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A.S.No.225 of 2



THE HIGH COURT OF JUD ICATURE AT MADRAS

Reserved on 21.12.2023	Delivered on 12.01.2024
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

A.S.No.225 of 2017
and
C.M.P.Nos.934 of 2017 & 18972 of 2023

1.M/s.Ramar Coir Industries
Represented by its Managing Partner,
Mr.K.R.Palanisamy,
Ramaragam, No.5, Raghupathy Layout,
Saibaba Colony, Coimbatore - 11.

2.K.R.Palanisamy
3.Saradha Palanisamy
4.N.Uma
5.K.P.Shanthi
6.S.Suganthi

...Appellants

(Appellants 4 to 6 brought into record vide Court
Order dated 05.08.2021 made in CMP.No.11814
of 2021 in A.S.No.225 of 2017 (MMSJ & SKJ)
Vs.

1.Dhana Natarajan

2.M/s.Nuovafil Infotech Pvt. Ltd.,
Rep.by its Director,
177, Devendra Street, Vaniyampalayam,
Vedapatti Post, Coimbatore.

...Respondents



Prayer: First Appeal filed under Section 96 of C.P.C., r/w. Order XLI Rule 1 of the Code of Civil Procedure, 1908, against the judgment and decree dated 29.04.2016 and made in O.S.No.719 of 2011 on the file of the V-Additional District Judge, Coimbatore.

For Appellants : Mr.R.Thiagarajan

For Respondents : Mr.P.R.Ramakrishnan for

M/s.Sarvabhauman Associates for R1

R2- Served - No appearance

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

This appeal was originally filed by the defendants 1 to 3 in O.S.No.719 of 2011 on the file of the V-Additional District Judge, Coimbatore, a suit for dissolution of the 1st defendant firm at the instance of one of its partners, the plaintiff.

2.Since the second appellant died pending appeal, his legal representatives were brought on record as appellants 4 to 6. The parties will be referred as per their rank in the Trial Court for the purposes of



convenience.

3.The plaintiff sued for dissolution of the 1st defendant firm contending that the defendants 2 and 3, who were in-charge of the affairs of the firm had been keeping her way from the business and have been indulging in acts of mismanagement. According to the plaintiff, the 1st defendant firm was started on 23.01.1974 with the defendants 1 and 2, the plaintiff, one Nanjappan and one Palasseri Prabhakaran Nair as a partners. The capital of the firm was Rs.90,000/-. While the defendants 1 and 2 contributed a sum of Rs.12,500/- each, the plaintiff contributed a sum of Rs.20,000/-. The firm was originally engaged in coir business. Subsequently, one of the partners, Palasseri Prabhakaran retired from the firm. After his retirement, a deed of reconstitution was entered into amongst remaining partners namely, the plaintiff, defendants 1 and 2 and Nanjappan on 01.01.1978. The capital of the firm, was increased to Rs.2,90,000/-. Each of the partners contributing a sum of Rs.72,500/-. The business of the firm was also changed, godowns were constructed in the land belonging to the firm and they were let out to various persons.

4.It was agreed that the profits or losses the business should be shared



equally amongst the partners. Subsequently, Nanjappan also retired from the firm leaving the plaintiff and the defendants 1 and 2 as partners. The plaintiff's husband, who was a Lawyer was a good friend of the 2nd defendant and that was the main reason for the plaintiff to join the partnership. The plaintiff's husband passed away and thereafter, the attitude of the 2nd defendant towards the plaintiff was not all that conducive. The 2nd defendant started excluding the plaintiff from the business and also did not account for the income properly thereby, denying the plaintiff's legitimate share in the income from the business. The plaintiff was, therefore forced to seek dissolution. Since the partnership deed contained an Arbitration clause, the plaintiff issued a notice on 20.08.2011 dissolving the partnership from 30.08.2011 and requiring the defendants to nominate any one of the Arbitrators named by the plaintiff. Since no reply was received, the plaintiff issued a re-joinder appointing Mr. Shanmugam, a retired District Judge as Arbitrator on 13.09.2011. The defendants 2 and 3 sent a reply on 27.09.2011 making false and unacceptable allegations. However, the defendants did not accept the said nomination forcing, the plaintiff to sue for dissolution.



