

(2016) 06 KL CK 0092

High Court Of Kerala

Case No: W.P. (C) No. 9021 of 2015 (C)

J. Rajmohan Pillai

APPELLANT

Vs

District Collector,
Kollam

RESPONDENT

Date of Decision: June 29, 2016

Acts Referred:

- Partnership Act, 1932 - Section 25, 30, 30(5), 30(7), 35

Citation: (2016) 166 AIC 394 : (2016) 4 CivilLJ 229 : (2016) 3 KerLJ 238 : (2016) 3 KLT 223 : (2016) 3 RCRCivil 1052

Hon'ble Judges: A.M. Shaffique, J.

Bench: Single Bench

Advocate: Sri. Harisankar V. Menon and Smt. Meera V. Menon, Advocates, for the Appellant; Smt. Lilly K.T., Government Pleader, for the Respondent

Final Decision: Disposed Off

Judgement

A.M. Shaffique, J.—This writ petition is filed challenging Ext.P5 order passed by the 1st respondent by which it is confirmed that revenue recovery proceedings can be initiated against the petitioner.

2. The short facts involved in the writ petition would disclose that the petitioner, while he was a minor was inducted as a partner of the firm M/s.Malabar Cashew and Allied Products with effect from 01/01/1975. The partnership was reconstituted on 01/01/1976 by which the petitioner and three other minors were excluded from the partnership. The firm was liable to pay sales tax dues and accordingly, revenue recovery proceedings were initiated by the 1st respondent. The 1st respondent proceeded on the basis that the petitioner, being a partner, was also liable for the arrears of sales tax dues and accordingly, steps were taken against the petitioner under Section 65 of the Revenue Recovery Act. Petitioner preferred a revision before the Commissioner of Land Revenue which was rejected as per order dated 03/05/2002. Further revision was filed before the

Government which was disposed of as per Ext.P2(b) order, by directing the District Collector to make an enquiry as to who were partners of the firm during the above period when arrears were due to the Government and to take necessary action in the matter. The District Collector passed Ext.P3 order dated 24/04/2008, by which the matter was referred to the assessing authority to take a final decision regarding the retirement of the petitioner from the firm and whether he was a major or minor at the time of retirement. Petitioner challenged Ext.P3 order by filing W.P.C.No.19555/2009 before this Court. This Court, by judgment dated 19/03/2012, directed the 1st respondent to finalise the matter, in accordance with law and the attachment was kept pending until finalisation of the proceedings. Pursuant to the same, District Collector considered the issue and directed continuance of the proceedings against the petitioner. Impugning the aforesaid order, this writ petition is filed.

3. The main contention urged by the petitioner is that, in the Government Order dated 02/08/2003 [Ext.P2(b)] there was a clear finding that the partnership was reconstituted by excluding the petitioner while he was a minor and the petitioner has ceased to be a beneficiary of the partnership firm. The period of assessment of sales tax arrears in question is later to the cessation of the petitioner as a beneficiary of the partnership firm. Therefore it is held that "as such the RR proceedings initiated against the petitioner has no legal standing in the eye of law. In the circumstances stated above, the case is remanded back to the District Collector, Kollam for initiating RR proceedings against all the persons who were partners of the firm during the period for which the Sales Tax arrears are due. The District Collector should enquire and find out who were the partners of the said firm for the period for which the arrears were due to Government and take necessary action accordingly. The revision petition is disposed as above".

4. Learned counsel for the petitioner argues that once such a finding had been entered, there cannot be a re-appreciation of facts to take a different decision. It seems that after Ext.P2(b) order, proceedings had been taken against the petitioner and therefore the petitioner submitted a petition dated 29/07/2007 to the District Collector for withdrawing the revenue recovery proceedings against him. It is, in the said circumstances, that the District Collector had referred the matter to the sales tax authorities.

5. The learned Single Judge, however, in WP(C) No. 23496/2006 and connected cases, observed at para 16 as under:

"16. Pursuant to the revision filed by the petitioner in W.P.C. No.19555/2009, the matter was remanded by the Government as per Ext.P3, directing the District Collector to take necessary steps to enquire and arrive at the actual facts and figures of partnership and to proceed against all the persons who were partners of the firm for the period for which the arrears fell due to the Government. The specific submission made by the learned counsel for the petitioner in this case is that, since Ext.P3 has become final, it is no more open to the District Collector to have directed the second respondent to conduct any enquiry as to the status of the petitioner. But it has to be borne in mind, that the proceedings were

finalised by the Government as per Ext.P3, in relation to the correctness and sustainability of the steps taken by the concerned respondent under Section 65 of the R.R Act. Under Section 65 of the R.R Act, only two ingredients are to be satisfied; i.e., with regard to the mandatory requirement of issuance of a notice under Section 34 and so also as to the satisfaction of the authority concerned as to the means involved and the conscious default on the part of the defaulter in evading the payment. It was in the above context, that some observations have been made in Ext.P3 and this being the position, this Court finds that the matter requires to be dealt in detail, touching all the aspects including as to the extent of rights and interest in partnership, the relevant period, the cessation of membership and such other details."

