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[MANU/DE/0350/1991](#)

**Equivalent Citation:** AIR1992Delhi274, I(1992)BC21

**IN THE HIGH COURT OF DELHI**

Suit No. 1485 of 1983

Decided On: 28.11.1991

Appellants: **Oriental Bank of Commerce, Connaught Place**

**Vs.**

Respondent: **S.R. Kishore & Co. and Ors.**

**Hon'ble Judges:**

Mohd. Shamim, J.

**Counsels:**

A.D. Mahindroo, Anil Kumar and Anita Sahni, Advs.

**Subject: Commercial**

**Catch Words**

**Mentioned IN**

**Acts/Rules/Orders:**

Partnership Act, 1932 - Section 6

**Cases Referred:**

Rattan Lal and Anr. v. Commercial and Industual Bank Ltd., AIR 1965 AP 349; Parasuraman and Ors. v. Purushothaman & Co. and Ors., AIR 1977 Kerala 133; Abdul Gani (Minor) v. V.N. Paryjaswami Chetty and Co., AIR 1960 Madras 495; S.N. Soni v. Tqffiq Farooki and Ors., 1976 AIR (Del) 63

**Case Note:**

**Commercial – recovery - Section 6 of Partnership Act, 1932 – suit for recovery of Rs. 100356.16 – defendant No. 4 represented himself to be partner of defendant No. 1 by his conduct and through documents in writing – person who by words spoken, written or by his conduct represents himself or allows others to represent him as partner in firm is liable as partner of that firm to any one who has on basis of such representation given credit to firm - plaintiff-bank placed on record statement of account showing Rs. 100356.16 including interest was due to plaintiff from defendants - defendant liable to plaintiff on basis of principle of holding out - held, plaintiff entitled to recovery of Rs. 100356.16.**

**JUDGMENT**

**Mohd. Shamim, J.**

(1) This is a suit for recovery of a sum of Rs. 1,00,356.16 Paise together with pendente lite and future interest.

