



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8671 OF 2005

Ramchandra Namdeo Chonde,
Age 45 years, Occu. Business,
R/o. Kallamb, Taluka Kallamb,
District Osmanabad

.. Petitioner
(Original Appellant)

Versus

1. The State of Maharashtra
Through its Secretary,
Excise Department, Mantralaya,
Mumbai
2. The Commissioner of Prohibition
and Excise Maharashtra State,
Mumbai
3. The Collector, Prohibition and Excise,
Osmanabad, District Osmanabad
4. The Superintendent,
Prohibition and Excise Department,
Osmanabad, Taluka and District Osmanabad
5. Vijay Kashinath Shinde,
Age 30 years, Occu. Agri.,
R/o. 3667, Mallappa Dhanshetti
Road, Barshi, Taluka Barshi,
District Solapur

.. Respondents

...
WITH CIVIL APPLICATION NO. 2102 OF 2007 IN WP/8671/2005
WITH CIVIL APPLICATION NO. 3820 OF 2008 IN WP/8671/2005
...

Mr. N. L. Jadhav, Advocate holding for Mr. S. A. Nagarsoge,
Advocate for Petitioner;

Mrs. M. L. Sangit, A.G.P. for Respondents No.1 to 4;

Mr. Gopal C. Navandar, Advocate for Respondent No.5

CORAM : S. G. MEHARE, J.

DATE : 12-02-2024

ORAL JUDGMENT :-

1. Heard the learned counsel for the petitioner, the learned A.G.P. for respondents No.1 to 4 and the learned counsel for respondent No.5.

2. It is a case of partnership liquor license. The father of the petitioner and grandfather of respondent No.5 had obtained a joint retail country liquor permit on 21.07.1984. They had a written partnership. During the lifetime of Nivrutti, one of his sons, Kashinath, had applied to the authority to admit him as a partner in place of his father Nivrutti. The application remained undecided. In the meantime, Nivrutti died. The father of the petitioner had no knowledge about the application of Kashinath. He was not the partner as per the partnership deed. The said application remained pending, and it was allowed on 25.09.1990. Then, the petitioner's father/Namdeo renewed the permit in his name. Namdeo had filed a suit against the legal heirs of Nivrutti including Kashinath. However, he withdrew the suit. Thereafter, the legal heirs of Namdeo had filed Regular Civil Suit No.59 of 1992. The said suit was decreed. The first appellate Court recorded the findings that it was proved that the partnership dissolved automatically after the death of Nivrutti Shinde. Finally, the first appellate Court allowed

the appeal by setting aside the judgment and decree of the Court of first instance. Against the judgment of the first Appellate Court, the legal heirs of Namdeo had preferred a second appeal, which was dismissed *in limine*. Against the order of dismissal of the second appeal, they preferred Special Leave to Appeal (Civil) No.24873-24874/2004 before the Honourable Supreme Court. It was also dismissed by order dated 13.12.2004.

3. Thereafter, a second round of litigation was opened. By order dated 30.03.2005, respondent No.4, the Superintendent, Prohibition and Excise Department, Osmanabad, intimated to the legal heirs of Namdeo that there was a dispute about the partnership. Hence, the permit will not be renewed until the next order is passed. The legal heirs of Namdeo assailed that order in an appeal before respondent No.2, the Commissioner of Prohibition and Excise Maharashtra State, Mumbai. It was registered as Appeal No.129 of 2005. The appellate authority observed that "in this case, a civil matter had been admitted in the Supreme Court, and the outcome would be binding on both parties. Therefore, the appeal is allowed, and the Collector is directed to renew the permit till the final decision of the Hon'ble Supreme Court, which will apply to all contesting parties. The legal heirs of Namdeo assailed that order before the Hon'ble Minister. The Hon'ble Minister interfering with the findings of the civil suit has quashed and set aside the orders of Superintendent, Prohibition and Excise

Department, Osmanabad, dated 30.03.2005 and the first appellate authority dated 15.04.2005 and directed to issue the permit in the name of legal heirs of deceased Nivrutti Bapurao Shinde and Namdeo Raibhan Chonde, subject to the decision of the Hon'ble Supreme Court.