6. It is observed in Ext.P5 that there is no material in the sales tax office regarding the reconstitution of the firm on 01/02/1978. However, reference is made to the constitution of the firm and the partners from 11/12/1964. From the materials relied upon by the District Collector, it seems that the partnership was formed on 11/12/1964. It was reconstituted on 01/01/1966, again on 16/10/1966, 16/11/1967, 01/01/1971, the details of 01/04/1973 is not available. Until then, petitioner was not a partner. On 01/01/1975, four minors were included as partners for the benefits of partnership, including the petitioner. The firm was again reconstituted on 01/01/1976 and all the four minors had retired. It was reconstituted on 01/02/1978 where the minors were excluded. It is found that the retirement of either of the partners were not in accordance with the procedure prescribed under the Indian Partnership Act, 1932 (hereinafter referred to as "the Act"). Therefore, in terms of Sections 30(7), 35 and 25, all the persons are jointly and severally liable which includes the petitioner also. The question is whether the findings are justified or not.

7. Petitioner has produced Ext.P1(b), extract of the Register of Firms which would show that, at Sl.No.10, the petitioner's name is recorded as a partner and as a minor. The date of joining is shown as 01/01/1975 and the date of ceasing is shown as 01/01/1976. Sections 68(1) and (2) of the Act are extracted as under:

"68. Rules of evidence.- (1) Any statement, intimation or notice recorded or noted in the Register of Firms shall, as against any person by whom or on whose behalf such statement, intimation or notice was signed, be conclusive proof of any fact therein stated.

(2) A certified copy of an entry relating to a firm in the Register of Firms may be produced in proof of the fact of the registration of such firm, and of the contents of any statement, intimation or notice recorded or noted therein."

Ext.P1(b) is the evidence and is a conclusive proof of the fact of joining and retirement of the petitioner from the firm. Ext.P1 is the deed of partnership dated 01/1/1975 wherein the petitioner, who was 11 years was admitted to the benefits of the partnership firm and from the partnership deed dated 01/01/1976, it is evident that the minors including the petitioner had retired from the firm. It was confirmed as per the entry in the Register of Firms (Form A).

8. Counter affidavit has been filed on behalf of the 1st respondent supporting the stand taken by the authorities. It is stated that the firm is liable to pay an amount of 17,42,86,459/- from M/s. Malabar Cashew and Allied Products.

Sec.21 of the KGST Act reads as under:

"21. Liability of firms: (1) Where any firm is liable to pay any tax, fee or other amount under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment.

(2) Where a partner of a firm liable to pay any tax, fee or other amount under this Act retires, he shall, notwithstanding any contract to the contrary, be liable to pay the tax, fee or other amount remaining unpaid at the time of his retirement and any tax, fee or other amount due up to the date of retirement, though unassessed."

9. Therefore, when a firm is liable, each of the partners in the firm are jointly and severally liable for the amount due until he retires. The question is when the liability had arisen, whether the petitioner was a partner of the firm. It is very clear from the provisions of the Act, that a minor can only be admitted to the benefits of the partnership and cannot become liable to the debts or the loss of the partnership. The sales tax dues were due to the Government for the period from 1970-71 to 1990-95. Going by the records, the petitioner was admitted to the benefits of partnership during 01/01/1975 to 01/01/1976. It is trite, that a minor cannot be made liable for the liability of the firm. The District Collector had referred to Section 30(7), 35 and 25 of the Partnership Act to impose a liability on the petitioner. In fact, there is also a statement that documents are not available as far as partnership is concerned, subsequent to 01/02/1978. Section 30 of the Act, relates to admitting a minor to the benefits of partnership. The Statute indicates that though a minor may not be a partner of the firm, he may be admitted to the benefits of the partnership. Though the minors share is liable for the acts of the firm, but the minor is not personally liable for any such act. Sections 30(1), (2) and (3) of the Act, reads as under;

"30: Minors admitted to the benefits of partnership.-

(1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

(2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.

(3) Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act."

10. The above statutory provision clearly indicates that the minor is not a partner of the firm. Section 25 indicates liability of the firm for acts of firm. This provision will not apply since the minor does not become a partner of the firm. The only question is whether the petitioner, who was a minor, had issued notice in terms of 30(5) of the Act. Here the materials produced on record clearly shows that he had ceased to be a person admitted to benefits of partnership with effect from 01/01/1976. In such an event, the question of Sections 30(5) or 30(7) does not arise at all. Section 30(7) applies only when an option is exercised on becoming a partner, in terms of Section 30(5). Sections 30(5) and (7) reads as under:

30(5): At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm;

Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months."

"30(7): where such person becomes a partner,-

(a) his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and

(b) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

An eventuality in terms of section 30(5) has not arisen, since the petitioner was already removed from the benefits of the partnership with effect from 01/01/1976.

11. Section 35 deals with liability of estate of a deceased partner. That is a provision between the partners and has no bearing to the facts of this case. Section 35 reads as under:

"35. Liability of estate of deceased partner.- Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death."

12. Unless it is found on evidence, that the petitioner had become a partner of the firm subsequent to 01/01/1976, there cannot be any liability mulcted on the petitioner, as a partner. Yet another eventuality is whether the petitioner had succeeded to the estate of any deceased partner, who is jointly and severally liable to pay the amount. In such an event, there would not be any personal liability, whereas the liability will only be to the extent of properties succeeded from the deceased partner. Such a situation is not

mentioned in Ext.P5 order.

13. Hence the writ petition is allowed, the demand made against the petitioner as a partner of the firm in terms of Ext.P5 order is set aside. Consequently, Ext.P7 is quashed, however, without prejudice to the right of the revenue authorities to recover the amount due, by any other process.