(2) The plaintiff in the present case is a nationalised bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act (40) of 1980 with its head office at Harsha Bhavan, 'E' Block, Connaught Place, New Delhi. It has got one of its branches at Block 'A', 30-33, Connaught Place, New Delhi. Shri S. C. Kapoor is the Senior Manager and one of the principal officers of the said branch. He is as such fully conversant with the facts and circumstances of this case. He also holds a power of attorney on behalf of the plaintiff bank and as such is competent to sign and verify the plaint and to institute the present suit. He has also been authorised vide resolution No. F. 17(7), dated 30-7-1983 to institute the instant suit. The defendant No. 1 on the other hand is a partnership firm, it deals in the wholesale and retail business of silk and cotton Sarees of different makes with its principal place of business at 153, Katra Nawab, Chandni Chowk, Delhi. The defendants No. 2, 3 and 4 are the partners of defendant No. 1. The defendants approached the plaintiff bank somewhere in the month of April, 1978 for grant of loan facilities, i.e., Cash Credit facility to the tune of Rs. 50,000 and Clean Demand Draft facility to the extent of Rs. 10,000. They in connection therewith offered to hypothecate their stock of terene, cotton and raw silk, Sarees of all varieties lying in the shop. They also pledged cumulative deposit receipts (Rs. 10,000), L.I.C. policies of the face value of Rs. 37,500 and agreed to execute the equitable mortgage in respect of Plot No. SJ-33, situate at Shastri Nagar, Ghaziabad admeasuring 281 sq. yds. standing in the name of defendant No. 2 as security for due payment of the said loan Along with interest. The defendants also offered personal guarantee of Shri L. N. Gupta. The plaintiff after due consideration of the said proposal granted a Cash Credit facility to the tune of Rs. 50,000 and a Clean Demand Draft facility to the extent of Rs. 10,000 to the defendants against the hypothecation of all the above said goods, pledge of cumulative deposit receipt for Rs. 10,000 as collateral security and assignment of L.I.C. policies of the face value of Rs. 37,500 vide sanction order dated 1-5-1978. The said Cash Credit facility was to carry an interest at the rate of 15 per cent per annum. Besides the above in pursuance of and in consideration of the above loan facilities the defendants executed a Promissory Note dated 2nd May, 1978 in the sum of Rs. 50,900 carrying interest at the rate of 15 per cent per annum with quarterly rests. The defendant also executed a letter of waived dated 2nd May, 1978 in favor of the plaintiff Bank. They also executed Cash Credit agreement dated 2nd May, 1978 in favor of the plaintiff and a deed of hypothecation dated 2nd May, 1978 whereby they hypothecated their entire steel lying at 153, First Floor, Katra Nawab, Chandni Chowk, Delhi. The defendants in consideration of the above said loan facilities also executed an equitable mortgage deed in respect of Plot No. SJ-33, measuring 2.81 sq. yds. situated at Shastri Nagar, Ghaziabad. The defendants had been operating the said account, i.e., depositing in and withdrawing from the said account different amounts as and where required by them. The plaintiff Bank was subsequently approached by the defendants with a request, i.e., a letter dated 12th September, 1978 to enhance the Cash Credit Limit from Rs. 50,000 to Rs. 80,000 with immediate effect for a temporary period of three months. The plaintiff bank after considering the said request enhanced the Cash Credit facility to Rs. 70,000 vide its letter dated 25th September, 1978 for a period of two months only. The defendants failed to bring back the Cash Credit limit of Rs. 50,000 by 31st December, 1978. A sum of Rs. 71,963.37P. was due to the plaintiff bank from the defendants on 1st May, 1979. The defendants failed to claim the same as a corollary whereof they requested the plaintiff bank to dispose of the Plot alluded to above which was mortgaged with the plaintiff bank and adjust the sale proceeds thereof in their loan Account. Consequently, the said plot was disposed of and the sale proceeds adjusted towards the amount due from them. The plaintiff also surrendered the policies assigned to them and the amount recovered there from was adjusted in the loan account. As per the statement of account maintained by the plaintiff bank a sum of Rs. 1,00,365.16 P. was due to the plaintiff including interest at the agreed rate till the institution of the suit. The defendants acknowledged their liability to pay the amounts due from them on different dates, i.e., vide letters dated 2-7-1979, 30-6-1979, 2-7-'80, 30-6-1-1980 and 31-12-1981. The defendants are jointly and severally liable to pay the said amount which they have failed to pay despite service of a legal notice of demand dated 22-1-1982 and 17-12-1982. Hence, arose the necessity for the institution of the present suit.

(3) The defendants No. 1 to 3 did not put in any contest and the suit proceeded ex-parte against them.

(4) The defendant No. 4 only resisted the case of the plaintiff inter-alia on the following grounds: that the suit is barred by time in as much as the loan was advanced in the year 1978. Hence, it cannot be recovered through a suit in the year 1983. The defendant No. 4 never acknowledged any liability to clear the said loan. The suit is bad for non-joinder of Shri L. N. Gupta who stood as guarantor for the clearance of the impugned loan. It is wrong and incorrect that Shri S. C. Kapur is the Senior Manager and principal officer of the Bank and as such is competent to sign and verify the plaint and to bring forward the present suit. It is false and preposterous that the defendant No. 4 is a partner of defendant No. 1. The partnership, if any, between the defendant No. 4 and the other defendants is sham and bogus. The fact is that the premises bearing No. 153, First Floor, Katra Nawab, Chandni Chowk, Delhi was in possession and occupation of M/s. B. L. Ghansi Ram. They let out the said accommodation to the defendant No. 4. Defendant No. 4 was not authorised to sublet, assign or part with possession of the said premises to anyone. Consequently, defendant No. 4 entered into a sham and bogus partnership with defendants No. 2 & 3 in order to sublet the above said premises to the defendant No. 1, 2 and 3 at a monthly rent of Rs. 250. In fact, the defendant No. 4 was never a partner of defendant No. 1, i.e., M/s. S. R. Kishore & Co. Defendant No. 4 never represented himself to be a partner. It is also innocent and wrong that the defendant No. 4 ever approached the plaintiff for the grant of loan facilities. It is also wrong and false that the defendant No. 4 hypothecated any of the goods or property belonging to him with the plaintiff. Defendant No. 2 & 3, however, got few blank documents signed from defendant No. 4 by misrepresentation and by playing fraud upon him. They also in connection therewith got signed from him a few blank bank documents. Since relations in between the defendant No. 4 and the defendant Nos. 2 & 3 were cordial he signed the said documents in good faith. The defendant No. 4 never confirmed and acknowledged his liability to pay any amount to the plaintiff. The suit is false, frivolous, and it is liable to be dismissed. The following issues were framed:

