

(1999) 04 NCDRC CK 0030

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Export Credit Guarantee
Corporation of India Ltd.

APPELLANT

Vs

MOHD.ASLAM

RESPONDENT

Date of Decision: April 12, 1999

Citation: 1999 2 CLT 264 : 1999 2 CPC 274 : 1999 2 CPJ 203 : 1999 2 CPR 106

Hon'ble Judges: K.C.Bhargava , D.D.Bahuguna J.

Final Decision: Revisions partly allowed

Judgement

1. BOTH these revisions relate to the same matter and they can be conveniently disposed off together as the questions raised in both revisions are the same and in Misc. Cases taken together are also same. The present revision has been filed against the order dated 18.9.1998 passed by the District Consumer Forum, Mirzapur. In Revision No. 134 the order is filed against the order in Case No. 190/96 and Revision No. 135 has been filed against the order in Case No. 110/96.

2. IT is not necessary to mention in detail the facts of both the revisions. The revision has been filed against the order on the ground that this order has been passed by a single Member, i.e. the President and has not been signed by any other member. Copy of the order is on record. The perusal of the order goes to show that it has been passed on an application moved by opposite party and the order was passed on the same day. In the application it has been mentioned that when the Counsel reached the District Forum, in order to argue the case on rulings and law, he came to know that the case has already been decided. A reference of a case has been filed in this application. IT was prayed that the case law of the applicant be also

considered and the order passed earlier in the day be reviewed. On behalf of opposite party, it was argued that since the order had already been passed, therefore, this application was without force. Even if this is signed by a single Member it does not have any effect because it only states a fact. It is not an order and has no effect.

It is further argued by learned Counsel for the applicants that order dated 18.9.1998 is illegal as it has been signed by a single Member. Section 14(2A) of Consumer Protection Act provides that every order has to be signed by the President and at least one Member who conducted the proceedings. Therefore this order dated 18.9.1998 is liable to be set aside and is hereby set aside.

According to the learned Counsel for the Revisionist, one partner, Mohd. Ibrahim, was doing pairvi of the case on behalf of the opposite party-partnership firm died. He has further argued that the other partners have started doing pairvi were not authorised to do the same as there is no clause in the partnership deed authorising any other partner to do pairvi. On the death of one of the partners, the partnership firm stood dissolved and no other partner could conduct the case on behalf of the firm. On the other hand learned Counsel for the opposite party argued that on death of a partner, the partnership firm automatically does not stand dissolved unless there is a specific provision in the partnership deed. In this connection Section 42 of the Partnership Act may be looked into. Chapter 6 of the Indian Partnership Act deals with dissolution of a firm. This section reads as under :

"Subject to contract between the partners a firm is dissolved- (a) if constituted for a fixed term, by the expiry of the term; (b) if constituted to carry out one or more adventures or undertakings, by the completion thereof; (c) by the death of a partner; and (d) by the adjudication of a partner as an insolvent."

A perusal of this section goes to show that on the death of a partner, subject to the contract between the parties, the partnership firm shall stand dissolved if the term of the partnership has expired or if the purpose of the firm for which it was constituted has been completed or a partner is adjudicated as an insolvent and lastly on death of a partner. But there is big rider provided in this section which says that the firm shall not stand dissolved on the death of a partner if there is an agreement to the contrary. In the present case, learned Counsel for the opposite party has argued that on the death of a partner the firm shall not stand dissolved. A perusal of partnership deed goes to show that in para 21 of if, it is specifically provided that the death of any partner shall not operate as the dissolution of the partnership. Thus this averment in the partnership deed clearly goes to show that the partnership firm in the present case did not get dissolve on the death of one of the partners as argued by the learned Counsel for the appellant.

3. WITH respect to the next limb of this argument, it may be stated that all the partners who constitute a firm are agents of the firm for the purpose of business of the firm. This provision has to be found in Chapter IV of the Indian Partnership Act. This chapter deals with the rights and obligations of partners as regards third parties. Section 18 reads as under :

"18. Subject to the provisions of this Act, a partner is the agent of the firm for the purpose of the business of the firm."

A perusal of the section goes to show that as regards third parties, each of the partner is agent of the firm for all practical purposes as far as the partnership is concerned. As a matter of fact his power etc. are governed by the same rules and principles as those of an agent. A partner is both a principal as well as agent in relation to other principals. A partner has an interest, in the partnership while an agent has no interest in the partnership. As long as a firm exists, any partner can act on behalf of the partnership firm and pairvi on behalf of other partners before any Court or any Authority.

