

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**1. RSA-1644-2019 (O&M)
Reserved on: 04.08.2022
Date of decision: 17.08.2022**

S.P. GOYAL (DECEASED) THROUGH LR AND ANR.

..Appellants

Versus

H.L. GOYAL AND ORS.

..Respondents

2. RSA-2732-2019 (O&M)

M/S HOME CONCEPT CRAFTS PVT. LTD. & ANR.

..Appellants

Versus

H.L. GOYAL AD ORS.

..Respondents

3. RSA-2459-2019 (O&M)

HIRA LAL GOYAL (AS KARTA OF HUF)

..Appellants

Versus

S.P. GOYAL AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sumeet Mahajan, Sr. Advocate
with Mr. Saksham Mahajan, Advocate
Ms. Rabani Attri, Advocate
Mr. Mandeep Singh, Advocate
for the appellants.

Mr. Narender Singh, Advocate
for appellant (in RSA-2732-2019)
for respondent No. 4 and 5 (in RSA-2459-2019).

Mr. Aishwarya Bajaj, Advocate
for the appellant (in RSA-1644-2019).

Mr. Siddharth Pandit, Advocate
for the appellant No.1 (in RSA-1644-2019)
for respondent No.1(iv) (in RSA-2732-2019).

Mr. Kanwaljit Singh, Sr. Advocate
with Ms. Neha Anand Mahajan, Advocate
for respondent No.1.

ANIL KSHETARPAL, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) thorough LRs Vs. Chandrika and others, (2016) 6 SCC 157.**

2. By this judgment RSA-1644, 2372 and 2459 of 2019, filed by defendant No.1, 2, 4 and the plaintiff, respectively, arising from the same suit, shall stand disposed of. The learned counsel representing the parties are *ad idem* that all these appeals can conveniently be disposed of by a common judgment.

3. In the considered opinion of the Court, the following questions need adjudication:-

1. After dissolution of the partnership firm, if the erstwhile majority/managing/remaining partners fail to immediately render accounts of the firm to the other ex-partner(s) (outgoing partners), then, whether such liability is restricted upto the date of dissolution of the firm or its assets shall be liable to be evaluated on the day on which the accounts are finally settled by paying the amount of the proceeds while completely winding up the affairs of the dissolved firm?

2. Whether a registered sale deed of immovable assets belonging to the dissolved partnership firm executed by former majority partners without rendering the accounts or settling the accounts of the dissolved partnership firm shall be void and hence, liable to be set aside?

3. Whether the suit for rendition of accounts of a registered partnership firm is not maintainable on account of non-compliance of Section 45, 63, 69(2) of the 1932 Act (as amended by the State of Maharashtra) and 72(a) of 1932 Act?

4. Detailed facts have been noticed in the judgments passed by the Courts below, however, to complete the narration of facts, it would be appropriate to notice a few necessary facts. The dispute is with regard to rendition of accounts of the firm namely M/s Sanjeev Woollen Mills. As per partnership deed dated 01.04.1987, the shares of the respective partners, were as under:-

- i) Satparkash Goyal (Defendant No.1):- 40%*
- ii) Hira Lal Goyal (HUF), (Plaintiff): 13%*
- iii) Sanjeev Goyal, Defendant No.2:- 24% and*
- iv) Rakesh Goyal, Defendant No.3:- 23%*

Clause 7 of the partnership deed reads as under:-

“The partnership shall be terminable at will and any partner may retire by giving one calendar months' notice to the firm or the other partner's and the partner so giving the notice shall cease to be the partner on the expiry of the said period.”

5. The partnership is stated to have been dissolved on 12.05.1993, when the plaintiff sent a telegraphic notice (Ex.P-3) through his counsel to all the partners/defendants for dissolution of the firm with a request to render the account while directing them not to alienate the goodwill and assets of the firm. There were allegations that the defendants have created bogus documents in connivance and collusion with Sh. Rohit Sharma and got filed various false suits.