1. Whether the suit has been instituted and the plaint signed and verified by a duly authorised person ?
2. Whether the claim in suit or any part of it is barred by time ?
3. Whether the suit is bad for non-joinder of Shri L. N. Gupta. who had earlier offered personal guarantee ?
4. Whether the defendant No. 4 was never a partner in M/s. S. R. Kishore & Co, and in fact it was a sham agreement ? If so, to what effect ?
5. Whether defendant No. 4 is not liable for the claim in suit?
6. To what amount is the plaintiff entitled towards the claim in suit on account of principal?
7. Whether the plaintiff is entitled to claim interest at the rate of 20 per cent per annum as claimed ?
8. Relief.

(5) Issue No. 1 A perusal of the plaint reveals that it has been signed and verified by one Shri S. C. Kapur who has instituted the present suit. Shri S. C. Kapur was the Senior Manager and principal Officer of the plaintiff Bank. The plaintiff in support of their case that he is authorised and competent to bring forward the present suit have placed on record a copy of the resolution by the Board of Directors of the plaintiff bank dated 30-7-83 vide Ex. P/1. A perusal of the same reveals

that they authorised the above named Shri S. C. Kapur, Sr. Manager of plaintiff Bank's branch at 'A' Block, Connaught Place, New Delhi and Shri S. K. Lakhina, Chief Manager to institute the suit against M/s. S. R. Kishore & Co. for recovery of the amounts due to the plaintiff Bank Along with interest. Besides the above, the plaintiff have also placed on record copy of the power of attorney vide Ex. P/15 executed by the Chairman/Director of the plaintiff bank in favor of Shri S.C.Kaplur, PW-3. To the same effect is statement of Mr. S.C. Kapur. Furthermore, Shri S.C.Kapur was the Senior Manager, Connaught Place Branch of the plaintiff Bank during the year 1982-83 when the instant suit was filed. Hence even otherwise.

Being the Senior Manager of the plaintiff he was Principal officer and was competent to bring forward the present suit.

(6) Counsel for the defendants did not argue anything on this point. In view of the above it can be safely concluded that the instant suit has been instituted by a competent person. Issue No. 1 is decided in favor of the plaintiff accordingly.

(7) Issue NO. 3 It is true that defendant No. 4 raised a plea in his written statement to the effect that the suit is bad for non-joinder of Shri L. N. Gupta who offered his personal guarantee for the repayment of the loan amount vide para 2 of the written state- ment filed by defendant No. 4 (preliminary objections). However, the counsel for the defendant presumably Realizing that it was a very flimsy ground did not argue on this point. It is manifest from the above that even as per the allegations in the written statement in Para 2 Shri L. N. Gupta is reported to have offered his personal guarantee only. There is no averment in the written statement that he stood as guarantor or any document was executed to that effect. Consequently, in the absence of any document to that effect, I feel that he was neither a necessary nor even a proper party and the suit is not bad for non-joinder of parties. Issue No. 3 is disposed of accordingly.

(8) Issue NOs. 2, 4 & 5The sheet anchor of the defense version as is manifest from the averment in the written statement is that defendant No. 4 was never a partner of M/s. S. R. Kishore & Co. and the impugned partnership deed Ex. P-14 is a bogus and sham agreement.

