(1936) 08 BOM CK 0025

Bombay High Court

Case No: None

Jayantilal Ranchhodlal and Others		APPELLANT
	Vs	
Popatlal Kevaldas Zaveri and Others		RESPONDENT

Date of Decision: Aug. 27, 1936

Acts Referred:

- Contract Act, 1872 - Section 251

Citation: AIR 1937 Bom 262

Hon'ble Judges: Broomfield, J

Bench: Division Bench

Judgement

Broomfield, J.

The suit from which this appeal arises was brought by respondents 1 and 2 to recover a sum of Rupees 6,051 on four chithis dated 6th October 15th November 1925, 4th January and 21st February 1926. he amounts of these chithis were Rs. 2,500, Rs. 1,000 Rs. 600 and Rs. 1,000, and they were borrowed by defendant 5 as managing partner of the Jayantilal Ranchhodlal Cotton Pressing Company, defendant 1 in the suit. Plaintiffs are a firm of money lenders doing business at Viramgam. The defendant company does business at Viramgam where they have a cotton press. Defendants 2 to 4, the other partners in the company, reside in Ahmedabad and the business of the company was managed entirely by defendant 5 who resided in Viramgam. The moneys were all borrowed in the name of the company. The trial Judge has passed a decree against all the defendants.

2. The only question in this appeal by defendants 1 to 4 is whether the company, i.e. defendant 1, and the partners, defendants 2 to 4, are liable for these debts contracted by defendant 5. There is no evidence that defendants 2 to 4 authorized defendant 5 to borrow these particular sums. They are not shown in the books of the company which were kept by defendant 5. It has not been proved that the

money was necessary for the business of the firm, nor that it was in fact used for that business. There is nothing to show that defendants 2 to 4 knew any thing about these advances until they received a notice from the plaintiffs just before the suit. The liability of the partners other than defendant 5, therefore, depends mainly on the question whether Section 251, Contract Act, covers the case. That section provides:

Each partner who does any act necessary for, or usually done in, carrying on business of such a partnership as that of which he is a member binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

3. As I have mentioned, defendant 5 was in sole control of the management of the defendant company. The other partners never even visited Viramgam. Defendant 2, the only partner who has given evidence, has admitted that it was sometimes necessary to borrow money for the business, and that defendant 5 used to do so in his capacity as managing director or managing partner. That is not an admission of defendant 5''s authority to borrow these particular sums, but it is an admission of his authority to borrow money for the partnership when necessary. The case-law on Section 251 has been summed up by Mulla, J., as he then was, in Saremal Punamchand v. Kapurchand AIR 1924 Bom. 260. The learned Judge cites the well known passage from Story on Agency which has been approved by the Privy Council in Bank of Australasia v. Breillat (1847) 6 Moor P.C. 152 : 1924 Bom. 260:

(Section 124) Every partner is in contemplation of law, the general and accredited agent of the partnership; or, as it is sometimes expressed, each partner is proepositus negotiis societatis; and may consequently bind all the other partners by his acts in all matters, which are within the scope and objects of the partnership. Hence, if the partnership be of a general commercial nature, he may pledge or sell the partnership property; he may buy goods on account of the partnership; he may borrow money, contract debts, and pay debts on account of the partnership; he may draw, make, sign, endorse, accept, transfer, negotiate, and procure to be discounted, promissory notes, bills of exchange, checks, and other negotiable paper, in the name and on account of the partnership.

4. Story, in the passage from which the citation was made, went on to point out that:

(Section 125)... Each partner is an agent only in and for the business of the firm; and therefore his acts beyond that business will not bind the firm. Neither will his acts, done in violation of his duty to the firm, bind it when the other party to the transaction is cognizant of, or cooperates in such breach of duty.

