

## CIVIL REVISION.

Before Nasim Ali and Khundkar JJ.

SURENDRANATH DE

v.

MANOHAR DE.\*

1934

July 26, 30.

*Partnership—Firm—Registration—Limitation—Penalty—Construction of statutes—Ambiguity—Indian Partnership Act (IX of 1932), ss. 1(3), 4, 69(2), 74(b).*

Section 69 (2) of the Indian Partnership Act would apply to suits for enforcement of claims accrued *before* the commencement of the Act, if such suits are started *after* section 69 (2) begins to operate.

Section 69 (2) being an enactment, which deals with procedure only, *i.e.*, the mode in which a right of action already existing shall be asserted, may be considered as retrospective in its operation and may be held to apply *prima facie* to all litigation pending as well as future.

*Kimbray v. Draper* (1) referred to.

The legislature, therefore, wanted to save expressly pending litigation, in respect of rights already accrued, from the operation of section 69 (2) by enacting section 74, clause (b).

The words "before the commencement of the Act" may also be taken as referring to the legal proceedings or remedy in respect thereof.

If the connotation of the words is in itself precise and unambiguous, no difficulty arises. But, if the terms are ambiguous, then the intention of the legislature must be sought for in the statute as a whole.

Section 74, clause (b), therefore, does not save litigation started *after* the 1st day of October, 1933.

CIVIL RULE under section 115 of the Code obtained by the plaintiffs.

The facts of the case appear sufficiently in the judgment under report herein.

*Bijankumar Mukherji* (with him *Pankajkumar Mukherji*) for the petitioners. Section 69 (2) of the Indian Partnership Act is not a bar to the maintainability of the present suit even though this partnership firm has not been registered. The ordinary

\*Civil Revision, No. 606 of 1934, against the order of Adityachandra Datta, Second Munsif of Burdwan, dated February 28, 1934.

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meaning and grammatical construction of section 74, clause (b), indicates unmistakably that the legislature intended to *save* all litigation, pending as well as future.

*Raāhabinode Pal* (with him *Joytishchandra Banerji*) for the opposite party. Section 69 (2) would apply to suits for enforcement of claims accrued *before* the commencement of the Act, if such suits are started *after* section 69 (2) begins to operate. The legislature wanted to save expressly *pending* litigation, in respect of rights already accrued, from the operation of section 69 (2) by enacting section 74, clause (b).

*Cur. adv. vult.*

The judgment of the Court was as follows :—

This Rule is directed against the judgment and decree of the second court of the Munsif of Burdwan vested with the powers of a Small Cause Court Judge in a suit brought by the petitioner against the opposite party No. 1 for recovery of a certain sum of money. The learned Munsif has dismissed the suit on the ground that section 69, clause (2) of the Indian Partnership Act of 1932 is a bar against the present suit.

It is not disputed before us that the petitioner and the opposite party 2 constituted a firm as contemplated by section 4 of the Indian Partnership Act and that the said firm has not been registered as required by the Act. It is not also disputed that this suit was instituted after section 69 of the Act came into operation.

The only point for determination, therefore, is whether section 69 (2) of the Act is a bar to the maintainability of the present suit. Section 69 (2) runs thus :—

No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

Evidently, under this section, firms, which do not choose to be registered under the provision of the Act, have been put under disability as regards their right to sue, the object of the legislature being to put pressure upon the unregistered firms to come on the register under the provisions of the new Act. *Prima facie* such an enactment would be unjust, if no opportunities were given to them to register, as for no fault of theirs they would be deprived of the right to enforce a claim, which accrued to them before the Act came into operation. In order to obviate this hardship the legislature suspended the operation of section 69 for a year in order to give unregistered firms a reasonable chance to register before the section begins to operate against them. [Section 1, clause (3) of the Act.] The suspension of operation for a year is, therefore, to be taken—

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as an intimation that the legislature has provided that as the period of time within which proceedings respecting antecedent damages or injuries might be taken before the proper tribunal.

See *Queen v. Leeds and Bradford Railway Company* (1).

In other words, if proceedings for enforcement of claims are not taken within one year, section 69 would begin to operate as against them. It is, therefore, clear that section 69 would apply to suits for enforcement of claims accrued before the commencement of the Act, if such suits are started after section 69 begins to operate.

Again section 69, being an enactment, which deals with procedure only, *i.e.*, the mode, in which a right of action already existing shall be asserted, may be considered as retrospective in its operation and may be held to apply *prima facie* to all actions, pending as well as future. [See *Kimbray v. Draper* (2) *per Blackburn J.*]. The legislature, therefore, wanted to save expressly pending litigation, in respect of rights already accrued, from the operation of section 69 by enacting section 74, clause (b). Dr. Mukherji,

(1) (1852) 21 L. J. (M. C.) 193. (2) (1868) L. R. 3 Q. B. 160, 163.

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however, contends that the language of the section in its ordinary meaning and grammatical construction goes to indicate that the intention of the legislature was to save all litigation, pending as well as future. In other words he would read the words "before the commencement of the Act" in section 74 (b) as referring to "the right or liability, *etc*". But the words "before the commencement of the Act" may be taken also as referring to the legal proceedings or remedy in respect thereof. If the collocation of the words is in itself precise and unambiguous, no difficulty arises: but, if the terms are ambiguous, then the intention of the legislature must be sought for in the statute as a whole. As already pointed out, the other sections in the Act would go to indicate that the intention of the legislature was to bring section 69 into operation against the firms, if they do not register themselves or if they do not take proceedings respecting antecedent matters within a year from the date of the commencement of the Act. Section 74, clause (b), therefore, does not save litigation started after the 1st day of October, 1933. The Munsif was, therefore, right in dismissing the suit.

The Rule is accordingly discharged, but we make no order as to costs in this Rule.

*Rule discharged.*

G. S.