5.The suit was resisted by the defendants contending that the suit for dissolution is not maintainable in as much as there is an Arbitration agreement between the parties. While admitting the allegations regarding the partnership, it was claimed that there was no re-constitution on 01.01.1978. It was also the contention of the defendants, the plaintiff cannot seek for dissolution but she can only retire from the firm on the terms set out in the partnership deed. The claim of the plaintiff regarding execution and mismanagement were denied. It was contended that the defendants have been distributing the rental income / profits according to the provisions of the partnership deed. It was also contended that there was no cause of action for the suit in as much as the defendants had agreed to the claim of the plaintiff for retirement.

6.It was further contended that as per the terms of the original partnership dated 23.01.1974, the plaintiff cannot seek dissolution but she can only retire from the firm. In case of such retirement, as per Clause-25 of the deed, the plaintiff would only be entitled to the share of the retiring partner as per the books of the firm. The written statement filed by the 1st



defendant was adopted by the defendants 2 and 3. The 4th defendant, who was a tenant remained exparte in the suit. On the above pleadings, the

learned Trial Judge framed the following issues:-

- 1) Whether the firm was reconstituted as alleged by the plaintiff?*
- 2) Whether the plaintiff entitled for the relief dissolution of the firm.*
- 3) To what other relief?*

7. At trial, there was no oral evidence on either side. Exs.A1 to A29 were marked by son on the side of the plaintiff. The defendants did not let in any documentary evidence also. On consideration of the documents that were placed before him, the learned Trial Judge concluded that there was no reconstitution of the firm by the deed dated 01.01.1978. He also concluded that the parties are bound by the original deed of partnership dated 23.01.1974. The learned Trial Judge, however, concluded that the plaintiff is entitled to dissolution and claim of the defendants that the plaintiff cannot seek dissolution and she has only to retire from the firm cannot be countenanced.



8.The learned Trial Judge also relied upon the Ex.A11, an undertaking given by the 2nd defendant on 20.12.2004 giving certain assurances, while admitting that there is an arrears of godown rent of Rs.10,00,000/- and amount payable towards the share capital of the plaintiff is Rs.20,00,000/- as on 20.12.2004. The 2nd defendant had also undertaken that he would pay the said sum by the end of January, 2005, failing which, the share capital of the plaintiff would stand increased to 50% from 25%. He has also stated therein, if he pays Rs.30,00,000/- on or before January, 2005, the plaintiff would relinquish her interest in the firm in favour of the 2nd defendant and retire from the firm. It is not in dispute that the said undertaking was not honoured. The learned Trial Judge concluded that this undertaking would be sufficient to demonstrate that the plaintiff has been excluded from the income from the firm over a long period. After issuance of notice for dissolution by the plaintiff, the 2nd defendant had paid a sum of Rs.5,000/- per month for a few months as evidenced by Exs.A13 (Series) and Ex.A22. The learned Trial Judge also concluded that Section 43 of the Partnership Act vests an unbridled right on a partner to seek dissolution.

9.The learned Trial Judge also noticed the fact that while retirement



of a partner in terms of Section 32 or is subject to the contract between the parties and dissolution of the firm under Sections 39, 40, 41 or 42 is not made subject to the contract between the parties under the Partnership Act.

On the aforesaid conclusions, the learned Trial Judge granted a decree for dissolution as prayed for. Hence, this appeal.

10. We have heard Mr.R.Thiagarajan, learned counsel for the appellants and Mr.P.R.Ramakrishnan, learned counsel for M/s.Sarvabhauman Associates for the 1st respondent. Despite service, the 2nd respondent has not chosen to appear either in person or through counsel, duly instructed.

11. Mr.R.Thiagarajan, learned counsel appearing for the appellants would vehemently contend that the plaintiff cannot seek dissolution and bring the business of the firm to grinding halt. While it is open to the plaintiff to seek retirement as per terms of the partnership dated 23.01.1974, it is not open to the plaintiff to seek dissolution when the other two other partners are interested in carrying on business of the firm.



12. Inviting our attention to the terms of the partnership deed dated 23.01.1974, the learned counsel for the appellants would contend that a retiring partner would be entitled only to the amounts standing to the credit of his capital and the share has determined as per the written down value in the books of accounts. The learned counsel would also draw our attention to Clause 22, 23, 24 & 25 of the deed of partnership dated 23.01.1974 to contend that be it retirement or dissolution, the partner either retiring or seeking dissolution would be entitled to only the share determined as per the written down value in the assets of the firm in the books of accounts of the firm.