5. On the evidence in this case it is possible that these moneys were borrowed by defendant 5 for his private purposes and not for the firm. If that was so to the knowledge of the plaintiffs, the firm and the other partners would not be liable. But I do not think that there is any evidence to justify a finding that plaintiffs were aware

that defendant 5, who borrowed these moneys in the name of the firm, did not require them for the firm but for his private purposes. On the occasion of the first of the four advances, the person who was sent for the money was one Jatashankar. He has been examined as a witness and he stated that he was a servant of defendant 5, but not in the employment of defendant 1 firm. It also appears from the plaintiffs'' books that defendant 5 and this man Jatashankar together settled the account with the plaintiffs, that is to say agreed on the balance due on 30th October 1926, when defendant 5 purporting to act on behalf of the firm signed an acknowledgment of the debt. But on the record there is no reason to suppose that the plaintiffs knew that Jatashankar was defendant 5''s private clerk only. The other three loans were taken by Ratilal who was admittedly a clerk employed by defendant 1 firm. In each of the four cases the receipts were signed by the person taking the money in the name of the firm. Reliance has been placed on the fact that on no previous occasion was money borrowed from the plaintiffs on chithis. The plaintiff Popatlal says in that connexion:

Defendant 5 has not sent chits during the other years to borrow money as it was not our practice then. The practice of borrowing money on chits was introduced two years before the date of the suit.

6. It has been suggested that the change of procedure is an indication that the plaintiffs knew that this money was required by defendant 5 for himself. The evidence does not show exactly how the money was borrowed on previous occasions. But it can hardly have been done in a way to make it more obvious that defendant 5 was acting for the firm. Three of the chithis are on the firm''s note-paper, and in all of them it is stated, twice over, that the money is borrowed in the name of the firm. I think, on the whole, there is no justification for holding that the plaintiffs were aware that defendant 5 did not require this money for the purposes of the firm. Then, the learned counsel for the appellants has argued that this was not a trading partnership. It did not buy and sell goods, and therefore, on the authorities, defendant 5 had no implied authority to borrow money. In that connexion Mulla, J. in Saremal Punamehand v. Kapurchand AIR 1924 Bom. 260 said (p. 182):

Any partner in a trading firm has an implied authority to borrow money for the purposes of the business on the credit of the firm. But the firm must be a trading firm. A firm is a trading firm if its business consists in buying and selling... Where, however, the business is not of a commercial nature, e.g., where it is a professional business or even the business of a farmer... or a quarry worker... where there is no buying and selling of goods, or an auctioneer... no partner can borrow or pledge the partnership property so as to bind his co-partners.

7. Various English authorities were referred to in support of this proposition. I doubt very much whether the definition of a trading firm as one whose business consists in buying and selling is intended to be an exhaustive one. The point did not arise in

Saremal Punamchand v. Kapurchand AIR 1924 Bom. 260 as it was admitted that the partnership in that case did carry on the business of buying and selling goods. In this connexion I may refer to the judgment of Murphy, J. in Gordhanaas v. Raghuvirdasji A.I.R 1932 Bom. 539. The law laid down in Section 251, Contract Act, was probably intended to be the same as in England, and in the majority of cases it is the same. But in India the rule as to implied authority has been enacted in a particular form, and we have to have regard to the language of Section 251. In this country if a partner in a firm of auctioneers, farmers or quarry owners, has no authority to borrow money, the reason must be, I think, not because the partnership does not buy and sell goods, but because in the language of Section 251 the borrowing of money is not an act necessary, or usually done in carrying on the business of such a partnership. Moreover, in the present case, Section 251 must be read in connexion with certain other sections of the Contract Act,-Section 187 which says that an authority is said to be implied when it is to be inferred from the circumstances of the case, the second part of Section 188 which says:

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business;

and Section 237 which says:

When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent''s authority.