4. The learned counsel for the petitioner has raised a simple issue: soon after the death of one of the partners, the partnership is dissolved in view of Section 42(c) of the Partnership Act, 1932. He argued that the effect would be the same, whatever the clauses are in the partnership deed. A partnership is a creation of a contract. No one could be forced to admit a third person as a partner. After the death of Nivrutti, the permit was issued in the name of Namdeo, and after his death, his legal heirs inherited the right to get the permit in the name of any of his legal heirs by consent.

5. To bolster his arguments, he relied on the case of ***Mohd. Laiquiddin and Another Versus Kamala Devi Mishra (Dead) by Lrs. And Others, 2010(2) All.M.R. 490***. Further, he relied on the case of ***Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bandara Versus Seth Govindram Sugar Mills, 1966 AIR (SC) 24***. He also relied on the case of ***Khtahema Fibres Ltd. Versus N.K. Paper Tube Industries and Another, 2011 DGLS (Del.) 4833***.

6. He has vehemently argued that the first Appellate Court long back recorded the findings that soon after the death of the partners, a partnership firm automatically dissolved. The Hon'ble Supreme Court also upheld the judgment of the first Appellate Court. None of the legal heirs of deceased partner Nivrutti has the right to claim inheritance. The rule of inheritance does not apply to the firm. He prayed to allow the petition.

7. Per contra, the learned counsel for the respondent has vehemently argued that it was a clause in the partnership deed that another partner would not object if one of the partners introduced a third party. During the life of Namdeo, his son had applied to the authority to admit him as a partner in the firm of his father and the father of the petitioner. Namdeo never objected to it; therefore, by conduct, Namdeo accepted Kashinath as a partner in the firm. He has emphasized the terms of the partnership deed and submitted the terms of the partnership deed bind the parties. Therefore, the Hon'ble Minister has passed the order subject to the decision of the SLP pending before the Hon'ble Supreme Court. The SLP has been dismissed. Hence, the rights of the legal heirs of Nivrutti are restored. He prayed that the legal heirs of Nivrutti were entitled to hold the permit under the partnership. To bolster his arguments, he relied on a Government circular dated 6.7.1989. He prayed to dismiss the petition.

8. The question that arises for consideration is, "What is the effect of the death of a partner where only two partners had constituted a partnership firm?".

9. The partnership deed between Nivrutti and Namdeo was unregistered. It is admitted that two persons had constituted a partnership firm. There is also no quarrel that Nivrutti predeceased Namdeo. After Nivrutti's death, the permit was renewed in the name of Namdeo. It is also not in dispute that Nivrutti's legal heir never impugned the renewal of the permit in the name of Namdeo. The order of the authority dated 05.01.1989 allowing the application of son of Nivrutti adding him as a partner created a mess. The legal heirs of Namdeo had filed a civil suit. It was withdrawn. The Nivrutti's legal heir filed another suit. It was decreed. However, the first Appellate Court reversed the judgment, recording findings that the death of one of the partners in the partnership firm of two partners only is deemed to be dissolved. The Supreme Court also maintained the said judgment.

10. The learned counsel for the respondent tried to point out that there was a term in the partnership deed that neither partner would raise the objection if the third person was admitted as a partner. Therefore, the partnership would not be dissolved on the death of either partner. He also argued that Section 42 of the Partnership Act opens with a clause that, subject to the contract

between the partners of the firm, gives the partners a right to continue with the firm on the death of either partner. Therefore, the firm could not be dissolved only on the death of either partner. The terms of the firm bind the partners. In his lifetime, the deceased Nivrutti explicitly expressed his intention to add his son Kashinath as a partner. In the facts and circumstances and the Government Circular which has resolved the disputes of partnership in the business of liquor the rights of the respondents have been correctly protected by the impugned order.

11. Before advertent to the rights arising out of the terms of the partnership deed, it would be better to comment on the document of partnership deed which was not registered.