6. The parties in the meantime created/incorporated various other firms/companies. The plaintiff (Sh. Hira Lal Goyal) filed the present suit on

08.11.1993 for grant of decree of declaration that the firm M/s Sanjeev Woollen Mill stands dissolved with a prayer to direct the defendants to render the accounts of the firm and for permanent injunctions restraining the defendants from carrying on business of the firm and similar business in the name of the firm and from using the properties of the firm. After amendment of the plaint, a decree for declaration that the transfer deed No.4120 of 04.01.2005, with respect to sale of plot No.C-44, Block C, Phase-II, Noida, Gautam Budh Nagar, in favour of defendant no.4 be set aside and relief of joint possession also be granted. It has also been asserted by the plaintiff that the plot located at Noida has been sold for a sale consideration of Rs.2,00,00,000/- though its actual worth on the date of sale was not less than Rs.20 Crores.

7. Defendant No.1 to 3 while filing the written statement, contested the suit. It was asserted that the plaintiff has no *locus standi* to file the present suit in the capacity of *karta* of HUF. The various other objections were taken including that the plaintiff is estopped by his act and conduct and that the plaintiff is guilty of deliberately giving his wrong description in the array of plaintiffs as he is not a partner of M/s Sanjeev Woollen Mills. On merits, it was submitted that the description of plaintiff as Sh. Hira Lal Goyal son of Sh. Jagat Ram Goyal (as a *karta* of HUF) partner M/s Sanjeev Woollen Mills is not valid, competent and referred to as such. The firm namely M/s Sanjeev Woollen Mills came into existence in the year 1969 with nine partners and deed dated 01.04.1987, is simply a deed entered between the continuing partners after retirement of the various other partners. After 1970, there was no intention to dissolve the firm merely on retirement of some partners from the firm. It was also asserted

that the plaintiff has, intentionally not given the correct figure of investment and is making vague and scandalous allegations. Various allegations and counter allegations alleging misconduct by the plaintiff as well as the defendants were also asserted. Defendant No.4 and 5 contested the suit while asserting that they are bonafide purchasers of the property located in Noida and the property was purchased on the representation of defendant No.1 and 2 that they are the only partners of the firm M/s Sanjeev Woollen Mills and they were apprised of the certificate issued by Registrar of Firms, Mumbai bearing No.08234 dated 15.12.2004. The replications to the different written statements were filed by the plaintiff denying the contents of the various written statements while reiterating the contents of the plaint. The trial Court after appreciating the pleadings, culled out the following issues:-

“1. Whether plaintiff is entitled to declaration that M/s Sanjeev Woolen Mills and other premises as detailed in the heading of the plaint stood dissolved, if so, its effect? OPP

2. Whether plaintiff is entitled for dissolution of firm M/s Sanjeev Woolen Mills and other premises as detailed in the heading of the plaint? OPP

3. Whether plaintiff is entitled for rendition of account of the firm M/s Sanjeev Woolen Mills with all its assets and premises as detailed i the heading of the plaint? OPP

4. Whether plaintiff is entitled to injunction as prayed for on the facts pleaded? OPP

5. Whether suit is not maintainable in view of preliminary objection no.1? OPD

6. Whether plaintiff is estopped by his act and conduct from filing instant suit? OPD

7. Whether plaintiffs have no locus standi to file the present suit? OPD

8. Whether this Court has no jurisdiction to entertain the present suit? OPD

9. Whether suit is barred under Sec.11 CPC? OPD

10. Whether transfer cum sale deed 04.01.2005 executed by defendants no.1 to 3 in favour of defendants no.4 and

5 is illegal, null and void and has no effect on rights of defendants? OPP

11. Whether above said transaction is hit by provision of Section 52 of TPA? OPP

12. Whether alleged partnership deeds dated 16.6.1993 and 31.7.2K are illegal and void? OPP

13. Whether plaintiff is entitled to joint possession of Industrial Plot No.44, Situated in Block-C, Noida? OPP

14. Whether suit is not properly valued for the purposes of court fee and jurisdiction? OPD

15. Whether suit is bad for misjoinder of parties? OPD

16. Whether plaintiff is estopped by his own act and conduct from filing present suit? OPD

17. Whether the defendants no.4 and 5 are bonafide purchasers of plot no.44-C at Noida for consideration without prejudice/notice? OPD 4 and 5

