

*** Discussed

***** Referred

Union of India and Anr. v. Delhi Cloth and General Mills Co. Ltd.

Bhor Industries Ltd., Bombay v. Collector of Central Excise, Bombay

South Bihar Sugar Mills Ltd. etc. v. Union of India and Ors.

Union Carbide India Ltd. v. Union of India

Indian Cable Co. Ltd., Calcutta v. Collector of Central Excise, Calcutta and Ors.

Quality Steel Tubes (P) Ltd. v. Collector of Central Excise, U.P.

Name Tulaman Manufactures Pvt. Ltd., Hyderabad v. Collector of Central Excise, Hyderabad

ORDER

1. Substitution allowed.

2. The decision impugned herein is a reversing judgment of the Madras High Court in Appeal No. 180/76, dated April 3, 1980. This appeal by special leave realties to an action which took place between the filing of the suit by the respondent for dissolution and rendition of accounts by the appellent.

3. The admitted position is that one N.A.P. Alagiri Raja, son of Pappu Raja, and Raja Ramalinga Raja, two brothers and the appellent, K.P.A. Vellayappa Nadar a stranger, since dead, admittedly, were partners of "N.A. Pappuraja Sons" started way back in 1943. The partnership agreement was reduced to writing for the first time under Ex. A-2, dated March 31, 1954. Another admitted fact is that on February 15, 1970, another partnership was constituted under Ex. B-1 consisting of the first two partners and their sons, together four, with the same partnership business in the same place and with the same registration number of the partnership firm with the Registrar of the Firms. Raja Ramalinga Raja died on May 31, 1972. Thereon, the respondent laid the suit for dissolution of the partnership firm and for rendition of accounts by the appellent on April 26, 1973. The case of the appellent is that due to his old age, viz., 70 years as on February 14, 1970, there was mutual agreement by which the appellent had stepped out from the partnership business leaving all assets and liabilities with the two partners. His right to share in the goodwill was mutually agreed to the set-off against liabilities falling within his share. The partnership under Ex.A-2 mutually stood dissolved on February 14, 1970 settling the accounts between the partners. The new partnership came into existence on February 15, 1970 under Ex. B-1. Therefore, there is no liability on his part to render any accounts or to bear any losses incurred by the new partnership firm under Ex. B-1 to which he was not a member on and from February 15, 1970. The trial Court recorded the findings as under:

The question relating to the goodwill and Vilasam and fixed assets of the business of "Pappuraja and Sons" were discussed. In the end, in view of all these facts, it was agreed (1) that the first plaintiff and his brother should take over the business as a running concern; and (2) that the amounts shown as debits against the defendant should be considered to have been wiped out as having been set out against this defendant's share in the goodwill and in the share of profits really made for the above 2 years. It was on this understanding that the firm was dissolved on 14.2.1970 by consent of all parties concerned. The first plaintiff and his brother and others from their family started their business in the same vilasam with the same R.C. No. and in the

same premises from 15.2.1970 in pursuance of the above conclusion. Thus, the firm was dissolved on 14.2.1970 itself with no need whatsoever for taking any account in respect of the dissolved firm in the above circumstances.

4. On the basis of this finding the Trial Court came to the conclusion that the partnership firm under Ex. A-2 stood dissolved with the settlement of accounts. The appellant has nothing to do with the business run by the respondent-plaintiffs after Ex.B-1 dated February 15, 1970 was entered into among the respondent-plaintiff and the deceased Raja Ramalinga Raja and other. The trial Court also found thus:

No document was filed to show whether the defendant along with the plaintiffs signed in the subsequent returns. On an analysis of the entire evidence, it is clear that the old firm was dissolved on 14.2.1970 with the consent of all the partners and the plaintiffs have started a new partnership as mentioned in Ex.B-1 and they are continuing the same business of the old firm.

5. However, no documents were filed to show whether the defendant along with the plaintiffs signed in the subsequent returns. On the analysis of the entire evidence, it is clear that the old firm was dissolved on 14.2.1970 with mutual consent of all the partners and the plaintiffs had started a new partnership firm as mentioned in Ex. B-1 and they continued the same business of the old firm. The High Court has proceeded on the premise that though the old firm was dissolved, thereby, the trading activity came to a stop and the new firm started doing business, may be of the same nature, it could not be concluded that the old firm automatically stood dissolved unless there was a dissolution and settlement of accounts. In this case, since it was a profit making business, it was unlikely that the appellant would have agreed for the dissolution. In support thereof, the High Court placed reliance on the income-tax returns, Ex. A-4 to A-6 for the years 1966 to 1970-71. On that basis, it was held that the firm stood dissolved with the demise of one of the partners, namely, Raja Ramalinga Raja on May 31, 1972; there was no settlement of accounts; therefore, the appellant was liable to render account for the profits and losses after the settlement of accounts and to bear the necessary losses proportionate to his share in the partnership firm.

6. The question is: whether the view taken by the High Court is correct in law. We have gone through the evidence to find whether the view taken by the High Court could be supported. It is seen that admittedly Ex.A-2, partnership firm consists of the aforesaid two persons and the appellant. On February 15, 1970, another partnership firm under Ex.B-1 was constituted consisting of the two partners and their sons. The new firm started doing the same business in the same premises under the same registration number of the partnership with the Registrar of the Firms. It is true, as rightly pointed out by the High Court, that in law, mere cessation of the trading activity does not automatically result in dissolution of a partnership firm leaving behind no rights and the liabilities unless it was dissolved and accounts settled. It needs no reiteration. In this case it is seen that the respondents have under Ex.B-1 constituted new partnership firm and continued the same business which the first two partners and the appellant had carried on. It is the specific case, as accepted by the trial Court, and in the circumstances we think it quite reasonable to reach the conclusion that the appellant due to his old age, has stepped out from the business, foregoing his right to share in the goodwill of the firm and the partners had agreed to take over the old partnership in consideration of setting off of losses, if any, from the business the amount payable towards the share of the appellant in the goodwill of the firm etc. Consequently, the partnership firm mutually stood dissolved on February 14, 1970. Consequently, the new partnership had come into existence under Ex.B-1 on February 14, 1970 to which admittedly the appellant was not a partner; nor they claimed that he was being paid any profits out of the business carried on thereafter. Under those circumstances, the High Court was not right in taking into consideration of Ex.A-4 to A-10, the returns and other documents in concluding that he was a partner in the partnership subsequent to the accounting year 1970-71. The only relevant evidence that could be taken into account is that if any returns were signed or acknowledged by the appellant subsequent to February 1970, namely, accounting years 1971-72, 1972-73 that would be relevant evidence. It

is not the case that any acknowledgement of his liabilities as a partner of the firm is shown. Under those circumstances, the High Court was not right in concluding that the old firm constituted under Ex.A-2 was subsisting as on the date of the death of Raja Ramalinga Raja on February 29, 1972 and consequently, the appellant is liable to render account for the same.

7. The appeal is accordingly allowed. The judgment and decree of High Court stand set aside and that of the trial Court stand confirmed, but in the circumstances, without costs.

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