

APPELLATE CIVIL.

Before Addison and Din Mohammad JJ.

TARA SINGH (PLAINTIFF) Appellant,

versus

MST. SAHIB DEVI AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No 223 of 1936.

Partnership — Suit for rendition of accounts — after partnership had been dissolved by efflux of time — Plaintiff — whether entitled to interest on his share in the profits from date of dissolution.

In a suit for rendition of accounts of a partnership which had become dissolved by efflux of the time fixed for the partnership, Rs.3,256 was found by arbitrators to be due to plaintiff on account of profits. Plaintiff claimed that he was entitled to interest on this item from the date of dissolution of the partnership.

Held, that this being an action to dissolve and wind up the affairs of a partnership, until the accounts had been taken it was impossible to say what, if anything, was due from any partner to his co-partner and interest on the profits could, therefore, be allowed only from the date of the final decree.

Suleman v. Abdul Latif (1), followed.

First appeal from the decree of Sheikh Ferozeud-Din Qureshi, Subordinate Judge, 1st Class, Lahore, dated 26th February, 1936, ordering the defendants to pay to the plaintiff Rs.6,117 together with Rs.337-8-0 costs.

ACHHRU RAM and INDAR DEV DUA, for Appellant.

NAROTAM SINGH and H. J. RUSTOMJI, for Respondents.

The judgment of the Court was delivered by—

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ADDISON J.—A partnership was entered into between the plaintiff Tara Singh on the one side and Teja Singh and Teja Singh's son Sobha Singh, on the other side. The partnership was fixed from the 1st April, 1924, to the 31st March, 1925, the shares of the two sides being equal. The present suit was instituted by the plaintiff against Teja Singh and Sobha Singh on the 1st May, 1927, for rendition of the accounts of the partnership which had automatically dissolved on the 31st March, 1925. A preliminary decree was granted on the 8th August, 1928.

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Thereafter various commissioners were appointed to go into the accounts. In the meantime Teja Singh died and is now represented by his widow *Mussammatt Sahib Devi* and three sons. For various reasons the accounts were not settled for a long time and at length on the 20th March, 1935, certain arbitrators were appointed to fix what was due. They gave their award on the 16th January, 1936. Their finding was that Rs.1,544 were due to the plaintiff as capital, Rs.3,256 as profits and Rs.550 as costs of the litigation up to the date of the award. The total of these three sums is Rs.5,350. The question of costs after the award was left to the Court as well as the question of interest.

The trial Judge allowed the plaintiff his costs subsequent to the award. He also allowed interest on the sum of Rs.1,544 at 9 *per cent. per annum* but held that the defendants were only liable for half that amount as their share of the partnership was half. He disallowed interest on the sum of Rs.3,256 which represented the profits to which the plaintiff was entitled. Against this decision the plaintiff has appealed as regards interest.

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It was admitted by the learned counsel appearing for the appellant that he was only entitled to half interest at 9 *per cent. per annum* on capital up to the 31st March, 1925, the date of the dissolution of the partnership, but he urged that after that date he was entitled to higher interest by way of damages from the defendants as they should have returned his capital then. He was allowed interest at $4\frac{1}{2}$ *per cent. per annum* on capital advanced by him up to the date of the decree and we see no reason to increase that rate. There is no force, therefore, in this part of the appeal.

The appellant's counsel, however, strenuously contended that he was entitled to interest on the sum of Rs.3,256, which represents his share of the profits from the 1st April, 1925, till date of realisation. We are, however, of opinion that he is not entitled to this on the authority of *Suleman v. Abdul Latif* (1). There, a decree was given which allowed interest from the date of the plaint. The defendants appealed to His Majesty in Council against that part of the order while the plaintiffs appealed by way of cross-appeal against the disallowance of interest on the amounts overdrawn by the defendants.

As regards the cross-appeal, their Lordships remarked that no case was made out or even alleged against the defendants which should justify a departure from the ordinary rule that a partner was not charged with interest in respect of overdrawings. This has no connection with the present case. As regards the appeal of the defendants, however, which was against the allowance of interest from the date of the plaint, their Lordships remarked that they were

(1) I. L. R. (1931) 58 Cal. 208 (P. C.).

unable to accept the correctness of the view that interest should be allowed to the plaintiffs from the date of the plaint. They said that this was not an action to recover a debt of which it could be said that it was due at the date of the plaint. It was an action to dissolve and wind up the affairs of a partnership and until the accounts had been taken it was impossible to say what, if anything, was due from any partner to his co-partner. In their opinion, therefore, interest should only be allowed to the plaintiffs from the date of the final decree. This applies fully to the present case. It follows that the plaintiff was only entitled to interest from the date of the final decree but as the sum found due was paid within a month or two of the final decree, we see no reason to accept the appeal to the extent of allowing interest for a month or two.

We, therefore, dismiss this appeal but make no order as to costs here.

A. N. C.

Appeal dismissed.

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