13. Mr. R. Thiagarajan, learned counsel would also submit that there was no mismanagement as alleged and even the reply notice dated 27.09.2011, the defendants have made it very clear that it is open to the plaintiff to inspect the books of accounts at any point of time. The learned counsel would contend that there is no cause of action for the suit in as much as the defendants had expressed their willingness to accept the retirement as per Clause-22 of the partnership deed.



14.The learned counsel for the appellants would also rely upon the following judgments in support of his submissions.

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- 1) *Guru Nanak Industries, Faridabad and Another Vs. Amar Singh (dead) through legal representatives* reported in (2021) 14 SCC 672.
- 2) *M.O.H.Uduman and Others Vs. M.O.H.Asylum* reported in (1991) 1 SCC 142.
- 3) *N.Sathyanarayana Murthy and Others Vs. M.Venkata Bala Krishnamurthy* reported in AIR 1989 AP 167.
- 4) *Abbashbhai K.Golwala Vs. R.G.Shah and Others* reported in AIR 1988 Bom 187.
- 5) *Devi Textiles and others Vs. S.Suganthi* reported in AIR 2000 mad 62.
- 6) *Vishnu Chandra Vs. Chandrika Prasad Agarwal and Others* reported in (1983) 1 SCC 22.
- 7) *Hindustan Life Care, rep. by its Partner Vs. Mr.N.Ramesh* reported in 2008 (5) CTC 481.

15.Contending contra, Mr.P.R.Ramakrishnan, learned counsel for the 1st respondent would submit that Clause-3 of the partnership deed dated 23.01.1974 very clearly states that the partnership is at will. Therefore, according to Mr.P.R.Ramakrishnan, once the partnership is at will, it is open to the partner to seek dissolution of the firm in terms of Sections 43 and 44 of the Partnership Act. The learned counsel would also further submit that the right of a partner to seek dissolution is a statutory right and the same cannot be contracted out.



16.Drawing our attention to Sections 7, 11, 43 and 44 of the Partnership Act, the learned counsel would submit that the contention of the appellants that the plaintiff can only seek retirement and not dissolution cannot be accepted. The learned counsel would also draw our attention to Ex.A13 (Series) to demonstrate the though the firm was receiving the rental income of Rs.43,452/- per month, the same was not shared with the plaintiff. He would also point out that the contents of Ex.A11 would go a long way to show that the defendants had excluded the plaintiff from the firm a considerably long period and there is a tacit admission of liability of Rs.30,00,000/- towards a share of the plaintiff in the firm.

17.Inviting us to Ex.A24 and Ex.A25, the learned counsel would submit that there has been a property tax arrears payable to the Panchayat by the firm. This according to the learned counsel, would show that the defendants have been appropriating the income from the firm for themselves even without paying the statutory dues. He would also contend that Clause-22 , 23 and 25 of the partnership dated 23.01.1974 would apply only in the event of retirement of a partner and dissolution being a statutory right conferred under Section 43 cannot be controlled by the contract



between the parties.

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18.The learned counsel for the 1st respondent would also invite our attention to the following judgments:-

8)Vali Venkataswami and Others Vs. Gannabathulla Venkataswami reported in (1953) 2 MLJ 396.

9)Banarsi Das Vs. Kanshi Ram reported in AIR 1963 SC 1165.

10)A.Nagappan and others Vs. M/s.Mc.Adams Chemicals Manufacturing Co., represented by its Managing Partner, R.Balagangadharan and others reported in 1998 2 MLJ 435.

11)Kanagammal Vs. Theatre Abirami Partnership Concern reported in (2009) 8 MLJ 1187.

19.The learned counsel would also draw our attention to Section 29 of the Partnership Act, which while prohibiting the transferee from the partner and from taking part in the business enables him or her to receive a share in the assets of the firm to which, the transferring partner is entitled to. Therefore, according to the learned counsel for the 1st respondent, right of a partner to seek dissolution is absolute and in a partnership at will and the partnership will stand dissolved upon issuance of notice under Section 43 of the Partnership Act. Therefore, the claim of the defendants that the



plaintiff can only seek dissolution is wholly misconceived and the same is liable to be rejected. We have considered the rival submissions.

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20. Let us advert to the relevant clauses in the partnership deed dated 23.01.1974, which has been found to be subsisting by the Trial Court.