In view of the provisions of the law, this part of argument of the learned Counsel for the applicant also fails.

4. THE next argument of the Counsel for the applicant is that the applicant had summoned the records of the Bank of Baroda, New Delhi branch in order to show the nature of transaction in dispute. This application was opposed and was rejected. No doubt in certain cases, the entries in the bank records are necessary to be proved in order to settle a controversy between the parties. But in all cases it is not necessary for the Court/District Forum to summon the original records. THE parties can specify entries of the particular date or of a particular transaction which are required to be examined in a case. If these details are furnished to the District Forum, then the District Forum can direct the bank concerned to file entries of a particular date or transaction involved in the dispute or can issue a Commission, with the consent of parties, to examine the entries and to obtain certified copies of the entries from the bank which are relevant to the decision of the case. THE party's Counsel or the parties themselves can be present at the time of execution of the Commission. THE learned District Forum will decide this matter afresh in order to see which relevant entries are to be brought on record in order to settle the

controversy or dispute. THE order of District Forum on this application is set aside.

The learned Counsel for the applicant further argued that an application was moved for permission to cross examine a witness who has tendered his evidence on affidavit. This application was also wrongly rejected in the present case. 9. The applicant should have specified the points on which he wants to cross examine the witness and must give some supporting facts in order to show that the averments made in the affidavit are wrong. Thereafter, the District Forum could have summoned the witness and permit him to be cross examined only on those points and will not permit general cross examination on all the points. For this purpose, the applicant should specify the portion of the averments made in the affidavit on which he proposes to cross examine the witness and after hearing the objections of the other side on this the learned District Forum will pass suitable orders on this application. The order passed by District Forum on this application is also set aside.

10. Thus in view of what has been stated above, it is clear that a partner can represent the firm and do pairvi on its behalf so far as the firm is not dissolved. In the present case, on the basis of facts on records, it is held that the firm had not dissolved on the death of one of the partners. Thus both the revisions are liable to be partly allowed in view of the observations made above. 11. Now we take up the case regarding transfer of these cases from the District Forum concerned. It has been argued by the learned Counsel for the applicant that the District Forum is behaving in a non-judicial way. It was argued that the District Forum had no territorial jurisdiction to decide the case and this argument was not allowed to be raised at that stage and was told verbally that this point shall be decided at the time of final disposal of the case. The learned District Forum has not committed any illegality or error by disallowing this prayer of applicant. The learned District Forum has a right to decide whether the question of jurisdiction is to be decided in the first instance or should be decided alongwith the case. In order to impart finality to a case, it is necessary that, unless the District Forum patently feels that it has no jurisdiction, which point has already been settled finally either by the National Commission or by High Court or by Apex Court the case shall be. Thus this cannot be a ground for transfer of the case. 12. It has further been argued that on the instance of opposite party, the learned District Forum changed the dates of hearing without hearing the applicant. No doubt the date cannot be changed if the other party is not informed of the new date fixed and if the hearing has been done in his absence, then the order passed ex-parte is to be recalled and both the parties are to be heard. The learned District Forum should change the dates after copy of application for change of date is supplied to the other side. 13. It has also been argued by the learned Counsel for the applicant that the applications moved by the applicant for cross examination of the witness and for abatement of the cases on death of a partner were rejected and it showed prejudice of the District Forum against the applicant. If an application of a party is rejected, even though wrongly, it does not give an indication that the District Forum is prejudiced against that

particular party. That particular party shall always have a right to challenge those findings in an appeal if he losses the case. It is further argued that the applicant has no confidence in the learned District Forum. This is no ground to transfer a particular case from a Forum. 14. Thus we find that there is no force in the Misc. Cases for which transfer prayer has been made. They are liable to be rejected. The result of above discussion is that both the revisions are liable to be allowed in part and Miscellaneous Cases are liable to be dismissed.

ORDER Both the Revision Nos. 134/1998 and 135/1998 are partly allowed and order dated 18.9.1998 passed by single Member (President) is set aside. The District Forum shall again decide the applications of applicant for cross-examination of witnesses and for summoning of documents from Bank. All the Misc. Case Nos. 2/1999, 3/1999, 4/1999, 5/1999, 6/1999, 7/1999, 8/1999, 9/1999 and 10/1999 are dismissed. The parties shall appear before the learned District Forum on 5.5.1999. A copy of this order shall be sent to the learned District Forum within 3 days. Copy of this order be made available to the parties as per rules. Revisions partly allowed.