18. Relief.”

8. The parties led their voluminous evidence. The trial Court partly decreed the suit while passing a preliminary decree in favour of the plaintiff and against the defendants to the effect that the firm namely M/s Sanjeev Woollen Mills stood dissolved with effect from 12.05.1993 and the plaintiff is entitled to his share to the extent of 13%, whereas, defendant No.1 Sh. S.P. Goyal was held entitled to 40%, defendant No.2 Sh. Sanjeev Goyal was held entitled to 24% and defendant No.3 Sh. Rakesh Goyal was held entitled to 23%. The defendant No.1 to 3 were held liable to render the accounts of the firm till 12.05.1993, in respect of all the assets belonging to the firm as on 12.05.1993, including those mentioned in document Ex.P-1, within three months of the passing of the decree.

9. As many as three appeals were filed before the First Appellate Court. The first appeal was filed by defendant No.1 to 3, second appeal was filed by the plaintiff and the third appeal was filed by defendant No.4 and 5. The First Appellate Court after re-appreciating the evidence, dismissed the separate appeals filed by defendant No.1 to 3 and defendants No. 4 and 5

while partly allowing the appeal filed by the plaintiff. The plaintiff has been held entitled to seek rendition of accounts only upto 12.05.1993 of all the assets belonging to the firm including those specified in document Ex.P-1, which shall include the right to seek rendition of accounts of all the properties, stocks, deposits, machinery and every other asset of firm M/s Sanjeev Woollen Mills as it existed on 12.05.1993, and also includes the rights of the plaintiff in capital/profit of the firm M/s Sanjeev Woollen Mills as shown in the balance sheet upto 31.03.1992, as well as the synthetic waste etc. which was subject matter of litigation before Delhi High Court and was released vide order dated 08.01.1998, passed in IA No.3332 of 1997 in Suit No.748 of 1997. The Trial Court also held that the transfer-cum-sale deed dated 04.01.2005, is hit by the principle of *lis pendens* and the property purchased by defendant No.4 and 5 shall be taken into consideration like any other property of the partnership firm and defendant No.4 and 5 shall be bound by the decision in the present litigation.

10. Heard the learned counsel representing the parties at length and with their able assistance perused the paper book as well as the record of the Courts below, which was requisitioned. The respective written notes of arguments have also been perused.

11. The learned counsel representing the appellant has contended that the trial Court as well as the First Appellate Court have erred in ordering rendition of accounts only upto 12.05.1993, whereas, as per Section 16, 46, 48 and 50 of the Indian Partnership Act, 1932 (hereinafter referred to as 'the 1932 Act'), the defendants are liable to render accounts upto the date on which the affairs of the firm are completely wound up as the defendants have been using the properties of the firm to earn profit and

also sold the properties/plant and machinery of the firm to earn profit after dissolution of the firm even though the affairs of the firm were not completely wound up and its properties have not been distributed amongst the partners till date. He relies upon the judgment passed by the Supreme Court in *Shridhar Govind Kamerkar Vs. Yeshwant Govind Kamerkar, (2006) 13 SCC 481* and by the jurisdictional Court in *Vinod Krishan Khanna and other Vs. Sri Krishan Khanna (since deceased) through LRs and others, 2019 (2) PLR 200*. While elaborating, the learned Senior counsel contends that the rights and liabilities of the partners in respect of the partnership property stand discharged only when affairs of the firm are finally wound up and the assets of the firm are distributed. Thus, the plaintiff is also entitled to the profits earned by the said firm for using its assets, warranting upto the date of rendition of accounts by defendant No.1 to 3. He further contends that the transfer/sale of the Noida property by transfer deed dated 04.01.2005, is also required to be declared null and void as the same has been sold in violation of Section 53 read with Section 19 (1)(g) of the 1932 Act as well as in violation of Section 52 of the Transfer of Property Act, 1882.