Clause – 3 of the partnership deed reads as follows:-

"3. The Partnership shall be one at will."

21. Clause 22, 23, 24 and 25 reads as follows:-

"22) If any party elects to retire from the partnership he/she shall give notice in writing to other parties of such intention and within three months of the receipt of such notice the Assets and Liabilities of the firm shall be valued according to the books of the Partnership as on the date of the receipt of the notice and Share of the outgoing Partner shall be ascertained in accordance with the terms herein. The amounts due, if any to the outgoing partner shall be paid to him in FOUR equal annual installments which shall carry interest at the ruling rate from the date of ascertainment till the date of payment.

23) The death, insolvency or retirement of a Partner shall not of itself dissolve the partnership and remaining partners will continue the business.

24) The Goodwill of the firm shall not be valued and



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taken into account at the time of retirement of the partner or in case of the death of a partner.

25) The assets of the partnership whether immovable or otherwise shall not be revalue on the basis of the market values for any purpose whatever such as determination of share of retiring partner, determination of share of a partner who seeks dissolution, or determination of share of legal heir of a deceased partner etc. For all purposes the book written down values of the assets shall be final and binding on all the parties."

22. In 1978 namely, 01.01.1978 under Ex.A3, capital of the firm was increased to Rs.2,90,000/- and each partner had contributed Rs.72,500/-. One of the partners Nanjappan had retired thereafter. The business of the firm was changed from Coir Industry to construction of godowns and leasing it out. The fact that two godowns were constructed and are being leased out is not in dispute. The fact that the plaintiff was excluded from the income from the partnership is evident from Ex.A11 wherein, the 2nd defendant had categorically agreed that there is an arrears of nearly Rs.30,00,000/- payable to the plaintiff and there is an arrears of Rs.10,00,000/- towards the rental income and Rs.20,00,000/- towards the

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capital account due and payable to the plaintiff. There is also an undertaking to pay the same by the end of January, 2005. Though the 2nd defendant has denied writing such letter in the written statement, the 2nd defendant had neither objected to the marking of the said letter in evidence nor had he gone into box to dispute the correctness of the said letter. Therefore, the claim of the plaintiff that she was excluded from management also cannot be disputed. There is also evidence to show that the plaintiff was being paid a sum of Rs.5,000/- per month for some time during the year 2010, which is available under Ex.A13 (Series).

23.It is also seen from Ex.A22 that the plaintiff has been paid a sum of Rs.5,000/- for some months and thereafter, after she issued a notice seeking dissolution, the said payment was also stopped. This conduct on the part of the defendants would conclusively established the fact that there had been serious invasion of the right of the plaintiff as a partner and therefore, she has every right to seek dissolution of the firm. Section 43 of the Partnership Act provides for dissolution of partnership at will and it leaves no discretion. As rightly contended by Mr.P.R.Ramakrishnan, learned counsel for the respondents, while a right of a partner to retire or a



right of the firm to admit new partners or expel partners are all made subject to the terms of the contract between the parties, the right to seek dissolution is not made to subject to the contract between the parties. Therefore, once the partnership is at will, it is open to the partner/s to seek dissolution at any point of time. Once dissolution is sought for and a notice for dissolution is issued, the firm would stand dissolve from the date specified in the notice. What remains is only the methodology of dissolution and not dissolution itself.

24.Adverting to the contentions of Mr.R.Thiagarajan that in view of Clauses 22 to 25, the plaintiff can only to retire, we can straight away point out that it deserves to be rejected. As we had already pointed out, a right of a partner to seek dissolution is a statutory right and cannot be contracted out.

25.The respondents have filed an application in CMP.No.18972 of 2022 seeking to produce certain documents as additional evidence. The documents that are sought to be produced are :-

i)Passbook of the 1st appellant issued by the Canara Bank.



ii) Books of accounts maintained by the appellants for the year 1978-1979

iii) Books of accounts maintained by the appellant for the year 1989

iv) Series of profit and loss accounts from the year 1974 to 2011.

v) Calculation of depreciation for the godowns between 1978 and 2014.

vi) Series of medical reports of the 2nd appellant who was the managing partner of the firm.

A counter affidavit has been filed disputing the documents and the decrying belated attempt to produce these documents.