(9) Learned Counsel for the defendant No. 4 Mr. Anil Kumar has vehemently contended that the fact is that defendant No. 4 was never a partner in M/s. S. R. Kishore & Co., i.e" defendant No. 1. He simply let out First floor, at 153, Katra Nawab, Chandni Chowk, Delhi to defendant No. 1 at a monthly rent of Rs. 250 whose partners were defendants No. 2 & 3 who carried on business under the name and style of M/s S. R. Kishore & Co. The defendant No. 4 neither took part in any partnership business nor shared any profits and losses in the said business. A firm known as M/s. B. L. Ghasi Ram was in possession of and occupier of premises bearing No. 153, First Floor, Katra Nawab, Chandni Chowk. Delhi. The said premises was let out by the said firm to defendant No. 4. Defendant No. 4 was not authorised to sublet, assign or part with its possession to any one. Since the said premises was lying vacant in as much as defendant No. 4 was not carrying on any business over there he sublet the same to the defendant Nos. 1, 2 and 3 and a sham and bogus partnership agreement war entered into between the defendants No. 2 and 3 on the one hand and defendant No. 4 on the other in order to conceal the said factum of sub-letting.

(10) Learned Counsel for the plaintiff Mr. A. D. Mahindroo has on the other hand argued with great zeal and fervour that the defendant No. 4 was very much a partner of defendant No. 1 Along with defendants No. 2 & 3. The impugned partnership deed, i.e., Ex. P/14 is a valid, legal and genuine document. Defendant No. 4 entered into a partnership agreement with defendants! No. 2 & 3 with his open eyes. He is as such very much bound by the same and cannot wriggle out of the same by taking up false pleas.

(11) I have heard the learned counsel for both the parties at sufficient length on this point since this is the most polemical issue in between the parties whereon hinges the entire fate of the present suit, and have given my anxious thoughts thereto. Section 6 of the partnership Act deals

with the mode of determination of existence of partnership. It is in the following words : "6. Mode of determining existence of partnership :-In determining whether a group of persons is to is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relations between the parties, as shown by all relevant facts taken together.

ExplanationN1.-. ....

ExplanationN2.-....."

It is abundantly clear from the relevant provisions of law edited above that in order to ascertain as to whether a group of persons is or is not a firm and whether a person is or is not a partner of the said firm regard shall be had to the real relations and intention of the parties as shown by relevant facts taken together. Thus the fact as to whether a particular group of persons is or is not a partnership firm and whether a person is or is not a partner of the said firm is to be determined on the basis of the totality of the circumstances. Isolated cases and incidents are of no help to determine the relationship in between the parties. The Court should examine all the incidents and the relations between the parties as shown by the written agreements, verbal agreements together with surrounding circumstances at the time when the contract was entered into and the subsequent conduct and circumstances, if any, which throw light on the nature of their relationship. The plaintiff in order to substantiate their assertion have placed on record the partnership deed, i.e., Ex. P-14. It bears the signatures of defendant No. 4, i.e. Surender Kumar. A close scrutiny of the said partnership deed reveals that the name of the defendant No. 4 appears at Seriall No. 2 of the said partnership deed. Defendant No. 4 has admitted his signatures thereon. He has not denied the same. Besides the above partnership deed the plaintiff have also placed on record Quite a good number of documents which reveal beyond any shadow of doubt that partnership farm was very much alive, genuine and real and the defendants carried on business in the name and style of M/s. S.K. Kishore & Co., 153, Katra Nawab, Chandni Chowk, Delhi Defendant No. 4 actively participated in each and every transaction of the business of the said arm. In this connection he used lo. sign. all the relevant papers and used to participate in ail the relevant trunsaactions. The defendant No. 4 has also entered the witness box. He has admitted with commendable fairness on his part that Ex. P-14, i.e., partnership agreement was executed with his consent Besides the above there are other documents on record which in unequivocal terms show and prove that impugned partnership agreement v.'us a genuine one and not a bogus and sham one. Ex. P-7 is an application whereby the defendants applied to the plaintiff bank to grant them the facilities to open a Cash Credit Account in the name of the firm. It is dated 2-5-1978. It bears the signatures of the defendant No. 4. Ex. P-5 is an agreement for Cash Credit entered into in between the plaintiff bank and the defendants including the defendant No. 4. Exhibit P-6 is hypothecation deed whereby the defendants including defendant No. 4 agreed to hypothecate all the goods lying at the business premises of the firm i.e., 153, Katra Nawab, Chandni Chowk, Delhi in favor of the plaintiff Bank. The said document also very much bears the signatures of defendant No. 4. Ex. P-2 is a Promissory Note in the sum of Rs. 50,000 executed by the defendants in favor of the plaintiff Bank. The signatures of the defendant No. 4 very much appear on the said document. Ex. P-3 is a letter written by all the defendants to the plaintiff Bank where through they conveyed that they were sending therewith a demand promissory Note for Rs. 50,000. Defendant No. 4 also signed the same Ex. P-4 is again a letter from the defendants to the plaintiff whereby they agreed not to take any advantage of any default in presentment for payment of the said promissory note. It is also under the signatures of the defendant No. 4. Ex. P. 8 is a letter dated 1-5-1978 from the plaintiff Bank to the defendant No. 1 where through they conveyed their sanction to grant the facility of the Cash Credit to the tune of Rs. 50,000.

