is, would the act done by the appellant, of taking the loan from the plaintiff, showing that it was being taken for the firm, bind the firm and by extension, the other partner, i.e. respondent No.2 (i)?

14. A reading of Section 20 shows that the partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner, as stipulated by Section 19. However, that extension or restriction is subject to the fact that if an act done by a partner, on behalf of the firm, falls within his implied authority. It would, then, bind the firm.

In my opinion, though the plaintiff obviously is entitled to his recovery, however, in view of the fact that the appellant acted without the authority of his partner (respondent No.2 (i)), in terms of Clause 10 of the partnership deed, he cannot be said to have acted on behalf of the firm, within his implied authority to bind the firm, when no documents could be shown by him, to prove that the loan taken was, in fact, for the business of the firm.

Similarly, since Section 19 stipulates that the act of a partner which is done to carry on the business of the kind carried on by the firm, binds the firm and an act done by the partner is his implied authority, to bind the firm, that cannot be interpreted, in such a situation, to hold that such authority extended to a direct violation of the partnership deed, qua the partners inter se. If, of course, the loan taken had been shown by the appellant, to have been used for the business of the firm, then of course the firm itself would be held bound to pay the amount to the plaintiff, with any breach of inter se contract between the partners left to resolution between

such partners, either by agreement or in a Court of law etc.

However, to repeat, the loan taken by the appellant from the plaintiff, purportedly for the purpose of the business of the firm, but actually not shown to have been used as such, then in the opinion of this Court, neither the firm, nor the other partner, can be held bound or liable to repay the loan to the person from whom it was taken, with such liability then falling upon the partner who acted not only in breach of his contract with his other partner, but also acted beyond any implied authority in terms of Section 19, the act actually not having been done for any purpose of the firm.

15. However, as submitted by learned counsel, if the appellant is able to show in any suit instituted for rendition of accounts of the firm, (if such a suit is found to be maintainable) that the loan taken was actually used for the benefit of the firm, contrary to what has been held by the learned first appellate Court, then obviously, in the face of any such firm evidence to that effect, the amount of loan would also be offset with regard to the final rendition of accounts, in favour of the appellant.

Though otherwise this Court would not interfere in a finding of fact with regard to the loan amount not having been used for the benefit of the firm, however, learned counsel submits that since the appellant was not being treated as a partner of the firm by Tarlochan Singh, none of the documents showing that the loan had been taken for the benefit of the firm could be produced by him, they all being in the possession of Tarlochan Singh/or the person who was managing the accounts of the firm.

16. Consequently, while dismissing this appeal *in limine*, it is also

observed that the finding of the learned lower appellate Court, that the loan amount was not used for the benefit of the firm, would not be binding on either party, in any suit instituted for rendition of accounts of the firm, and whether or not such loan amount, as was the subject matter in the present lis, was used for the benefit of the firm, would be a conclusion to be arrived at by the Court seized of any such suit for rendition of accounts, on the basis of evidence led before it.

The above observation is again, however, subject to the maintainability of any such suit, on all parameters. That aspect would also be considered by the Court seized of such suit, which would then be decided on its own merits.

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17. In view of the fact that the appeal has been dismissed, *in limine*, as above, the question of condonation of the delay of 7 days in filing the appeal is rendered academic and is not gone into.

3.6.2016
nitin/vcgarg

(AMOL RATTAN SINGH)
JUDGE