IN THE COURT OF MS. SHIVALI BANSAL
DISTRICT JUDGE-03 (NORTH)
ROHINI COURTS, DELHI

CNR No. DLNT010048222020
CS No. 218/20

Surrender Kumar Singal
Vs. M/s. Mercury Rubber Mills

ORDER

08.11.2024

1. Vide this order, I shall decide upon the maintainability of the present suit before this court.

2. Ld. Counsel for defendant has argued that the present suit is not maintainable before this court as the same is based upon partnership agreement and as per Section 2 (c) (xv) of the Commercial Courts Act, 2015, any dispute arsing out of partnership agreement falls withing the definition of commercial dispute and therefore, this court does not have the subject matter jurisdiction. It is argued that the plaint ought to be returned for presentation before the court of competent authority i.e. the Commercial Courts.

3. *Per contra*, Ld. Counsel for the plaintiff has argued that the plaintiffs had already retired from the partnership firm i.e. defendant no. 1 on 28.02.2001 and his suit is based upon a retirement deed dated 28.02.2001 and as such, the same does not pertain to a partnership agreement, therefore, Section 2 (c) (xv) of the Commercial Courts Act, 2015 is not applicable.

4. Heard. Record Perused.

5. The brief facts of the case are that the plaintiff is entitled to recovery of Rs. 12,64,015/- on the basis of retirement deed dated 28.02.2001 and one of the condition of retirement deed was that though all accounts had been settled but in future, if any profits, recoveries, refunds in respect of business carried on during the existence of partnership, shall be shared in erstwhile profit sharing ratio between all the former partners of the erstwhile partnership firm. The relevant para of the retirement deed is as under:-

> *"That all the known liabilities have been accounted for in the accounts for the period upto the date of retirement. It is however agreed that in case of any unknown, unforseen liability for the period in which the business was carried on in partnership, as it may crystallize, of any nature including income tax, Sales Tax, Excise Duty, Guarantee / Warranty Claim against the material supplied to the customers, encashment of any Bank Guarantee for the same period etc which the firm is required to pay after the date of retirement in respect of dealings and transactions which had taken place prior to the date of retirement, the retiring partners hereby undertake to reimburse the same to the extent they were sharing in the profits and losses of the erstwhile firm. Similarly any / all recoveries / refunds, net of all expenses, in respect of the erstwhile partnership will be shared in the same manner."*

6. It is stated that after retirement, some refunds to the tune of Rs. 23,47,978/- were received from central excise / tax departments and claim from insurance company in respect of business / claim of the former partnership firm in the name of defendant no. 1. It was agreed that all the claim shall be kept in the form of FDs in the name of partnership firm i.e. M/s Mercury Rubber Mills and it was also agreed that plaintiff no. 1 shall additionally take Rs. 1,30,000/- with interest from the date of award from the abovesaid amount as he had spent Rs. 1,30,000/- out of his own pocket as Arbitrators' Fee.

7. It is stated that in March, 2020, plaintiff came to know that all amount of said FDs i.e. Rs. 35,78,013/- was forfeited by the defendant no. 4 as a sum more than Rs. 2.99 crore was due against the defendant no. 1. Thereafter, plaintiff also came to know that defendant no. 1, 2 and 3 also received refunds of Rs. 8,10,179/- from the Central Excise Department and had also taken the benefit / credit of Rs. 1,47,769/- as TDS in respect of interest of the abovesaid FDs. It is stated that plaintiff requested the defendants to make the payment of their share i.e. Rs. 11,34,015.25/- in addition of Rs. 1,30,000/- along with interest but defendants avoided to make payment on pretext or other. It is stated that defendant no. 4 has no right to forfeit the amount as the liability of the tax on the defendant no. 1, 2 and 3 is in respect of business and profits earned by the defendant no. 1, 2 and 3 after the retirement of the plaintiffs from the defendant no. 1. Hence, the present suit is filed for recovery of money.

8. The only issue that needs adjudication is that whether retirement deed dated 28.02.2001 shall also be covered under 'Partnership Agreements' as stipulated in Section 2 (c) (xv) of the Commercial Courts Act, 2015. To the understanding of this court, the partnership agreements as stipulated in Section 2 (c) (xv) of the Commercial Courts Act, 2015 would not cover within its ambit a retirement deed.