(12) Furthermore, if the defendant No. 4 in fact was not a partner and Ex. P. 14 was a sham and bogus transaction in that eventuality the defendant No. 4 should have informed the Bank to that effect. Surprisingly enough he kept quiet all through and went on signing one after the other documents as alluded to above. Hence, he would be deemed to have acquiesced in and agreed to the above transactions. Subsequent conduct of the Defendant No. 4 belies his assertions. He never

paused for a moment to reflect and think over his conduct and to refute any of his actions by a letter or a notice to the plaintiff bank. In the circumstances stated above the inevitable conclusion is that the partnership agreement is a genuine and real document and the same was acted upon and is not a sham and bogus transaction. Issue No. 4 is decided accordingly.

(13) This brings me to issue No. 2. Learned counsel for the defendant No. 4 Mr. Anil Kumar has urged that the present suit is barred by time in as much as the same was filed on 22nd October, 1983 whereas the impugned loan was taken in the year 1978 as is manifest from the letter dated 1-5-1978 vide Ex. P. 8 whereby the sanction was granted. Hence, the present suit was brought forward 5 years after the grant of the loan. The next limb of the argument advanced by the learned counsel for the defendant No. 4 is that the acknowledgements dated 2-7-79, 2-7-90, and 31-12-81 Ex. PIG-12 are not in the hand of the defendant No. 4 They do not bear his signatures. Hence, they do not lead as anywhere and the said documents do not come to the rescue of the plaintiff bank. According to the learned counsel the suit is thus liable to be dismissed being barred by time.

(14) Learned counsel for the plaintiff Mr. Mahindroo has on the other hand argued that the last acknowledgement is dated 31-12-1981. It bears the signatures of one of the partners of firm, i.e., Shri Sham Kishore Gupta who is defendant No. 3 in the present suit. He signed the said acknowledgement for and on behalf of the firm. Thus the period of limitation is to be computed from the said date, i.e., 31-12-1981 and if so computed the suit is within time as the same was filed on 22-10-83, i.e., within 3 years. The question in view of the above which comes to the tip of the tongue, in order to resolve the present controversy, is as to whether Shri Sham Kishore one of the defendants could bind the other partners by the impugned acknowledgement dated 31-12-1981 ? Since we are concerned with the construction of the implied authority of a partner to bind his other colleagues it would be just and proper to examine the relevant provisions of law before embarking upon a detailed discussion of law and evidence. Section 18 of the Partnership Act provides, "Subject to the provisions of the said Act a partner is an agent of the firm for the purposes of the business of the firm". Section 19 of the Partnership Act deals with the implied authority of a partner as an agent of the firm. It runs as under :

(15) "SUBJECT to the provisions of Section 22, the Act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm."

(16) The authority of a partner to bind the firm conferred by this section is called his "implied authority".

(2) In the absence of any usage, or custom or trade to the contrary, the implied authority of a partner does not empower him to-

- (A) submit a dispute relating to the business of the firm to arbitration,
- (B) open a banking account on behalf of the firm in his own name.
- (C) compromise or relinquish any claim or portion of a claim by the firm,
- (D) withdraw a suit or proceeding filed on behalf of the firm,
- (E) admit any liability in a suit or proceeding against the firm,
- (F) acquire immovable property on behalf of the firm,
- (G) transfer immovable property belonging to the firm. or
- (H) enter into partnership on behalf of the firm.

