

Before S. S. Kang, J.

GUPTA STEEL INDUSTRIES and others,—Appellants.

versus

BALBIR KUMAR and another,—Respondents.

R.S.A. No. 319 of 1980.

March 17, 1980.

*Partnership Act (IX of 1932)—Sections 46 and 48—Code of Civil Procedure (V of 1908)—Order 26 and Appendix D Form 21—Suit for dissolution of partnership—Said partnership dissolved under a preliminary decree—Local Commissioner appointed to take charge of the assets of the firm—Such directions—Whether envisaged under sections 46 and 48—Scope of authority of the Local Commissioner in such situations—Stated.*

*Held*, that a combined reading of sections 46 and 48 of the Partnership Act, 1932 shows that after dissolution of the partnership the partners cannot manage its affairs, and the assets have to be applied in the discharge of debts etc. and the residue if any has to be distributed amongst the partners. In accordance with the provisions of section 48 of the Act only a Receiver or a Local Commissioner appointed by the Court can perform these functions and this role can be played only by a disinterested and neutral person. The partners in control of the assets of the dissolved partnership cannot perform this role. This policy has been expressed clearly in Form 21 in Appendix D to the Code of Civil Procedure 1908. Although this form is not mandatory and is directory in nature, it gives an indication as to what steps should be taken while passing a preliminary decree. If the Court acts in conformity with the intentions of the Legislature expressed in the aforesaid form the decision cannot be questioned as being against the law. Moreover the powers of the Commissioner given in Order 26 of the Code are not exhaustive and the Court can direct the Commission to discharge the functions prescribed by section 48 of the Act. As such the directions to the Local Commissioner to take charge of the assets of the firm are perfectly in accordance with law.

(Para 5).

*Regular Second Appeal from the order of Shri Balwant Singh Teji, Additional District Judge, Jullundur, dated 31st October, 1979 modifying that of Shri Gurdev Singh Dhiman, Sub-Judge III Class, Jullundur, dated 18th May, 1978 (whereby partnership concern between the parties was dissolved from 2nd May, 1978 and appointed Shri J. S. Uppal, Advocate, Jullundur as a Commissioner to take the following accounts :—*

- (1) *An account of credits, property and effects now belonging to the said partnership.*

- (2) *An account of debts and liabilities of the said partnership.*
- (3) *An account of all dealings and transactions between the plaintiffs and defendant from the foot of the settled account exhibited in the suit and not disturbing any subsequent settled account.*

*He is directed to submit his report within 3 months. The Appointed Local Commissioner is directed to take accounts, to take control and apply the assets of the firm and take accounts only to the extent and limit provided under section 48 of the Indian Partnership Act, leaving the parties to bear their own costs.*

*Kuldip Singh, Barrister and G. S. Chawla, Advocates, for the appellants.*

*H. L. Sarin, Senior Advocate, Ravinder Seth, M. L. Sarin and R. L. Sarin, Advocates with him, for the respondent.*

#### JUDGMENT

*Sukhdev Singh Kang, J.*

(1) M/s. Gupta Steel Industries and others, have through this regular second appeal, assailed the judgment and decree, passed by the Additional District Judge, Jullundur, whereby he modified the judgment and decree passed by the trial Court to the effect that the Local Commissioner, appointed to take accounts, was directed to take control and apply the assets of the firm.

(2) Brief facts of the case are that Balbir Kumar and Ranjit Kumar filed a suit against M/s. Gupta Steel Industries and others for dissolution of the partnership and rendition of accounts. Their case was that the parties to the suit entered into a partnership on 22nd of May, 1970. The share of the plaintiffs was 44 per cent. The plaintiffs were minors and the business of the firm was being carried on by defendants 2 to 4. They alleged that these defendants had misappropriated the funds of the partnership business and had closed the factory. Since the defendants had refused to render the accounts of the partnership business, a suit was filed against them. The trial Court passed a preliminary decree and ordered that the partnership shall stand dissolved as from 2nd of May, 1978 and appointed Mr. J. S. Uppal, Advocate as Local Commissioner to take the accounts. The plaintiffs were not satisfied with the judgment and decree of the trial Court and filed an appeal. The

Gupta Steel Industries and others v. Balbir Kumar and another  
(S. S. Kang, J.)

---

learned Additional District Judge, upheld the preliminary decree and modified it to the extent that the Local Commissioner shall take control and apply the assets of the firm. The defendant-respondents have filed this regular second appeal against the judgment and decree of the learned District Judge.

(3) It has been argued on behalf of the appellants that during the pendency of the suit in the trial Court the plaintiffs made application for appointment of a Receiver, the same was declined. During the pendency of the appeal, they moved another application for appointment of the Receiver, this was also rejected by the lower Appellate Court. The prayer for appointment of a Receiver having been declined, the lower Appellate Court directed the Local Commissioner to take control of the assets of the partnership and apply the same in accordance with the provisions of section 48 of the Indian Partnership Act (hereinafter called the Act). These are the functions of a Receiver and not of a Local Commissioner. The Local Commissioner can only take accounts and he cannot take possession of the assets of the partnership and apply them in accordance with the provisions of the Partnership Act. In support of this, the learned counsel has relied on a decision of the Supreme Court in *Padam Sen and another vs. The State of Uttar Pradesh* (1), wherein it has been held as under:—

“Court has no inherent powers under S. 151 to appoint a Commissioner to seize account books in the possession of the plaintiff, upon an application by the defendant that he has apprehension that they would be tampered with.”

