

Introduction:

The Indian Partnership Act, 1932('the Act') provides for registration of partnership firms with the registrar of Firms. Registration under the Act is voluntary and not compulsory as in England. However, u/s.69 of the Act, in the case of firms which are unregistered, the partners of the firms cannot file any suit in a Court. Thus, this is a disability for all unregistered firms.

In spite of the above disability, the partner of an unregistered firms. This position was amended in the state of Maharashtra by the introduction of S.69(2A) and S.69(3)(a). Hence, partners of an unregistered firms in the State of Maharashtra, could not even sue for the dissolution of the firm or for realisation of the property of a dissolved firm.

This amendment in Maharashtra caused a great deal of hurdles for partners of unregistered firms and was challenged as being unconstitutional. The Bombay High Court upheld the validity of this in the case of V. Subramanian v. Rajesh raghuvendera Rao, Civil Appeal No.7438 of 2000 decided on 20th March, 2009, had an occasion to consider the Constitutional validity of this important amendment. This article analyses this important judgment and the principles laid down therein.

Principles laid down by the SC

The Bombay High Court had upheld the validity of the above provision which prevented a partner of an unregistered firm from suing for dissolution. Aggrieved by this decision, the appellants, V.Subramaniam, preferred an appeal before the Supreme Court. The Supreme Court laid down various important principles in its judgment.

Firm not a separate legal entity

The Court observed that unlike in the case of a company, a firm is not a separate legal entity and it does not have a personality distinct from its partners. The registration of a firm also does not give it the status of an artificial juridical person. The partners are the real owners of the firm's property. The property belongs to the partners. This position is distinct from that in the case of a company.

Constitutional validity

The supreme court held that Act. 300A of the Constitutions state that deprived of his property except by authority of law. Sub-section 2A deprived a partner from his share in the property of the firm and that too without any compensation.

The court also held that the amendment was violative of Art.14 of the Constitution which guarantees the right to equality. Under the present law, partners of an unregistered firm were placed on an unequal footing vis-à-vis partners of a registered firm. Further, the amendment was ultra vires Art. 19(1)(g) which guaranteed all persons the right to practice any profession or trade. The State was this right. However, a reasonable restriction meant that the limitation should not be arbitrary or unjust or excessive. A proper balance should be struck between the restriction and the fundamental right of freedom granted by Art.19. A law is invalid if it is arbitrary and of excessive nature and goes beyond what is in public interest as held by the Supreme Court on Maneka Gandhi vs. UOI, AIR 1978 Sc 597

The Court observed that the amendments were crippling in nature. It would have the effect that the partnership cannot be put to an end by filing a suit for dissolution. It may happen that a dishonest partner who was in control of the business or if he is stronger than the rest, can deprive the other partners of their dues from the firm. This would be extremely unjust and unfair. Will be very reluctant to enter into unregistered firms since they would not be able to dissolve the firm and get back the money which they have got in the firm.

Conclusion

The Court ultimately held that the amendment was ultra vires Art.14,19(1)(g) and 300A of the Constitution and hence. It was struck down as being unconstitutional. Accordingly, the Act in Maharashtra should now be read as if it does not contain sub-section (2A) and the revised clause (a). Thus, a partner of an unregistered firm can now sue for dissolution or accounts or property of such a firm. ■