(17) Section 22 deals with the mode of doing an act to bind a firm. It envisage", "In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm." Section 23 deals with the effects of admissions by a partner. It runs as under :

"An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business."

(18) Section 25 then provides liability of a partner for acts of the firm "Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner."

(19) It is fully manifest from the relevant provisions of the law cited above that a partner is an agent of the firm and an act of a partner which is done to carry on the usual business of the kind carried on by the firm binds the firm. In order to bind a firm an act or instrument done or executed by a partner or other persons on behalf of the firm should have been done in the firm name or in any other manner expressing or implying an intention to bind the firm.

(20) With the above background let us now see as to whether the defendant No 4 is bound by the acknowledgement made by his other partner vide Ex. P. 10, 11 and 12, i.e., dated 2-7-79, 2-7-80 and 31-12 1931 Admittedly, the partnership in question carried on the wholesale and the retail business of silk and cotton sarees of different makes. They borrowed a sum of Rs. 50,000 from the plaintiff bank by opening a Cash Credit Account and Clean Demand Draft limit of Rs. 10,000. The said amounts were taken in order to carry on the business of the firm vide Ex. P. 8 and P.5 and all the documents which were executed in connection therewith bear the signatures of the defendants. The plaintiff subsequently, raised the said limit from Rs. 50,000 to Rs. 70,000 as per the request of the defendants to raise cash credit limit from Rs. 50,000 vide Ex. P. 9. Thus the impugned loans were raised in order to run the business of the firm more effectively and properly A business can not be carried on and done effectively without sufficient funds at the disposal and command of the firm Hence, I feel to borrow money and to repay the said amounts is one of the implied authorities of a partner as agent of the firm. A close scrutiny of the acknowledgement dated 31-12-1981 shows that Shri Sham Kishore acknowledged the debt under his signatures for and on behalf of the firm, i.e., S. R. Kishore & Co. He never acknowledged the same in his individual capacity. He did so as an agent and representative of the firm. Thus all the defendants are very much bound by the said acknowledgement and it is sufficient enough to extend the period of limitation. Every partner, I feel has got full control over the partnership funds and is competent to deal with the partnership property in connection with the business of the firm and has full authority to make contracts incur liabilities and manage the whole business of the firm. Every partner is an agent of the firm in every matter connected with the partnership business. In a business concern where a partner has a general authority to raise loans then it is also within his implied authority to keep alive the said debt. Admittedly, in the instant case the loans were raised in order to carry out the business of the firm by all the partners. Hence, one of the partners of the said firm, I feel, was competent enough to acknowledge the said debt in order to keep it alive for the purposes of repayments. Shri Sham Kishore, defendant No. 3 acknowledged the said debt not in his individual capacity but as a partner for and on behalf of the firm. Now it does not lie in the mouth of the defendant No. 4 to say to the contrary vide Ex. P. 22.

(21) I am supported in my above view by the observations of their Lordships of Privy Council, "It is pertinent to note that a partner is a part owner and not merely an agent or servant of the firm. His powers are wider than those of a mere manager of a business, who acts entirely for another." Bank of Bengal Vs. Fagan 7 Moo Pc 6). 74(1).

(22) Learned counsel for the defendants during the course of his arguments referred to certain authorities. I have very carefully gone through the said authorities They are not applicable to the facts and circumstances of the present case. I propose to deal with the same below :

(1) In Rattan Lal & Anr. Vs. Commercial and Industrial Bank Ltd. [MANU/AP/0035/1965](#) it was observed that what is necessary for a creditor to prove is that the debtor who acknowledges the debt or makes the payment was the agent of the other co-debtors, duly authorised by them to acknowledge the liability or to make payment on account of the debt and acknowledge demand in writing signed by him.

(2) In Parasuraman & Others Vs. Purushothaman & Co. & Others Air 1977 Ker 133(3) it was held that the joint tenants or tenants in common under section 19 of The Hindu Succession Act as such have no implied authority in the absence of a contract to the contrary to act for all. A co-owner, as such, has no authority to enlarge the period of limitation as against the other co-owners by any acknowledgement of liability.