8. From the evidence in the case, and in particular from plaintiff''s accounts which have been produced, it is clear that money was required for running the defendants'' business. Hessian, hoops, fuel and sundry stores had to be purchased, and these purchases were made by defendant 5 in Viramgam. Defendant 2 in the beginning of his deposition stated that money used to be sent to Viramgam when required by hundis and in cash, and that the stores and the goods required for the factory were purchased in Bombay, Calcutta and elsewhere, and sent to Viramgam. But later on in cross-examination he admitted that the factory had dealings with the plaintiffs from 1964 Sam vat onwards, and that fuel, hessian, oils, hoops, stores, etc. were purchased locally. 1964 Samwat would be 1908. The accounts prior to 1914 have not been put in, but from 1914 and 1921 it is clear that the plaintiffs were to a considerable extent, if not entirely, financing the defendant company. In all the years, 1914, 1915, 1916, 19-17, 1918, 1919 and 1920, considerable sums were advanced by plaintiffs. Many of them were comparatively small amounts,-Rs. 250, 300, 400 and so on, but at the same time there are several large items of Rs. 1,000, 1,200 and 2,000. In January 1921, an amount of Rs. 3,000 was borrowed. In some of these years a large balance remained due to the plaintiffs at the end of the year, which contradicts a statement in the written statement that whenever there had

been any borrowing the accounts had been settled immediately and no considerable amount was left outstanding at the end of the year.

9. Some of the loans shown in these accounts have been explained or sought to be explained by defendant 2 as having been due to special causes, for instance, he suggests that the advance of Rs. 3,000 in January 1921, was necessitated by a fire in the factory, and other advances are said to have been due to the fact that for a period of five years the defendant company leased a ginning factory and, were running that as well as the pressing factory. It cannot be said to be proved that the advance of Rs. 3,000 in January 1921, was due to the fire, and the other point seems to me to be immaterial, because the ginning factory was a part of the business of defendant 1 firm. When these accounts are considered as a whole, I think it is not possible to doubt that borrowing money was both necessary and usual in this business of the defendants, run as it was. At any rate that was so up to 1921. After that time as appears from the plaintiffs'' accounts the borrowing was only nominal. There is no suggestion that the entries relating to this borrowing of money by defendant 5 from 1914 to 1921 are not contained in the books of the defendant company. The borrowing therefore must have been done with the knowledge of defendants 2 to 4. Does it lie in their mouths therefore now to deny that defendant 5 had authority to borrow ? Obviously they cannot deny it so far as the borrowing up to 1921 is concerned. The fact that borrowing on a considerable scale ceased from 1921 is no doubt a point in defendants favour. But, as far as I can see, there is no evidence that anything had happened between 1921 and 1925, to the knowledge of the plaintiffs, which had changed the system of business, so that defendant 5 who had authority to borrow up to 1921 had no longer such authority in 1925. A point was made to the effect that the loans in suit were made in the off-season when the factory was not working. The working season is from February to May, and the last of the loans was in February. The third of them was in January just before the season commenced. No importance can really be attached to the fact that the other advances were in October and November because a very large number of other advances which cannot be disputed were made at all times of the year other than from February to May. It is hardly necessary to point out that there was no obligation on the plaintiffs to see to the application of the moneys. In that connexion it is only necessary to refer to illus. (d) to Section 251 and the observations of Mulla, J. in Saremal Punamchand v. Kapurchand AIR 1924 Bom. 260 where he says (p. 183):

Where a firm is a trading firm, so that one partner can borrow money for the purpose of thebusiness on the credit of the firm, no duty is cast on the person advancing the money to make any further inquiries....

10. If the act belongs to an authorized class, it is not material whether the agent intends the principal''s benefit or not, nor whether the principal in fact derives any benefit. The learned trial Judge has made some very severe strictures on the

evidence of defendant 2. In my opinion these are not justified. Defendant 2 was an absentee partner. He had no personal knowledge of the business of the firm and he was cross-examined about matters many years old. At the same time his admissions do make it very difficult indeed to hold that defendant 5 had no implied authority to borrow on the credit of the firm. We think there are no sufficient grounds for differing from the view taken by the trial Court and dismiss the appeal with costs.

Tyabji, J.