26. While Mr.R.Thiagarajan, learned counsel for the appellant would contend that these documents are necessary for us to decide the controversy and it was because of the illness of the 2nd appellant during the relevant point of time that these documents were not produced. Mr.P.R.Ramakrishnan, learned counsel for the 1st respondent would submit that these documents are wholly irrelevant for the purposes of appeal, since in the appeal we are called upon to decide only the very short question as to the entitlement of the plaintiff to seek dissolution. What follows after dissolution are subject matter of the final decree proceedings where

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accounts will be taken and the actual liability towards the plaintiff would be determined. Therefore, according to Mr.P.R.Ramakrishnan, the documents in question that are sought to be introduced in the appeal are wholly unnecessary to determine the question that arises in the appeal.

27.No doubt, Order 41, Rule 27 enables the Court to entertain additional evidence at the appellate stage but the same is not as of right. The party, who seeks to produce such additional evidence has to satisfy the conditions enumerated under the said provision. One of the important factors is that the Court must record a finding that the evidence sought to be produced would enable the Appellate Court to pronounce upon the controversy between the parties or for any other substantial cause.

28.As rightly pointed out by Mr.P.R.Ramakrishnan, the documents that are sought to be produced relate to the accounts of the firm. In the appeal, we are only concerned with the question as to whether the plaintiff is entitled to dissolution or not. What follows after dissolution is subject matter of the final decree proceedings, which will have to be adjudicated separately. The documents that are sought to be produced, in our



considered opinion, are not of any assistance to us in deciding the appeal.

This petition therefore, stands dismissed.

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29. Upon a consideration of the contentions of the counsel on either side, the following points emerge for determination in the appeal:-

i) Whether a right of a partner to seek dissolution could be controlled by the contract between the parties.

ii) Whether the discretion that is vested in the Court under Section 44 could be used to deny the right of dissolution to a partner under Section 43 of the Partnership Act.

30. We have already found that the partnership is one at will. Section 43 of the Partnership Act provides for dissolution of a partnership at will and it reads as follows:-

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 43 invests a right in a partner of a partnership at will to seek dissolution by issuing a notice of dissolution. The nature of the right of the partner to seek dissolution is no longer *res-integra*.

31.In ***Vali Venkatasamy and Others Vs. Gannabathulla Venkataswami*** reported in ***AIR 1954 Mad 9*** equivalent to ***66 LW 708***, this Court had considered the case where the partnership deed provided that a partner who is not willing to continue as a partner, he has to transferred and sell his share for the amount of credit in his account towards capital to all the partners or to some of them or one of them but he has no right to sell the same to outsiders. It was contended that such Clause would be bar to a partner to seek dissolution under Section 44. After considering the nature of the right of the partner and after considering the provisions of Section 11 and Section 44, this Court held that a right to seek dissolution under 44 cannot be subject to the terms of the contract between the parties. In doing so, this Court observed as follows:-

“6. The only contention, which requires consideration, is the existence of Clause 22 of the partnership agreement which provides that "if any partner is not willing to continue as partner in the said cinema, he should transfer and sell his



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share for the amount credited in his account towards capital of the cinema to all other partners or to some of them or to one of them but he has no right to sell the same to outsiders." This clause, it is contended, is a bar to the maintainability of the suit as the right to institute a suit for dissolution under Section 44 of the Partnership Act is excluded by this clause. Reliance was placed in support of this position on a decision of the Allahabad High Court in -- 'Smt.Dropadi v. Bankey Lal', AIR 1939 All 548 (A). Under Section 11, Partnership Act, the mutual rights and duties of the partners of a firm are to be determined by the contract between the parties and such contract may be express or implied. But this is however made subject to the provisions of the Act.

Assuming for a moment that Clause 22 of the partnership deed amounts to a contract to the contrary, the question is whether it is open to the partners to contract out of the right conferred by Section 44. Section 44, it may be observed is not made subject to the contract between the parties and gives a right to the partner to seek the assistance of a court to have a partnership dissolved on grounds specified in the section. Section 11 makes the contract between the parties subject to the provisions of the Act, and Section 44 being one of the provisions of the Act, the contract is undoubtedly Subject to the right under Section 44. Section 11 therefore does not override the provisions of Section 44. In the Act itself whenever the Legislature intended that the right conferred under a