(3) In Abdul Gani (minor) Vs. M/s. v. N. Paryiaswami Chetty & Co. [MANU/TN/0222/1960](#) relates to a case in which an acknowledgement was made by a surviving partner of a partnership debt after dissection of the firm on account of the death of a partner. It was held that such an acknowledgement does not bind the minor legal representatives of the deceased partner. Once the partnership is dissolved even the theory of implied agency disappears.

(4) In S. N. Soni Vs. Toffiq Farooki & Others [MANU/DE/0079/1975](#) the Court opened "all the partners of the firm can ratify the act of the partner which has been done by him in excess of the implied authority or without any authority provided the act is such that it can be legally done with the authority of all the partners previously given and that the partners ratify the act with full knowledge of all the facts.

(5) M/s. Mansa Ram & Sons (Bankers) Dehradun & On. Vs. M/s. Janki Dass Om Parkash, New Delhi & Ors. (6). This authority instead of helping defendants helps the plaintiff. It was laid down therein, "Implied authority to bind the firm might include the power to acknowledge the liability in the usual course in respect of a deposit accepted in banking transactions."

ISSUE No. 2 is decided in favor of the plaintiff and against the defendants.

(23) In the circumstances stated above I am of the view that the defendant No. 4 is liable to pay the amount claimed by the plaintiff. Assuming argued even if it is held for a moment that the defendant No. 4 is not a partner of the defendant No. 1 even then he is liable to pay the amount claimed on the basis of principle of holding out as contained in Section 28 of the Partnership Act.

(24) It is in the following words :

"28. Holding out-(1) Any one who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to any one who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

(2) Where after a partner's death the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death".

(25) It is crystal clear from the relevant provisions of law cited above that any person who by his words spoken, written or by his conduct represents himself or allows others to represent him as

partner in a firm is liable as partner of that firm, to any one who has on the basis of any such representation given credit to the firm. Admittedly, the defendant No. 4 in the present case represented himself to be a partner by his conduct and through documents in writing vide Ex. P. 14 partnership deed and P. 2 to P. 8. The plaintiff bank lent a sum of Rs. 60,000 to all the defendants believing them to be the partners of the defendant No. 1. Furthermore, it is in the statement of Shri M. L. Sarin that he saw the defendant No. 4 functioning as partner of the defendant No. 1. He has reported to have seen him at the business premises 4-5 times. He was always seen working at the business premises. There is absolutely nothing to rebut the above testimony when it is read along with the innumerable documents placed on record. Thus the defendant No. 4 represented himself not only through the documents but also through his acts and continued conduct as if he was a partner of the defendant No. 1. Hence, now it is, too, late in the day for him to deny that this is not so. In any case he is responsible for bringing about a particular situation hence he cannot now turn around and say that he is not bound by the said situation. I thus conclude that even otherwise, the defendant No. 4 is liable to the plaintiff on the basis of principle of holding out. Issue No. 5 is decided in favor of the plaintiff and against the defendants.

(26) Issues No. 6, 7 & 8, The plaintiff have placed on record a statement of account Annexure 'A' vide Ex. P. 13 which shows that a sum of Rs. 1,00,356.16 P. including interest at the rate of 15 per cent per annum (vide Ex. P. 2, P. 5 and P. 8) was due to the plaintiff from the defendants, on the date of the presentation of the present suit. In the circumstances stated above, I am of the view that the plaintiffs are entitled to the same from the defendants.

(27) Plaintiffs further claimed interest at the rate of 20 per cent per annum for the period the suit remained pending and till the realisation of the above amount. Keeping in view the facts and circumstances of the present case, I think it is just and proper to award pendente lite and future interest to the plaintiff at the rate of 18 per cent per annum. Counsel for the defendant No. 4 did not argue anything on these issues. The plaintiff shall be thus entitled to pendente lite and future interest at the rate of 18 per cent per annum.

(28) The suit for recovery of a sum of Rs. 1,00,356.16 P. is hereby decreed with costs against the defendants. The plaintiffs shall be entitled to pendente lite and future interest at the rate of 18 per cent per annum.

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