12. Section 69(1) of the Indian Partnership Act, 1932 provides,

"(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 behalf of any person suing as a partner in a firm against the firm or 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".

13. The above section explicitly bars a partner to sue where the partnership deed is unregistered. He cannot enforce rights of obligations against each other or the firm in case of any dispute. In view of the legal position, the respondent cannot claim that in view

of the terms of partnership deed, legal heirs of any partners could be a partner of the firm.

14. As against this legal provision, the learned counsel for the contesting respondent pressed in to service a circular of the Maharashtra Government, dated 06.07.1989. The said circular provides that where the partner dies, his legal heirs should be admitted. He is correct that under this circular, the Government has directed admitting the legal heirs of the deceased partner on the permit. However, the circular does not speak of the enforceable rights of the partners in terms of the deed. The partnership is the creation of a contract. Its terms bind the partners. It does not speak of the number of the partners, rules and the effect on the firm on the death of the partner. Therefore, such circulars would not prevail over the provisions of law.

15. The Hon'ble Supreme Court, in paragraph No.26 of the case of **Mohd. Laiquiddin (supra)**, has observed thus;

“In the light of aforementioned case, it is clear that when there are only two partners constituting the partnership firm, on the death of one of them, the firm is deemed to be dissolved despite the existence of a clause which says otherwise. A partnership is a contract between the partners. There cannot be any contract unilaterally without the acceptance by the other partner. The Appellants, the legal representatives of original plaintiff (since deceased) was not at all interested in continuing

the firm or constitute a fresh firm and they cannot be asked to continue the partnership, as there is no legal obligation upon them to do so as partnership is not a matter of heritable status but purely one of contract, which is also clear from the definition of partnership under Section 4. Therefore, the trial court was justified in holding that the firm dissolved by virtue of death of one of the partners and the first appellate Court as well as the High Court have taken the correct view in upholding the same.”

16. It is clear in the aforementioned case that when only two partners constitute a partnership firm, on the death of one of them, the firm is deemed to be dissolved despite having the clause to section 42(c) of the Partnership Act saying subject to the contract between the partners, on the death of either partner, the firm is deemed to be dissolved. There cannot be any unilateral contract without the acceptance of the other partner. The partner has a right to choose a partner. It is a matter of consent. No one could force a person to be his partner or admit him as a partner.

17. In the case at hand, Namdeo never admitted Nivrutti's son as partner during his lifetime. The suit by the legal heirs of Nivrutti was with a tune that they should be admitted as partners. The Court of first instance has decreed the suit. However, the first Appellate Court has correctly recorded the findings that on the death of the partners of the firm constituted by two partners, the

firm is deemed to be dissolved in view of Section 42(d) of the Partnership Act.

18. Deceased Namdeo or his legal heirs were never ready to create a new partnership deed with the legal heirs of Nivrutti. Therefore, the pronouncement of the Hon'ble Supreme Court in the case of **Mohd. Laiquiddin (supra)** squarely applies to the present case. The clause of adding partner and no right to object for adding any partners by another partner in the deed, was unenforceable under section 69 of the Partnership Act.

19. The Hon'ble Minister did not pay heed to the law on the partnership. Hence, erred in passing the impugned order.

20. In view of the facts of the case and law laid down by the Hon'ble Court, the Court is of the view that the order of the Hon'ble Minister for State, Excise Department, Mantralaya Mumbai, in Case No. RVN.1105/RA-56/EXC-3, dated 22.11.2005, the order of the appellate authority passed in Appeal No.129 of 2005, dated 15.04.2005 is unsustainable in the eyes of law. Hence, liable to quashed and set aside. Consequently, the order on the application of Kashinath s/o. Nivrutti admitting him as a partner, dated 05.10.1989, by the Superintendent of Excise, Osmanabad also becomes ineffective.

21. The writ petition is allowed.

22. Pending civil applications, if any, stand disposed of.
23. Rule made absolute in above terms with no order as to the costs.
24. Needless to say, the findings of this Court do not bind the Excise Authority to exercise his powers under the concerned law on the subject.

(S. G. MEHARE)
JUDGE

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