particular section is to be subject to the contract between the partners, it has been expressly stated so, for example, Sections 12to17 and Section 42. On a plain reading therefore of the provisions of the Act, it seems to me clear that the clause in the partnership deed would not affect in any manner the right of the partner to institute a suit for dissolution provided the grounds enumerated in Section 44 exist. Under the provisions contained in the Contract Act, Section 252 was not made subject to the provisions of the Chapter relating to the partnership and Section 254 provided for dissolution through Court. It has been held by the Judicial Committee under the old provisions that a partner's claim to a decree for dissolution rests, in its origin, not on contract, but on his inherent right to invoke the Court's protection on equitable grounds in spite of the terms in which the rights and obligations of the partners may have been regulated and dented by the partnership contract. Vide -- 'Rehmatunnissa Begum v. Price', AIR 1917 PC 116 (B). On this principle, it was held in that case that notwithstanding that the clause in the partnership deed provided a particular duration for the continuance of the partnership, it was open to a partner to institute a suit for dissolution if he brought himself under the provisions of Section 254, Contract Act. It is no doubt true that in the earlier decision --'Gowasjee Nanabhoy v. Lallbhoy Vullubhoy', 1 Bom 468 (PC) (C) also a decision of the Judicial Committee, which was decided however without reference to the provisions of the Act, there is an observation at page 474



which seems to suggest that it was open to the partners to relinquish the right, which they would have of applying to the Court for winding up the business, if it could not be carried on at a profit.

But the provisions of the Partnership Act under which the present case has to be decided make it clear that the contractual rights are subject to the statutory right under Section 44 of the Act. In AIR 1939 All 548 (A), it was held that "the partner's right to sue for dissolution of partnership may be controlled or negated by the terms of the agreement among the partners and the Court may, in view of the terms of the agreement and of other remedies provided therein like retirement or sale of his share or settlement of disputes by arbitration refuse to entertain a partner's suit for dissolution, although the grounds alleged may come within Section 44, Partnership Act."

I understand this means that unless it is expressly so stated in the Act, the contract would prevail and if the contract negatives the right, a party cannot invoke the aid of Section 44. In ordinary parlance, the expression "subject to the provisions of this Act" in my opinion mean that the contract, which is the basis for the rights of the partners, 'inter se' and which regulates such rights must yield to any right which is conferred by any of the provisions of the Act unless that right itself is made subject to a contract to the contrary. With great respect to the learned Judges in the Allahabad case, therefore, I am



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unable to accept the interpretation placed by them on the expression. The decision of the Judicial Committee in AIR 1917 PC 116 (B) was explained away by the learned Judges on the ground that the facts were different. But the principle enunciated by the Judicial Committee in my opinion is clear and unambiguous. It is to the effect that the right to seek dissolution through Court is not based on contract but is based on statute, and therefore, the contract cannot override the right conferred by the statute.

I am unable therefore with great deference to explain away the decision in AIR 1917 PC 116 (B) in the manner in which it was got over by the learned Judge of the Allahabad High Court. The Partnership Act, if any, has made the position clearer than under the Contract Act, Ss. 252 and 254 which were the sections which were considered by the Judicial Committee in AIR 1917 PC 116 (B). The expression "subject to the provisions of this Act" did not occur in Section 252, Contract Act. In my opinion therefore when the Legislature enacted Section 11 it must have been aware of the decision in AIR 1917 PC, 116 (B) and must have deliberately introduced the expression "subject to the provisions of the Act" with a view to make it clear that the right under Section 44 cannot be taken away by the contract between the partners. In my opinion, therefore, the contention urged on behalf of the appellants that the suit is not maintainable by reason of the existence of Clause 22 of the partnership deed cannot be accepted.



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32.In ***Banarsi Das Vs. Kanshi Ram*** reported in ***AIR 1963 SC 1165***, the Hon'ble Supreme Court considered the right of a partner to seek dissolution and while pronouncing upon the scope of the said right observed as follows:-

"12.....In a partnership at will, if one of the partners seeks its dissolution, what he wants is that the firm should be wound up, that he should be given his individual share in the assets of the firm (or may be that he should be discharged from any liability with respect to the business of the firm apart from what may be found to be due from him after taking accounts) and that the firm should no longer exist....."

