

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 6659-6660 OF 2010

GURU NANAK INDUSTRIES,
FARIDABAD AND ANOTHER APPELLANT(S)

VERSUS

AMAR SINGH (DEAD) THROUGH LRS RESPONDENT(S)

JUDGMENT

SANJIV KHANNA, J.

Four persons, including two brothers, Swaran Singh and Amar Singh, both of whom have since died and are represented by their legal representatives, had constituted a partnership firm – Guru Nanak Industries, on 2nd May 1978. On 6th May 1981, a fresh partnership deed was executed between Swaran Singh and Amar Singh as the other two partners had resigned. The partnership firm was primarily in the business of manufacture and sale of print machinery for paper, polythene etc. Initially, profits and losses were to be divided in the ratio of 69:31 between Swaran Singh and Amar Singh. However, with effect from 1st April 1983, profit and

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DEEPAK SINGH
Date: 2020.05.26
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Reason:

loss sharing ratio was altered between Swaran Singh and Amar Singh to 60:40 respectively.

2. On 29th March 1989, Guru Nanak Industries and Swaran Singh filed a civil suit against Amar Singh claiming that the latter had retired from partnership with effect from 24th August 1988 and had voluntarily accepted payment of his share capital of Rs.89,277.11p. In addition, he had been advanced loan from the funds of the partnership firm on the same date. Amar Singh had agreed that he would not be entitled to profits and liabilities of the firm. In support, reliance was placed upon intimation dated 5th October 1988 sent by Amar Singh to Bank of India, the bankers of the partnership firm. It was stated that Amar Singh was paid amounts of Rs.1,00,000/- and Rs.50,000/- by way of pay orders and another amount of Rs.1,00,000/- in cash for which he had executed receipt dated 17th October 1988 (Exhibit P-9). Further, Amar Singh, after retirement, had floated a proprietorship concern, namely, Guru Nanak Mechanical Industries with effect from 14th September 1988 and was manufacturing and selling the same machinery.
3. Amar Singh contested the suit and on 29th April 1989, filed a suit for dissolution of partnership and rendition of accounts. The plea

and contention of Amar Singh was that he had never resigned. Some disputes had arisen between him and Swaran Singh on 19th August 1988 when he had written a letter to the bankers to stop operation of the bank account. Subsequently, he had written another letter dated 24th August 1988 (Exhibit P-5) as a partner, which letter was also signed by Swaran Singh as a partner, stating that the dispute between the partners had been settled and the bank may allow operation of the account. Amar Singh had pleaded that the receipt dated 17th October 1988 is forged and has been manipulated as he had signed and given papers to Swaran Singh.

4. The trial court dismissed the suit filed by Amar Singh and partly decreed the suit filed by Guru Nanak Industries and Swaran Singh primarily by relying upon letter dated 24th August 1988 (Exhibit P-5) and also the receipt dated 17th October 1988 (Exhibit P-9) observing that there is discrepancy in the two versions given by Amar Singh, the first version being that his signature on the letter dated 17th October 1988 (Exhibit P-9) was forged and the second version being that the receipt had been manipulated by adding the last sentence.
5. Two appeals preferred by Amar Singh were accepted by the first appellate court observing that the receipt dated 17th October 1988

(Exhibit P-9) was certainly manipulated by adding the last sentence. Letter dated 24th August 1988 (Exhibit P-5), in fact, supported the case of Amar Singh that he had not resigned as the letter was signed by both Amar Singh and Swaran Singh, wherein Amar Singh has been described as a partner. Official records in the Sales Tax Department and Income Tax Department also support the case of Amar Singh that the partnership firm was not dissolved on 24th August 1988. Accordingly, Amar Singh was held to be entitled to the prayer for partition of movable and immovable property wherein 40% belonged to Amar Singh and 60% belonged to Swaran Singh. The accounts would be rendered and settled as on the date of institution of the suit for dissolution of partnership, that is, 29th April 1989. Amar Singh would also be entitled to interest @ 9% per annum.

6. Swaran Singh, who had died when the civil suits were pending before the trial court and represented by his widow, filed two appeals before the Punjab and Haryana High Court which have been dismissed by the impugned judgment dated 18th May 2009.
7. Having heard counsel for the parties and having perused the relevant documents and oral evidence, we are not inclined to interfere with the findings recorded by the first appellate court,

which have been affirmed by the High Court as they are born out from the records. Exhibit P-5, a letter dated 24th August 1988, was individually signed by both Amar Singh and Swaran Singh clearly stating that they were partners of Guru Nanak Industries. By this letter, Amar Singh had requested the bank to start operation of the account of the partnership firm stating that the disputes between the partners had been settled. The subsequent letter dated 5th October 1988 relied by the appellants and written by Amar Singh states that there has been mutual understanding and agreement between him and Swaran Singh and as a result he had left the firm with effect from 24th August 1988 and, therefore, he would not be responsible in the event of any loan being granted after 24th August 1988. This letter also records that Amar Singh 'had to completely withdraw his share and accounts'.

8. The receipt Exhibit P-9 dated 17th October 1988, which is a disputed document, reads as under:

“Received with thanks a sum of Rs.1,00,000/- (Rupees One Lac only) by cash from S. Swaran Singh, Mg/ Partner of M/s. Guru Nanak Industries (Regd.), Plot No. C.P.-6&7, N.H.5, Rly. Road, Faridabad (Haryana) on account of part payment of the settlement made between both the partners of firm. The above amount is being received by the undersigned with regard to dissolution of our partnership on 24.8.1988. With the receipt of this amount my total amounts are settled. Nothing is due to me from S. Swaran Singh & his firm.