(4) On the other hand Mr. H. L. Sarin, learned counsel for the respondents, has argued that the partnership stood dissolved from 2nd of May, 1978. After this date the defendant-appellants had no right to manage the affairs of the partnership. They could not deal with the assets of the firm. In view of the provisions of sections 46, 47 and 48 of the Act, after the dissolution of the firm, however, a partner has a right to have the property of the firm applied in the payment of debts and liabilities of the firm and to have the surplus distributed amongst the partners. After the dissolution, the partner can bind others only to the extent it is necessary to wind up

---

(1) A.I.R. 1961 S.C. 218.

the affairs of the firm and to complete, the unfinished transactions. The mode for settling the accounts, after the dissolution, has also been given. He has also placed strong reliance on the language of Form 21 in Appendix D to the Civil Procedure Code. It has been specifically given in this form that while passing a preliminary decree, the Court shall order that the person named therein shall be the Receiver of the partnership estate and effects in the suit and to get in all the outstanding book-debts and claims of the partnership. According to the learned counsel, this shows that after the dissolution of the partnership, the assets have to be taken over by a Receiver. According to Mr. Sarin, in the present case, the word 'Local Commissioner' has inadvertently been used. The learned lower Appellate Court in fact had meant to use the word 'Receiver'. In any case this did not make any difference. The Local Commissioner could be ordered to take over the assets of the firm. The provisions of Rules 11 and 12 of Order 26 of the Code of Civil Procedure do not in any way suggest that the Local Commissioner is only to take over the accounts. In fact under rule 11, the Court can issue a commission to make examination of the accounts or adjustment thereof. The adjustment of the accounts can be made effectively after taking into possession the assets of the dissolved partnership. When the partnership has been dissolved, the persons in possession of its assets have no right to retain them. These have to be applied in accordance with section 46 of the Act and only a Receiver or Local Commissioner appointed by the Court can perform these functions. He has also contended that the decision in *Padam Sen's case* (supra) is not applicable to the facts and circumstances of the present case.

(5) I have given my thoughtful consideration to the rival contentions made by the learned counsel for the parties. A combined reading of sections 46 and 48 of the Act shows that after dissolution of the partnership, the partners cannot manage its affairs. One partner cannot bind the others. The assets have to be applied in the discharge of debts etc., and the residue, if any, has to be distributed amongst the partners. In accordance with the provisions of section 48 of the Act, only a Receiver or a Local Commissioner appointed by the Court can perform these functions. This role can be played only by disinterested neutral persons. The partners in control of the assets of the dissolved partnership cannot perform this role. This policy has been expressed clearly in Form 21 in Appendix D to the Code of Civil Procedure. Undoubtedly this form is not

Amrit Sagar Kashyap v. Chief Commissioner, Union Territory,  
Chandigarh and another (M. M. Punchhi, J.)

mandatory, it is only directory. This is a model form and cannot be termed to be statutory in the strict sense. However, this gives an indication as to what steps should be taken while passing a preliminary decree. The learned Additional District Judge has acted in conformity with the intentions of the Legislature expressed in Form 21 of Appendix D to the Code of Civil Procedure. Even if this form is to be taken to be directory and if the Court acts in accordance with this form, the decision cannot be questioned. It cannot be said that the decision in such a case will be against law. The powers of a Commissioner given in Order 26 of the Code of Civil Procedure, are not exhaustive. The Court can direct the Commissioner to discharge the functions prescribed by section 48 of the Act.

(6) The fact that the applications for appointment of a Receiver were dismissed by the trial Court and by the lower Appellate Court is of no consequence. Those applications were for appointment of a Receiver during the pendency of the suit and the appeal respectively. However, the directions to the Local Commissioner to take control of the assets of the partnership, have been given after the passing of the preliminary decree. The order had been passed to meet the entirely different situation.

(7) The ratio of decision in *Padam Sen's case* (supra) does not help the appellants. Their Lordships were dealing with the inherent powers of the Courts under section 151 of the Code of Civil Procedure to appoint Commissioners. However, in the present case, the impugned direction is given in conformity with Form 21 of Appendix D, prescribed by the Code of Civil Procedure itself.

(8) For the foregoing reasons, I do not find any merit in this appeal and dismiss the same with no order as to costs.

H. S. B.

Before D. S. Tewatia and M. M. Punchhi, JJ.

AMRIT SAGAR KASHYAP,—Petitioner.

versus

CHIEF COMMISSIONER, UNION TERRITORY, CHANDIGARH AND  
ANOTHER,—Respondents.

Civil Writ Petition No. 2587 of 1977

April 3, 1980.

*Capital of Punjab (Development and Regulation) Act (XXVII of 1952) as amended by Chandigarh Amendment Act of 1973 (Central Act 17 of 1973)—Section 8-A—The word 'resumption' occurring in*