33.Again in ***Nagappan Vs. M/s.Mc.Adams Chemicals Manufacturing Co.*** reported in ***1998 2 MLJ 435***, this Court had considered the scope of Sections 43 and 44 of the Transfer of Property Act and held as follows:-

"39. I have already referred to two decisions, namely, Kin Foo v. Whee Seik Cheng, 1925 Rang. 287 and in Sheonarain v. Shree Kripa Shankar in a case of partnership at will when the partners have gone to the Court bitterly fighting the question of continuing the partnership is almost



immaterial. When the will is expressed to dissolve even by one of the partners among number of partners and the will or intention is communicated to other partners under Section 43 of the Indian Partnership Act, the partnership business gets dissolved by operation in of law. When such a statutory right is conferred with reference to a partnership at will, the court cannot ignore the statutory right and assume or presume that the partnership is continuing.”

Of course, the said decision arose out of proceeding for appointment of receiver and however, the scope of Sections 43 and 44 of the Partnership Act and the right of a partner to seek dissolution were affirmed by the Court while deciding the question of appointment of a receiver.

34. Again in ***Kanagammal Vs. Theatre Abirami Partnership Concern, through its Managing Partnership, S.Nagalingam and Others*** reported in ***(2009) 8 MLJ 1187***, this Court had considered the effect of dissolution of a partnership at will. This Court, again considered Clause-10 of the partnership instrument provided that partner who wishes to retire from the firm should give three months notice and he would only be entitled to his share in the capital account and nothing more. While rejecting the same contention as has been raised by the learned counsel for the appellant



in the case on hand, this Court concluded that the provisions regarding to retirement, a partner cannot control the right of partner to seek dissolution.

While expressing this agreement with contention that the availability of the clause in a document for retirement need not be looked into for dissolution of the firm.

35.From the above, it is clear that right of a partner to seek dissolution of the firm is a statutory right and the same cannot be contracted out. It exists independent of any restriction imposed in the document of partnership.

36.Adverting to the judgments that are relied upon by Mr.R.Thiyagarajan, in the judgment in ***Guru Nanak Industries, Faridabad and Another Vs. Amar Singh (dead) through legal representatives*** reported in ***(2021) 14 SCC 672***, the Hon'ble Supreme Court had considered the distinction between retirement and dissolution. In fact, the Hon'ble Supreme Court has found that the partner who has said to have retired or resigned from the firm has clearly expressed his intention to dissolve the firm. The question as to the entitlement of a partner retirement partner who



seek dissolution was not gone into the said decision. However, the Hon'ble Supreme Court in the said judgment set out the distinction between retirement and dissolution as follows:-

"13. There is a clear distinction between "retirement of a partner" and "dissolution of a partnership firm". On retirement of the partner, the reconstituted firm continues and the retiring partner is to be paid his dues in terms of Section 37 of the Partnership Act. In case of dissolution, accounts have to be settled and distributed as per the mode prescribed in Section 48 of the Partnership Act. When the partners agree to dissolve a partnership, it is a case of dissolution and not retirement (see - Pamuru Vishnu Vinodh Reddy Vs. Chillakuru Chandrasekhara Reddy]. In the present case, there being only two partners, the partnership firm must have at least two partners. When there are only two partners and one has agreed to retire, then the retirement amounts to dissolution of the firm [see - Erach F.D.Mehta V. Minoo F.D.Mehta]."

The above observations of the Hon'ble Supreme Court in fact, militate against the contention of Mr.R.Thiagarajan.

37.In ***M.O.H.Udumal and Others Vs. M.O.H.Aslum*** reported in ***(1991) 1 SCC 412***, the Hon'ble Supreme Court had considered a partnership were the deed provided for continuance of the partnership in perpetuity and



it was not one at will. The Hon'ble Supreme Court considered the provisions of the French Code Civil particularly, that of Article 1865 to conclude that at once the partnership document provides that the partnership will continue in perpetuity, the same cannot be said to be a partnership at will. The Hon'ble Supreme Court has, on facts, found that the partnership deed in the said case provided for continuation of the partnership till there are two partners and therefore, it was not a partnership at will. Hence, the said judgment does not support of the contention of Mr.R.Thiagarajan.

38.The next judgment relied by Mr.R.Thiagarajan is that of a Single Judge of the Andhra Pradesh High Court in ***N.Satyanarayana Murthy and Others Vs. M.Venkata Bala Krishnamurthy*** reported in ***AIR 1989 AP 167***. In paragraph 20 of the said judgment, the learned Judge had examined the distinction that is available to the Court under Section 44(g) of the Partnership Act, while dissolution was sought for on just and equitable grounds. It will be useful for us to extract the said passage.