9. In the instant case, the plaintiff has a cause of action on the basis of a retirement deed, which was drafted / executed after the plaintiffs had decided to retire from the firm. Once the plaintiffs retired from the firm i.e. defendant no. 1, their relationship as partner with the defendant no. 1, defendant no. 2 and defendant no. 3 came to an end and there was no partnership *inter se* between the partners. The retirement deed is like any other agreement / contract between two parties, for breach of which, the parties can approach court of law. Reliance is placed upon the judgment of the Hon'ble High Court of Gujrat in ***"Keshavlal Lallubhai Narnadas And Ors. vs Patel Bhailal Narandas And Ors., AIR 1968 GUJ 157"***, wherein it is held as under:-

> *(3) We cannot assent to the proposition that retirement of a partner has the effect of dissolving the jural relation of partnership inter se amongst all the partners. The law of partnership draws a distinction between retirement of a partner and dissolution of a firm as dissolution of partnership between all the partners, Partnership is the jural relation between partners who are collectively called a firm and when this jural relation is snapped between all the partners inter se, that constitutes dissolution of the firm. But there may be cases where a partner may wish to withdraw from the firm without affecting the jural relation subsisting between the other partners. He may wish to sever his relation as a partner with the other partners leaving the jural relation to the other partners inter se unaffected. He can do so in the cases set out in Section 32 and when he does so, he is said to retire from the firm. When a partner retires from a firm there is no dissolution of partnership between all the partners; there is no severance of the jural relation of partnership inter se between all the partners; the only alteration of jural relationship which takes place is that the jural relation of the retiring partner with the other partners is served but the jural relation of partnership subsisting between the other partners remains unaffected. Out of several strands of jural relations which go to make up the juridical concept of partnership between certain specified individuals, those connecting the retiring partner with the continuing partners are snapped inter se remain intact and the partnership continues as between the continuing partners. There is this a clear and well recognised distinction between retirement of a partner from a firm and dissolution of a firm. These terms are not synonymous either in their judicial content or their legal implications and consequences. They are treated separately by the law of partnership: one is dealt with in Section 32 while the other is dealt with in Chapter VI commencing with Section 39. If as alleged by defendants Nos. 5 to 7 retirement of a partner from a firm has the effect of bringing about dissolution of the partnership between all the partners it is*

difficult to imagine what should have induced the Legislature to treat retirement as a separate topic under Chapter V and not regard it as one of the modes of dissolving the firm dealt with under Chapter VI. Section 32 (1) (c) and 43 would also in that event overlap fro a notice of retirement under Section 32(1)(c) would have the effect of dissolving the partnership between all the partners, that is of dissolving the firm which according to Section 43 must needs be done by a notice of dissolution. This distinction between retirement of a partner from a firm and dissolution of a firm is also recongised by judicial decisions of which we may cite only two, namely, Sohanlal Pachisia and Co. v. Bilasray, AIR 1954 Cal 179 and Meenakshi Achi v. P. S. M. Subramanian Chettiar, AIR 1957 Mad 8. In the former case Bose, J. said :

> *"But it is clear from Section 32 of the Partnership Act read with the relevant sections in Chapter VI of the said Act that by mere retirement of a partner,, a firm is not dissolved but the retiring partner must give notice of his intention dissolve the firm in order to bring about a dissolution. The old firm continues, with the continuing partners as its members." and in the latter case a Division Bench of the Madras High Court reiterated the same view in the following words:--*
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> *"Retirement is not the same as dissolution. On retirement of a partner, the firm continues to exist as such, which is not the case when a partnership is dissolved.*
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> *This proposition of law was however disputed on behalf of defendants Nos. 5 to 7 and it was contended that under the law of partnership in India a firm is not a legal entity but is merely a compendious name for the partners and therefore when a partner A retires from a firm of A B and C, the firm of A, B and C comes to an end and the firm which continues is the firm of B and C which is not the same as the firm of A, B and C. It is, therefore, not correct to say that on retirement of a partner, the firm continues to exist as such. The firm consisting of a retiring partner and the continuing partners, that is, of A, B and C in the illustration taken by us, ceases to exist and the firm of the continuing partners, that is, of B and C continues to carry on the partnership business. There is, therefore, necessary in the eye of the law, argued defendants Nos. 5 to 7, a dissolution of the firm when a partner retires from the firm. This contention rests on a too literal emphasis on the theory that in the law of partnership in India a firm is not recognised as a legal entity but is merely a compendious name for the persons who constitute the partnership and it ignores the scheme of the Act and some of its basic provisions. It is undoubtedly true that under the law of partnership in India, as in England, a firm has no legal existence apart from the partners composing it and it is merely a compendious name to describe the partners collectively and, therefore, according to the strict view of the law, on any change amongst the partners comprising a firm, there would in fact be a be firm but the law has, in conformity with mercantile usage which recognizes a*