12. On the other hand, the learned Senior counsel representing the defendant No.1 and 2, while contesting the suit, submits that keeping in view the conduct of the plaintiff, the Court should have dismissed the suit. While supporting the judgments of the Courts below, he contends that the plaintiff walked away from the partnership firm, therefore, he is entitled to his share only upto 12.05.1993. He tried to distinguish between retirement of the partner and the complete dissolution of the firm.

13. Further, the learned counsel representing the defendant No.4

(appellant in RSA-2372-2019), contends that the suit itself is not maintainable in view of Section 69 of the 1932 Act. While referring to the amendment by the State of Maharashtra in Section 69, he contends that the suit itself is not maintainable.

14. Before appreciating, evaluating and analysing the arguments of the learned counsel representing the parties, it is important to take a note of the relevant provisions of the 1932 Act.

“Section 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.

(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 party.

(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

Section 39 DISSOLUTION OF A FIRM: *The dissolution of a partnership between all the partners of a firm is called the "dissolution of the firm".*

Section 43 DISSOLUTION BY NOTICE OF PARTNERSHIP AT WILL:

(1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(2) The firm is dissolved as from the date mentioned in

the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

Section 46 RIGHT OF PARTNERS TO HAVE BUSINESS WOUND UP AFTER DISSOLUTION:

On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or which representatives according to their rights.

Section 49 PAYMENT OF FIRM'S DEBTS AND OF SEPARATE DEBTS:

Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in payment of the debts of the firm.

Section 50 PERSONAL PROFITS EARNED AFTER DISSOLUTION:

Subject to contract between the partners, the provisions of clause (a) of section 16 shall apply to transactions by any surviving partner or by the representatives of deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up:

Provided that where any partner or his representative has bought the good will of the firm, nothing in the section shall affect his right to use the firm-name.

Section 53 RIGHT TO RESTRAIN FROM USE OF FIRM-NAME OR FIRM-PROPERTY:

After a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm-name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up:

Provided that where any partner or his representative has brought the goodwill of the firm, nothing in this section shall affect his right to use the firm-name.

Section 63 RECORDING OF CHANGES IN AND DISSOLUTION OF A FIRM:

When a change occurs in the constitution of a registered firm, every incoming, continuing or outgoing partner, and when a registered firm is dissolved, every person who was a partner immediately before the dissolution, or the agent of every such partner or person specially authorised in this behalf shall, within a period of 90 days from the date of such change or dissolution, given notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall a record of the notice in the entry relating to the firm in the Registrar of Firms and shall file the notice along with statement relating to the firm filed under section 59.

(1A) Where a change occurs in the constitution of a registered firm, all persons, who after such change are partners of the firm, shall jointly send an intimation of such change duly signed by them, to the Registrar, within a period of 90 days from the date of occurrence of such change and the Registrar shall deal with it in the manner provided by section 61.

(2) RECORDING OF WITHDRAWAL OF A MINOR:

When a minor who has been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become a partner, and the firm is then a registered firm, he, or his agent specially authorised in this behalf, shall within a period of 90 days from the date of his election, give notice to the Registrar that he has or has not become a partner, and the Registrar shall deal with the notice in the manner provided in sub-section (1).

Section 69 EFFECT OF NON-REGISTRATION:

(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on a behalf of any person suing a partner in a firm against the firm on any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm :

Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(2A) No suit to enforce any right for the dissolution of a firm or for accounts of a dissolved firm or any right or power to realise the property of a dissolved firm shall be

instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or have been a partner in the firm, unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm : Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of a dissolved firm or to realise the property of a dissolved firm.

(3) The provisions of [sub-sections (1), (2) and (2A)] shall apply also to a claim of set-off or other proceedings to enforce a right arising from a contract but shall not affect—

(a) the firms constituted for a duration upto six months or with a capital upto two thousand rupees; or

(b) the powers of an official assigned, receiver or Court under the Presidency Towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, to realise the property of an insolvent partner.

