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THE SUPREME COURT REITERATES DISTINCTION BETWEEN 'RETIREMENT OF PARTNER' AND 'DISSOLUTION OF PARTNERSHIP FIRM'

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Introduction

A three-judge bench of the Supreme Court, comprising of Justices NV Ramana, Sanjiv Khanna and Krishna Murari, vide judgement dated 26 May 2020 in the case of **Guru Nanak Industries and Another v. Amar Singh** dealing with the Indian Partnership Act, 1932 inter alia reiterated well-established principles of partnership law regarding 'retirement of partner' and 'dissolution of partnership firm'.

Brief Facts

A two-member partnership was formed on 6 May 1981 between the Appellant (Swaran Singh) and Respondent (Amar Singh), under the name and style of Guru Nanak Industries.

The partnership firm and Swaran Singh filed a civil suit against Amar Singh, claiming that Amar Singh had retired from the firm. Amar Singh contested the suit on the grounds that he had not resigned and filed a suit for dissolution of partnership and rendition of accounts. The Trial Court dismissed the suit filed by Amar Singh and partly decreed the suit filed by the firm and Swaran Singh.

Amar Singh preferred two appeals against the orders of the Trial Court, which were accepted by the first appellate Court. The first appellate court inter alia directed the firm to render accounts as on the date of institution of the suit for dissolution.

The legal heirs of Swaran Singh preferred two appeals against the decision of the appellate Court before the High Court of Punjab and Haryana which dismissed the appeals vide judgement dated 18 May 2009.

The legal heirs of Swaran Singh filed a further appeal from the decision of the High Court before the Supreme Court.

Issue

The issue examined by the Supreme Court was whether in the facts of the case, Amar Singh had resigned from the firm or was the partnership dissolved?

Judgement

The Supreme Court upheld the findings of the first appellate court that Amar Singh had not resigned as a partner and there was a mutual understanding and agreement that

the firm would be dissolved. The Supreme Court however held that the dissolution of the firm would be from the date of Amar Singh's alleged retirement, and not from the date of the institution of the suit for dissolution of the firm.

The Supreme Court inter alia reiterated well-established principles of partnership law and explained the distinction between 'retirement of a partner' and 'dissolution of a partnership firm'. On the retirement of a partner, the reconstituted firm continues, and the retiring partner has 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. In this regard reliance was placed on the case of **Pamuru Vishnu Vinodh Reddy v. Chillakuru Chandrasekhara Reddy and Others** (2003) 3 SCC 445.

The Court further reiterated the well-established principles laid down in **Erach F.D. Mehta v. Minoo F.D. Mehta**, (1970) 2 SCC 724, that a partnership firm must have at least two partners and when there are only two partners and one has agreed to retire, then the retirement of one of two partners amounts to a dissolution of the firm. There being only two partners, the partnership firm could not have continued to carry on business as the firm.

Comments

There is often confusion about the terms used in the context of partnerships. One such confusion is with respect to the terms 'retirement of partner' and 'dissolution of the firm'. By way of the present judgement the Supreme Court once again clarified the distinction between the two. It clarified the different provisions of law applicable in both the instances, which lead to completely different consequences. In the event of the retirement of a partner, the partnership firm continues to operate with the remaining partners while in the event of a dissolution, the firm ceases to exist. Further, in the specific case of two-member partnership firms, the resignation/retirement of one of two partners results in the dissolution of the partnership firm as a partnership is required to have at least two partners.

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