

M/s. Rollon Steels Vs A.P. Transco Ltd.

Court: Andhra Pradesh High Court

Date of Decision: July 3, 2013

Acts Referred: Partnership Act, 1932 & Section 32

Citation: (2013) 5 ALD 217

Hon'ble Judges: S.V. Bhatt, J; L. Narasimha Reddy, J

Bench: Division Bench

Advocate: Vedula Srinivas, for the Appellant; O. Manohar Reddy, for the Respondent

Final Decision: Dismissed

Judgement

L. Narasimha Reddy, J.

The respondent herein filed O.S. No. 858 of 1984 in the Court of the II Senior Civil Judge, City Civil Court,

Hyderabad, against the appellant for recovery of a sum of Rs. 9,36,329/-. The trial Court decreed the suit through judgment, dated 21.10.1998.

Hence, this appeal. The background of the case is as under:

The respondent is a state owned undertaking involved in the activity of transmission of electricity supply. Its predecessor is Andhra Pradesh State

Electricity Board. In the year 1982, a tender notice was issued by the respondent inviting tenders for entrustment of work of conversion of steel

billets into steel bars. The tender submitted by the appellant, a partnership firm, was accepted on 10.08.1982 and the contract was awarded.

Under the contract, the respondent would supply the billets and the appellant, in turn, was under obligation to convert the same into bars of the

required specifications.

2. After the work was executed to certain extent, the respondent noticed that the appellant did not supply the finished product for the

corresponding raw material supplied to it. The value thereof was found to be Rs. 6,82,124/-. A notice was issued to the appellant requiring it to

pay the interest. Since the appellant did not pay the amount, the respondent filed the suit for recovery of Rs. 9,36,329/-, which include the cost of

the raw material as well as the interest.

3. The appellant filed a written statement. The principal contention advanced was that I.H. Abidi, who was the Managing Partner when the

contract was entered into, ceased hold that position and that his letter of retirement was also forwarded to the Registrar of Firms. An objection

was raised as to the maintainability of the suit on the ground that a retired partner was shown as Managing Partner. Other contentions were also

advanced on merits. As observed earlier, the suit was decreed.

4. Sri. V. Srinivas, learned counsel for the appellant, submits that the suit itself was not maintainable, since a person, who was no longer a partner

of the Firm, was shown as its representative. He submits that as per Section 32 of the Indian Partnership Act, 1932 (for short, "the Act"), the

obligation on the part of the erstwhile partners, ceases, on their retirement and that the respondent ought to have impleaded the existing partners.

He further submits that the failure to supply the finished product was on account of the shortage of labour and that the respondent ought to have

pursued the matter with the Firm, instead of proceeding against the retired Managing Partner.

5. Sri. O. Manohar Reddy, learned counsel for the respondent, on the other hand, submits that except making a statement that the Managing

Partner had retired from the Firm, no proof thereof was furnished. He contends that though a letter is said to have been addressed to the Registrar

of Firms, there is nothing on record that the Registrar has recorded the retirement of the Managing Partner. He submits that assuming that the

Managing Partner had retired, he is not relieved of the obligation, which the Firm has incurred when he continued to be the Managing Partner.

Referring to sub-sections (2) and (3) of Section 32 of the Act, learned counsel submits that the Managing Partner, who deposed as DW. 1, failed

to prove his retirement or the existence of any other, as Managing Partner of the firm.

6. On the basis of the evidence on record, the trial Court framed the following issues for consideration:

- 1) Whether the Managing Partner of the defendant's firm retired from the partnership even before the filing of the suit?
- 2) Whether the defendant's managing partner is not a necessary party to the suit?
- 3) Whether K. Kista Reddy is a necessary party to the suit?
- 4) Whether the plaintiff is entitled to the suit claim?
- 5) To what relief?

7. On behalf of the respondent, PW. 1 was examined and Exs. A1 to A20 were filed. On behalf of the appellant, DW. 1 was examined and Exs.

B1 to B7 were filed.

8. The emphasis was mostly upon the status of the Managing Partner, who is shown in the cause title of the suit. The suit was ultimately decreed.

9. In view of the arguments advanced by the learned counsel for the parties, we frame the following points for consideration:

- i) Whether DW. 1 established that he ceased to be the Managing Partner of the appellant's firm?
- ii) Assuming that DW. 1 retired from the partnership, whether he can be held liable for the suit claim?

POINT No. (i):-

10. The suit was filed for recovery of amount, which represented the cost of the raw material in relation to which the finished product was not

supplied by the Firm. There is no denial of the fact that the appellant was awarded the contract by the respondent and that substantial quantity of

raw material i.e., billets was not accounted for in the form of the finished product. The principal defence in the suit was that the person shown as

the Managing Partner has retired by the time the suit was filed. To be precise, it was stated that the bid was accepted on 10.08.1982. PW. 1

retired from the firm on 11.07.1983 and the suit came to be filed in the year 1984. Even if these facts are taken to be true, it is difficult for DW. 1

to extricate himself from the liability, for more reasons than one.

11. Firstly, DW. 1 failed to substantiate the plea that he retired from the Firm. The appellant is a Firm registered with the Registrar of Firms. Any

changes, as to composition thereof, are required to be registered. The effect thereof can be legally felt only after such registration. Except that he

forwarded a letter or affidavit to the Registrar, which is marked as Ex. B1, he did not place any other material to prove the factum of retirement.

12. Secondly, even where a partner had retired, he can extricate from the liability incurred, while he was a partner, only when he enters into an

agreement with the third party and remaining partners in that behalf. Section 32 of the Act deals with this aspect. It reads:

Retirement of a partner- (1) A partner may retire,-

(a) with the consent of all the other partners,

(b) in accordance with an express agreement by the partners, or

(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made

by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such

third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by

any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

13. No such effort was made. Such occasion does not exist, since DW. 1 did not examine any one, who is associated with the Firm. The self-

serving statements made by him cannot constitute the basis to imply the existence of agreement provided for under sub-section (2) of Section 32 of

the Act.

14. Thirdly, even if the retirement is otherwise legal and there exists any express agreement or an implied one, such retirement will be subject to the

consequences that are provided for under sub-section (3) of Section 32 of the Act. No evidence was adduced in this behalf. In that view of the

matter, point No. (i) is answered against the appellant.

15. POINT No. (ii):- The respondent has stated in clear terms, in the plaint as well as in his deposition as PW. 1, that a specified quantity of raw

material was not accounted for and that the corresponding finished product was by the appellants not supplied. Only one witness on behalf of the

appellant was examined as DW. 1 and the effort made by him was just to prove that he ceased to be a partner. There was no evidence whatever

to disprove the facts pleaded by the respondent. The trial Court was virtually left with no alternative except to decree the suit. The appellant has

not placed any material to convince us to take a different view.

16. Hence, the appeal is dismissed. There shall be no order as to costs. The miscellaneous petitions filed in this appeal shall stand disposed of.