(4) This section shall not apply—

(a) to firms or partners, in firm which have no place of business in the territories to which; this Act extends, or whose places of business in the said territories are situated, in areas to which, by notification under section 56 this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the presidency towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882, or outside the Presidency towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

69A. *If any statement, intimation or notice under sections 60, 61, 62 or 63 in respect of any registered firm is not sent or given to the Registrar, within the period specified in that section, the Registrar may, after giving notice to the partners of the firm and after giving them a reasonable opportunity of being heard, refuse to make the suitable amendments, in the records relating to the firm, until the partners of the firm pay such penalty, not exceeding ten rupees per day, as the Registrar may determine in respect of the period between the date of expiry of the period specified in sections 60, 61, 62 or as the case may be, 63 and the date of making the amendments in the entries relating to the firm.*

Section 72 MODE OF GIVING PUBLIC NOTICE:

A public notice under this Act is given:

(a) Where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of Firms under section 63, and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates, has its place or principal place of business, and

(b) in any other case, publication in the Official Gazette, and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.”

15. It is evident that Section 32 of the 1932 Act is applicable only if a partner retires from the firm. Section 32(1)(c) permits a partner, in a partnership at Will, to retire by giving notice in writing to all other partners of his intention to retire. Sub-Section 2 provides that there will be a reconstituted firm with remaining partners. However, in the present case, the telegraphic notice sent by the plaintiff, shows his intention to dissolve the firm. Hence, Section 32 shall not be applicable. It is not the case of any of the parties that the plaintiff retired from the partnership by giving notice under Section 32.

16. The dissolution of a partnership firm is governed by Chapter VI of the the 1932 Act. Section 39 of the 1932 Act provides that the dissolution of a partnership between all the partners of a firm is called the "dissolution of the firm". There is a fine distinction between dissolution of the firm between all the partners and the retirement of one or more partners. The Court is required to examine whether it is a case of retirement or dissolution.

17. Section 43 of the 1932 Act provides that where the partnership is at Will, the firm may be dissolved by any partner by giving notice in writing to all other partners of his intention to dissolve the firm. In the

present case, Clause 7 of the partnership deed clearly provides that the partnership was 'At Will' and by a telegraphic notice dated 12.05.1993 (Ex.P-15) sent by the plaintiff, the firm was dissolved. Hence, it is not a case of retirement.

18. Chapter VI of the 1932 Act provides for *inter se* responsibilities of the erstwhile partners as well as liability for the acts of the partners done after the dissolution and mode of settlement of accounts between the partners. Section 45 provides that the partners, even after dissolution, continue to be liable as such to the third parties for any act done by any of them which would have been an act of the firm if done before the dissolution until public notice of the dissolution is given. Section 46 of the 1932 Act provides that on the dissolution of a firm, the property of the firm is applied in the payment of the debts and liabilities of the firm and the surplus, if any, is distributed amongst the partners or their representatives in accordance with their share in the firm. Section 47 of the 1932 Act provides for continuing authority of the partners for the purpose of winding up, whereas, Section 48 provides for mode of settlement of the accounts between the partners. Section 50 provides that in absence of contract to the contrary, the provisions of Clause (a) of Section 16 shall apply. It provides that if any surviving partner or the representatives of deceased partner derives any profit for himself from any transaction of the firm or from the use of the property or business connection of the firm, he shall be liable to account for the same. Section 53 of the 1932 Act provides that every partner of the dissolved firm or his representatives may, in the absence of any contract to the contrary between the partners, restrain the other partners or their representatives from carrying on a similar business as that of the firm

or from using the firm-name or from using any property of the firm until the affairs of the firm have been completely wound up.

19. Thereafter, Chapter VII provides for registration of the firm. Section 63 of the 1932 Act mandates that whenever a registered firm is dissolved or any change occurs in the constitution of the registered firm, any such partner or persons specially authorized in this behalf may give notice to Registrar about such change. Section 69 of the 1932 Act provide for effect of non-registration of the firm, whereas, Section 72 of the 1932 Act provides for a public notice of the dissolution of the firm by publication in the official gazette or in at least one vernacular newspaper circulating in the district where the firm to which it relates, has its place or principal place of business.