11. The claim out of which this appeal arises was based on certain advances made by the plaintiffs to defendant 5 who was a partner in the firm which is defendant 1. The decision depends upon the application of Section 251, Contract Act. The section requires it to be determined whether the acts on which the plaintiffs base their suit-the acts consisted of defendant 5 taking the loans which are sued upon-were acts necessary for, or usually done in, carrying on the business of such a partnership as that of which he was a member. One of the arguments before us was that the business of the partnership, pressing cotton, was not a trading business, and.that therefore it must be taken that there was no authority to borrow. Certain remarks of Mulla, J. in Saremal Punamchand v. Kapurchand AIR 1924 Bom. 260 were relied upon. Taken out of their context, they might be considered to support the argument. But Mulla, J. was not dealing with the point in the form in which it now arises. He was only concerned with the question whether as soon as it is shown that a partnership business is a trading business, (i.e., that the purchase and sale of goods and property are contemplated as part of the business of the partnership), the partners must have authority to borrow.

12. There is nothing, that I can see, in Section 251 requiring that partnership be put under defined categories: such categories as partnerships for pressing cotton (such as the one we have before us) or partnerships known under other denominations under which businesses are generally known or classified; nor do I see anything in Section 251 justifying a decision (based on the denomination under which the partnership is generally referred to) apart from a consideration of the business actually carried on by the particular firm in question. I am strengthened in this view by the fact that the Court of Appeal in England differing in this respect from the Divisional Bench declined to express an opinion upon the question whether as a matter of law an auctioneer was a trader, and whether therefore a partner in a firm of auctioneers had implied authority to bind the firm by accepting a bill in the firm name: Wheatly v. Smithers (1907) 2 K.B 684. The decision of the Divisional Bench is reported in Wheatly v. Smithers (1906) 2 K.B 321. The Court of Appeal held that part of the business of the particular partnership before them was the purchase and sale of goods and property, and that in that respect it was a trading partnership. They declined to affirm or to disaffirm, as they were invited to do, the propositions that the firm was a firm of auctioneers; that members of a firm of auctioneers have implied authority to bind the firm by accepting bills in the firm name; and that

accordingly the particular partner had such authority. Moreover Section 251 deals primarily with the extent of authority that a partner must be deemed to possess as between himself and his co-partners. It is obvious that the position of third parties dealing with the firm may, as against individual partners, be different from the position of the partners amongst themselves. The partners may be taken to know exactly what the nature of their business is, and what is necessary for carrying it on. The authority of each member of the firm to bind his co-partner may rest on different principles and circumstances from those on which strangers dealing with the firm might be governed. There may be a restriction upon the power of any partner placed by agreement between the partners. Even in such cases, third parties are not necessarily debarred from binding the firm by acts done by that individual partner in contravention of such an agreement. Third parties are debarred only if they have notice of the restrictive agreement: Section 251, Exception.

13. Adverting to the facts of this case, the plaintiffs are entitled to say that in accordance with Section 187, Contract Act, the ordinary course of business must be one of the circumstances from which it may be inferred that defendant 5 had authority to bind the firm, defendant 1, to pay the loans taken by him, ostensibly as a partner of that firm; and that the inference so drawn cannot be displaced unless the case is brought under the exception to Section 251, i.e., unless it is proved that the plaintiffs had notice of the restriction placed on the inferred authority of defendant 5. It has been shown by evidence that defendant 5 was in the habit of borrowing moneys from the plaintiffs for the purposes of the firm in which he was a partner, so as to bind the firm. It is true that defendant 2 says that the loans which the firm recognized as binding upon it, had been taken for special objects on unusual occasions. There is no evidence to establish that the loans were only of this nature. But even if there had been any such evidence, it would have pointed to a restriction on the powers of defendant 5 as a partner, of the kind referred to in the exception to Section 251. It would have been an internal arrangement of which third parties must be given notice if an act in contravention of the internal arrangement is not to bind the firm. Third parties cannot be presumed to know that there are any special circumstances affecting the firm on account of which a partner is authorized to take loans to-day, and that those circumstances are absent the next day, so that he is no more empowered to borrow. No notice is alleged of either the existence or the cessation of the Conditions on which the authority of defendant 5 to borrow on behalf of the firm is supposed to have depended.

14. No sufficient reason is shown for taking a view of the evidence as a whole, different from that taken by the trial Judge, I agree however that the strictures passed by the learned Judge against defendant 2 are uncalled for.