firm as a distinct person or quasi-corporation, departed form the strict legal view and extended a limited personality to a firm so that a firm continues to exist despite changes in its constitution brought about by introduction, retirement, expulsion, death or insolvency of a partner. Chapter V contains provisions relating to introduction, retirement, expulsion, death or insolvency of a partner without dissolution of the firm. Where a person is introduced as a partner in a firm under Section 31 or a partner retires from a firm under Section 32 or is expelled from a firm under Section 33, there is no dissolution of the firm but the firm continues as such with its constitution changed by the introduction of a partner or the retirement or expulsion of a partner. The language of Sections 31, 32 and 33 clearly postulates that the firm contuse to exist as if it were a legal person dispute changes in the constitution contemplated in these Sections. Section 36(1) also supports this conclusion and the words "an outgoing partner may carry on a business competing with that of the firm" and "he may not .. solicit the custom of person who were dealing with the firm before he ceased to be a partner" in that Section indubitably suggest that the firm is not dissolved by the outgoing of a partner but continues to exist as if it were a legal entity despite such outgoing. If introduction, retirement, or explosion of a partner had the effect bringing about dissolution of the firm, we should have expected provisions relating to those topics to find a place in Chapter VI which deals with the subject of dissolution of a firm rather than in Chapter V. As a matter of fact cases where a firm is dissolved by death or insolvency of a partner are dealt with in section 42 which occurs in Chapter VI and it is only where by reason of a contract to the contrary, the firm is not dissolved by death or insolvency of a partner but continues to exist, that provision is made in Sections 34 and 35 in Chapter V. Section 34 and 35 on their plain terms deal with cases where death or insolvency of a partner does not operate to dissolve the firm but the firm continues as such with changed constitution. Section 35 also postulates that changes in the constitution as such with changed constitution. Section 38 also postulates that changes in the constitution of a firm do not affect the continuity of existence of the firm. It provides that a continuing guarantee given to a firm, or to a third party in respect of the transaction of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. This provision would have been totally unnecessary if a change in the constitution of a firm had the effect of dissolving the firm and bringing in the effect of dissolving the firm and bringing into existence a new firm. The provisions in Chapter V therefore clearly extend a limited personality to a firm despite internal changes in the constitution of the firm such as introduction, retirement, explusion, death or insolvency of partner. In this respect the law of partnership in India represents a compromise between the strict view of the English law which refuses to accord a legal personality to a firm and regards it merely as a compendious name for the partners and the mercantile usage which recognises a firm as a distinct entity or quasi-corporation. This view is clearly supported by the following observations of

Mahajan, J. In I. T Commissioner v. A. W. Figgis and Co., AIR 1953 SC 455 at p. 456:-

> *"It is true that under the law of partnership a firm has no legal existence apart from its partners and it is merely a compendious name to describe its partners but it is also equally true that under that law there is no dissolution of the firm by the mere incoming or outgoing of partners. The reconstituted firm can carry on its business in the same firm's name till dissolution. The law with respect to retiring partners as enacted in the Partnership Act is to a certain extent a compromise between the strict doctrine of English Common Law which refuses to see anything in the firm but a collective name for individuals carrying on business in partnership and the mercantile usage which recognises the firm as a distinct person or quasi corporation."*

The conclusion which we must, therefore, inevitably reach is that retirement of a partner from a firm does not dissolve the firm, that is determine the partnership inter so between all the partners but merely severs the partnership between the retiring partner and the continuing partners, leaving the partnership amongst the continuing partners unaffected and the firm continues with the changed constitution comprising the continuing partners. The first contention on behalf of defendants Nos. 5 to 7 must therefore be rejected.......”

10. Since the relationship between the plaintiffs and defendants herein is not of a partner any longer, the dispute cannot be said to be a commercial dispute under Section 2 (c) (xv) of the Commercial Courts Act, 2015 as there is no partnership agreement in sustenance between the parties, hereto. Accordingly, the present suit is maintainable before this court.

Announced in the open Court on 08.11.2024

SHIVALI BANSAL
Digitally signed by SHIVALI BANSAL
Date: 2024.11.08 16:00:11 +0530

Shivali Bansal
District Judge-03
North District, Rohini Courts, Delhi