20. In fact, Section 48, read with Section 50 of the 1932 Act are relevant while analysing the first argument of the learned Senior counsel representing the plaintiff. Section 48 provides for mode of settlement of accounts. As per Section 48 (b) clause (ii), (iii) and (iv), it is evident that the assets of the firm, including any sum contributed by the partners to make up the deficiency of capital is required to be distributed in the manner provided therein. Firstly, the distribution is towards the debts of the firm to the third parties. Thereafter, it provides that each partner rateably shall be entitled to the amount what is due to him from the firm for the loan, if any, advanced by him as distinguished from the capital. Thereafter, whatever is left shall be paid to each partner rateably towards the capital contribution of each partner and the residue, if any, shall be divided among the partners in proportion in which they were entitled to share profit. It is nowhere provided in Section 48 of the 1932 Act that the value of the assets shall be

evaluated as existing on the date of dissolution of the firm. Further, Section 50 makes a reference to Section 16(a) of the 1932 Act which provides that if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm-name, he shall be liable to account for that profit and pay it to the firm. Section 50 provides that in the absence of a contract to the contrary, the transactions by any surviving partner or representatives of the deceased partner, undertaken after the firm is dissolved, are liable to be accounted for even after dissolution of the firm. The important phrase used in Section 50 is “surviving partner” which would also include surviving partner(s). In the view of this Court, the correct interpretation should be that on dissolution of the firm, the rendition of the accounts shall have to take place on the day its assets are finally and completely divided while winding up the entire affairs of the dissolved firm although the profits shall be accounted for upto the date of its dissolution except as provided in Section 50 of the 1932 Act. Any other interpretation would encourage some of the erstwhile partners of the dissolved firm to delay the completion of winding up proceedings of the firm, resulting in loss to the other remaining partners. Moreover, it will be inequitable if the price of the assets required to be distributed is freezed on the date of dissolution of the firm because some times, it takes a very long time to completely wind up the affairs of the firm particularly when the parties are compelled to come to the Court. In the present case, the firm was dissolved in the year 1993, whereas, even after the passage of 29 years, the accounts have not been rendered.

21. Consequently, it is held that both the Courts have erred in restricting the settlement of accounts only upto 12.05.1993. Defendant No.1

to 3 shall be liable to render the accounts not only till the date of dissolution of the firm i.e. 12.05.1993, but also render the accounts for the profit earned by them while utilizing the assets including the plant and machinery of the firm in terms of Section 50 of the 1932 Act till the plaintiff is paid his share. It is also ordered that the defendant No.1 to 3 shall also be liable to render the accounts after valuing the assets of the firm as on the date on which the affairs of the firm are completely wound up while distributing the amount. Consequently, the price of the plot located in Noida as also the other immovable assets of the firm shall have to be evaluated on the date on which the affairs of the firm are completely dissolved on payment of the amount to the plaintiff.

22. There can be another method to adequately compensate the erstwhile partner/partners of the dissolved partner by directing payment of their share along with a suitable rate of interest. However, in the considered opinion of the Court, that may not be, at times, sufficient to compensate the erstwhile partners particularly when the market value of the immovable property has increased by leaps and bounds. Hence, it is considered appropriate to direct the evaluation of the immovable assets on the date on which the amount is finally distributed while completely winding up the affairs of the firm.