“20. In the light of the above discussion it must be held that the width of the words "just and equitable" in [Section 44\(g\) of the Act](#) is of wide import, with unfettered discretion on the



exercise of the power by the Court and it is incapable of precise definition. But itself is a limitation upon the court to exercise the discretion wisely taking into account not only the true intent and meaning of the articles of the partnership but also general interest of all the partners; the essential purpose for which the partnership has been formed and the detriment the partnership suffers from, while at the same time assuaging the rights of the aggrieved partners. The court would induct into all relevant consideration eschewing irrelevant or its inclination to dissolve the firm keeping in mind that it operates harshly annihilating the on going business on profitable lines, it must find whether it is no longer reasonably possible to carry the business according to true interest and meaning of the articles of the partnership. Each case furnishes its own peculiar facts calling for applicable or non-applicable of Clause (g). The court also must endeavor to see whether any alternative just relief without dissolving the firm could be granted to the plaintiff. On considering all the pros and cons if the court is of opinion that equity and justice demands dissolution, it is perfectly open to the Court to exercise the power under Section 44(g) of the Act. The cases dealt by the Privy Council, House of Lords and the Supreme Court are cases relate to the Company, but the meaning and purport is the same shedding illumination in its application to varied situations, though the partnership is founded on contract and not on status.”



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39.Mr.R.Thiagarajan would implore us to read the above passage as one suggesting that a partner cannot seek dissolution of a partnership firm. We are unable to read the said passage as suggested by Mr.R.Thiagarajan. It will be the discretion and each case will turn on its peculiar facts.

40.In the case on hand, the business of the partnership was to construct the godowns and let out the same. It has been proved beyond doubt that the 2nd defendant, who was maintaining the affairs of the firm has not been fair to the plaintiff. Even 2005, the 2nd plaintiff had expressly admitted that a sum of Rs.10,00,000/- was outstanding towards share of the plaintiff in the profits of the partnership business, apart from sum of Rs.20,00,000/- standing in the capital account. Though there is a clear undertaking to pay the same at the end of January, 2005, it is not even pleaded that the undertaking was honoured. We therefore, do not think that it will be the interest of the partners to continue the partnership.

41.In *Vishnu Chandra Vs. Chandrika Prasad Agarwal and Others*



reported in **(1983) 1 SCC 22**, the Hon'ble Supreme Court had considered the effect of retirement of the partner and a right of the partner to seek dissolution was not at all dealt with by the Hon'ble Supreme Court. Same is the case in **Abbashbai K.Golwala Vs. R.G.Shah and Others** reported in **AIR 1988 Bom 187**. In **Devi Textiles and others Vs. S.Suganthi** reported in **AIR 2000 Mad 62** what was considered was the prayer for appointment of receiver pending a suit for dissolution, the right of a partner to seek dissolution was not at all considered. Hence, we do not see that the judgment is the relevant for our purpose.

42. Similarly, in **Hindustan Life Care, rep. by its Partner Vs. Mr.N.Ramesh** reported in **2008 (5) CTC 481**, the Single Judge of this Court had considered the power of an Arbitrator to grant dissolution under Section 44 of the Partnership Act. The learned Judge also did not consider the question of dissolution. We have already concluded that the right of a partner to seek dissolution is a statutory right and the same cannot be contracted out. Once it is found that a partnership is a t will, it was open to a partner to seek dissolution and Section 43 invests a statutory right in a partner to seek dissolution. The Trial Court has found that the plaintiff was



excluded from the business of the firm. It is also evident from Exs.A11, A13 (Series) and Ex.A22 that the plaintiff was not paid her due share in the partnership business. We therefore, have no hesitation in coming to the conclusion that there was exclusion of the plaintiff from the business and there was mismanagement also.

43.We therefore, affirm the findings of the Trial court to the effect that the plaintiff is entitled to dissolution of the firm. We therefore, do not find any reason to interfere with the conclusions of the Trial Judge. This First Appeal therefore, stands **dismissed**, confirming the judgment and decree of the Trial Court with costs, which we quantify at Rs.1,00,000/-. Consequently, connected miscellaneous petitions are closed.

(R.S.M., J.) (N.S., J.)
12.01.2024

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A.S.No.225 of 2



R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

KKN

To:-

The V-Additional District Court,
Coimbatore.

A.S.No.225 of 2017
and
C.M.P.Nos.934 of 2017 & 18972 of 2023