There is a contradiction in the earlier portion and the last sentence of the said receipt. The first portion refers to payment of Rs.1,00,000/- from Swaran Singh, partner of Guru Nanak Industries, on account of part payment of settlement between the two partners. The last sentence does not gel and, in fact, contradicts the first portion. The manipulation is apparent from the photocopy of the receipt that has been placed on record as Annexure-13/A with the documents. The words 'retiring partner' have been typed later on. They also cannot be reconciled with the subsequent line, that is, "For Guru Nanak Industries (Regd.)".

9. Amar Singh accepts that he had received payment of Rs.1,00,000/- and Rs.50,000/- by way of demand drafts. We would accept that Amar Singh had also received payment of Rs.1,00,000/- in cash. Amar Singh, in his written statement, had referred to three immovable properties, viz. CP No. 6&7, Neighbourhood No.5, Railway Road, N.I.T, Faridabad; plot situated in Timber Market, Parvesh Marg, Railway Road, Faridabad – 121002; and Plot No.8, measuring 4098 sq.yards allotted by HUDA situated in Industrial Area, Sector-5, Faridabad . In addition, as per Amar Singh, the partnership firm had constructed factory sheds on two properties. Amar Singh, in his written statement, had given

details of the machinery, finished goods and material, stock in trade, vehicles etc. In addition, he had furnished particulars of different FDRs having maturity value of Rs.7,71,920/-. It is claimed that the partnership firm has goodwill of more than Rs.10,00,000/-.

10. Sukhdev Singh (PW-2), s/o. Swaran Singh (who had died before he would enter the witness box), in his cross-examination, has accepted that the firm was the owner of plot Nos. CP 6&7, NH-5, Faridabad and Plot No.8, Sector-5 measuring 4098 sq.yards. He could not recollect the machinery as on date of dissolution, that is, 24th August 1988. He could not deny the suggestion that at the time of dissolution the value of the factory plots was Rs.25,00,000/-each or that the goodwill of the firm was at least Rs.10,00,000/-. He did not know whether his father had encashed FDRs of Rs.77,000/- (sic – Rs.7,77,000/-) in the name of the partnership firm. However, he accepted as correct that the value of the machinery owned by the firm on the date of dissolution could be Rs.17,00,000/-, though he was not sure. Similarly, he could not answer whether the value of the finished goods or furniture and fixtures, on the date of dissolution, was Rs.17,00,000/- and Rs.17,50,000/- respectively and that stock in hand was Rs.3,60,000/-.

11. The primary claim and submission of the appellants is that Amar Singh had resigned as a partner and, therefore, in terms of clause (10) of the partnership deed (Exhibit P-3) dated 6th May 1981, he would be entitled to only the capital standing in his credit in the books of accounts. However, the argument has to be rejected as in the present case there were only two partners and there is overwhelming evidence on record that Amar Singh had not resigned as a partner. On the other hand, there was mutual understanding and agreement that the partnership firm would be dissolved. This is apparent from even the version put forward by Swaran Singh and deposed to by his son, Sukhdev Singh (PW-2). Even the letter dated 5th October 1988 refers to the fact that Amar Singh is to completely withdraw the share and accounts which means that the things were yet to be settled. The receipt Exhibit P-9 dated 17th October 1988 refers to part payment of Rs.1,00,000/- towards settlement between the two partners. It also refers to the date of dissolution as 24th August 1988, which clearly indicates that payments were still to be made whereupon the two sides would have completely severed their relationship although there was a mutual agreement that the date of dissolution was 24th August 1988.

12. There is a clear distinction between 'retirement of a partner' and 'dissolution of a partnership firm'. On retirement of the partner, the reconstituted firm continues and the retiring partner is 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 [See – ***Pamuru Vishnu Vinodh Reddy v. Chillakuru Chandrasekhara Reddy and Others***, (2003) 3 SCC 445]. In the present case, there being only two partners, the partnership firm could not have continued to carry on business as the firm. A partnership firm must have at least two partners. When there are only two partners and one has agreed to retire, then the retirement amounts to dissolution of the firm [See – ***Erach F.D. Mehta v. Minoo F.D. Mehta***, (1970) 2 SCC 724].
13. Therefore, in view of the aforesaid discussion, we dismiss the appeals and uphold the judgment and decree dated 24th September 2004 passed by the Additional District Judge, Faridabad and sustained by the High Court, except that the date of dissolution of the firm would be taken as 24th August 1988 and not 31st of March 1989.

14. Counsel for the appellants, at the time of arguments, had expressed desire of the appellants to settle the matter with the respondents – legal heirs of the Amar Singh. He had prayed for four weeks' time. It appears that settlement has not been possible. The case is rather old and Swaran Singh and Amar Singh have expired. Primarily it is a money matter where the accounts have to be settled and payment etc. has to be made by the legal representatives of Swaran Singh. The case record also reveals that Amar Singh had set up his own business in September-October 1988 in the name of Guru Nanak Mechanical Industries, similar to the name of the partnership firm. Swaran Singh had not objected. We would, therefore, give one more opportunity to the parties to appear before the Supreme Court Mediation and Conciliation Centre to explore possibility of a settlement. However, in case of no settlement within a period of three months, the matter would proceed before the trial court for passing of the final decree, in accordance with law.

.....J.
(N.V. RAMANA)

.....J.

(SANJIV KHANNA)

.....J.
(KRISHNA MURARI)

**NEW DELHI;
MAY 26, 2020.**