23. Thus, issue No.1 stands answered sufficiently.

24. Now, this Bench proceeds to examine issue No.2.

25. The learned counsel has submitted that in view of Section 19(2)(g) read with Section 53 of the 1932 Act, the sale of the property belonging to a dissolved firm shall be void, particularly when in the telegraphic notice dated 12.05.1993 (Ex.P-15), the defendants were directed

to stop using and alienating the name and assets of the firm. It may be noted here that Section 19(2)(g) provides that the implied authority of a partner as an agent of the firm does not extend to the transfer of immovable property belong to the firm. Further, Section 53 enables every partner or his representative, in the absence of a contract between the partners to the contrary, to restrain any other partner or his representative from carrying on a similar business as that of the firm or in the firm name or from using any property of the firm for his own benefit until the affairs of the firm have been completely wound up. However, these provisions do not provide that if a registered sale deed has been executed to dispose of the immovable assets of the dissolved firm without rendering the accounts of the firm, the sale shall be void *ab initio*. Declaration of a sale deed to be void entails a serious consequences for the purchaser. Such consequences cannot be inferred merely on account of a notice given by the plaintiff. In any case, this matter has to be examined in the context of prejudice caused to the plaintiff. While deciding issue No.1, this Court has already granted declaration that the rights of the plaintiff shall not be affected by the sale of the property at Noida and the its valuation shall be carried out on the date on which the affairs of the firm are completely wound up. Hence, the question No.2 is answered against the plaintiff.

26. The learned counsel representing defendant No.4 has contended that Section 45 of the 1932 Act requires the partner to give public notice of dissolution so that the third parties are informed of the same and any kind of false dealings can be avoided. While further referring to Section 63 of the 1932 Act, he submits that the firm or the outgoing or incoming partner is required to give notice to the Registrar of such change or dissolution

specifying the date thereof. Further, while referring to the amended provisions of Section 69 as applicable to the State of Maharashtra, he contends that as per Section 2(a) of Section 69, no suit to enforce the right of dissolution of a firm or for accounts of a dissolved firm is maintainable unless the firm is registered and the person suing is or has been shown in the register of the firms as partner in the firm. Further, while referring to Section 72(a), he submits that publication in the official gazette and in atleast one vernacular newspaper circulating in the district is required for maintaining the suit.

27. This argument of the learned counsel is required to be examined in the context of the present case. As per the case of the defendant, the name of the plaintiff (Sh. Hira Lal Goyal) was deleted from the firm vide entry dated 26.04.1995, and his date of retirement (12.06.1993) was recorded in the office of the Registrar. It is also the case of the defendant No.4 that before entering into the sale transaction, defendant No.2 and 3 had produced the record of the Registrar of Firms reflecting that only Sh. S.P. Goyal (defendant No.1) and Sh. Sanjeev Goyal (defendant No.2) were partners. In that context, the rights of defendant No.4 are required to be determined. This Court has already held that the sale deed is not void.

28. It may be noted here that the firm M/s Sanjeev Woollen Mills was a registered firm. It has also come on record that the name of Sh. Hira Lal Goyal was deleted from the array of partners of the firm vide entry dated 26.04.1995, and this was brought to the notice of defendant No.4 and 5 by Sh. S.P. Goyal and Sh. Sanjeev Goyal before executing the sale deed dated 04.01.2005. In such circumstances, the requirement of public notice is to

inform the public at large. The purchaser was in knowledge of the dissolution of the firm, particularly when he knew that Sh. Hira Lal Goyal (plaintiff) is no more a partner. In that context, defendant No.4 can only claim that the sale deed executed by defendant No.1 and 2 is not void.

29. Consequently, issue No.3 also stands answered.

30. Resultantly, RSA-2459-2019, filed by the plaintiff shall stand partly allowed, whereas, the separate appeals filed by the defendant No.1-2 and defendant No.4 (RSA-1644-2019 and RSA-2372-2019) shall stand dismissed. At the risk of repetition, it is declared that the plaintiff shall be entitled to rendition of accounts of all the immovable assets of the firm including the property situated at Noida after evaluating the price on the date on which the amount is finally paid to the plaintiff while completely winding up the affairs of the dissolved firm. The plaintiff shall also be entitled to the profits, if any, earned by the other defendants No.1 to 3 by use of the assets of the dissolved firm, firm-name or its goodwill after the date of its dissolution.

31. With these modifications, the appeals are disposed of.

32. All the pending miscellaneous applications, if any, are also disposed of.

17th August, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*