

APPELLATE CIVIL

*Before Prem Chand Pandit, J.*TRILOKI NATH,—*Appellant.**versus*FIRM HINDU JOINT FAMILY TARA CHAND, AVADH BEHARI, AND
OTHERS,—*Respondents.*

Regular Second Appeal No. 861 of 1964.

March 24, 1967.

Partnership Act (IX of 1932)—S. 19—Partner purchasing on credit goods for the business of the firm—Other partners of the firm—Whether liable—Power of a partner to purchase goods on credit—Whether confined to trading partnerships only.

Held, that when a partner purchases goods on credit for the business of the firm and such goods are actually used for the partnership business, all the partners of the firm are liable for the payment of those goods and the partners other than the one purchasing the goods cannot escape their liability by saying that the partner who had actually taken goods on credit should alone be responsible for their price.

Held, that the power of a partner to purchase on credit goods, which are necessary for carrying on the business of the partnership, is not confined to trading partnerships only.

Second Appeal from the decree of the Court of the Additional District Judge Karnal, dated the 31st day of January, 1964, affirming with costs that of the Sub-Judge 2nd Class, Kaithal, dated the 15th December, 1962 granting the plaintiff a decree for Rs. 1,616.14 Paisa, principal and interest against the defendants with proportionate Costs of the suit.

D. N. AGGARWAL, ADVOCATE, for the Appellant.

H. L. SARIN, BAHL SINGH MALIK, BALRAJ BAHL AND CHATUR BHUJ KAUSHIK,
ADVOCATES, for the Respondents.

JUDGMENT

PANDIT, J.—Joint Hindu Family firm Tara Chand Avadh Behari situate in Kaithal Mandi, brought a suit through its manager, Tara

Chand, for the recovery of Rs. 1,783.06 nP., against Tirloki Nath, Lachhman, Indraj, Sarup, Sardara, Sadhu and Amar Nath, defendants 1—7 on account of the price of the diesel oil supplied to them during the period commencing 25th of August, 1959 to 10th of May, 1960, and the interest on the said amount. The case of the plaintiff was that the defendants had entered into a partnership, by means of a deed dated 18th July, 1958, to run a tube-well installed in the land belonging to Lachhman, defendant No. 2. The plaintiff was the selling agents of Burmah Shell Co., and Indraj defendant No. 3, had been obtaining oil from them on credit on behalf of the said partnership for the engine which used to run the said tube-well. Since the defendants did not pay the amount due in spite of demands, the present suit was instituted.

The suit was resisted by the defendants. The case of Indraj, defendant No. 3 was that he had purchased the said oil from the plaintiff at the instance of Tirloki Nath, defendant No. 1 for running the tube-well. He, however, said that the liability for the payment of this amount was of defendant No. 1, inasmuch as he was responsible for keeping the accounts which he did not render. Tirloki Nath and Lachhman, defendants 1 and 2 pleaded that the tube-well was never worked and Indraj, defendant No. 3 did not purchase any oil for the said tube-well from the plaintiff. Besides, he had no authority to buy the said oil on behalf of the partnership. Similar pleas were raised by the other defendants whose case in the alternative was that Tirloki Nath alone was responsible to pay the amount in question. The trial Judge held that the oil in question was supplied by the plaintiff to Indraj, defendant No. 3, that this oil was not used by defendant No. 3 anywhere else except for running the tube-well which was worked in partnership of the defendants, that the oil in question was purchased by Indraj on behalf of and for the benefit of the partnership and that he was authorised to make the said purchase. It was also found that the plaintiff was entitled to interest by way of damages, because defendants had unreasonably withheld the price of the oil supplied to them. The plaintiff was allowed a sum of Rs. 175 as interest at the rate of 6 per cent per annum on this account. On these findings, a decree for Rs. 1,616.14 nP., as principal and interest was awarded in favour of the plaintiff against the defendants, with proportionate costs of the suit.

Against this decision, only Tirloki Nath, defendant No. 1, went in appeal before the learned Additional District Judge, Karnal, who dismissed the same after confirming the findings of the trial court. Tirloki Nath has come here in second appeal.

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The only contention raised by the learned counsel for the appellant was that on the facts found by the learned Additional District Judge, it could not be held that Indraaj had the implied authority to borrow money from the plaintiff-firm and thus bind the partnership of the defendants with any liability. It was he alone who was responsible for the repayment of the amount to the plaintiff and no recovery could be made from other partners. It was argued that the defendant-firm was not a trading partnership wherein a partner may have the implied authority to borrow money for the said partnership purposes and in so borrowing he might bind the other partners, because buying and selling were essential features of a trading partnership.

It had been found by the learned Additional District Judge that Indraaj had in fact purchased the oil in question from the plaintiff-firm, although he had no express authority to buy the said oil on credit on behalf of the partnership. It was further found that the said oil was used and consumed in working the tube-well of the partnership. Now the question is whether the other defendants are also liable for the payment of this amount to the plaintiff. When the goods which were taken on credit were actually used for the partnership purpose, in my opinion, the other partners become liable for the payment of those goods and they cannot escape their liability by saying that the goods had actually been taken on credit by Indraaj who alone should be responsible for their price. The goods were borrowed by Indraaj, not in his individual capacity, but in the name of the partnership as would be apparent from some of the vouchers produced in this case which bear the description of the purchaser as "Indraaj, Triloki Nath, Sardara Tubewell wale." It has also been established that Indraaj never utilised this oil for his own purpose, but the same had been used in working the tube-well of the partnership. Where the goods were purchased on credit on behalf of the firm and the same had been utilised for the partnership business, there is no reason why the entire partnership should not be responsible for the payment of their price. The oil had been taken on credit in course of the business and this step was necessary for carrying out the business of the partnership, namely, the working of the tube-well. It is significant to mention that it was not the case of the appellant that the plaintiff knew at the time when they gave the oil on credit that Indraaj had no authority to purchase the goods for the firm on credit.

The view that I have taken above finds support in a Bench decision of the Bombay High Court in *Lakshmishankar Devshankar v.*

Motiram Vishnuram, etc., (1), where it was held that when money borrowed by one partner in the name of the firm without the authority of the co-partners has been applied to paying off the debts of the firm, the lender was entitled in equity to repayment by the firm of the amount which he could show to have been so applied and the same rule extended to money *bona fide* borrowed and applied for any legitimate purposes of the firm.

There is yet another way of looking at the whole matter. Had Indraaj the implied authority to purchase the oil on credit and bind the partnership with liability? The implied authority of a partner as the agent of the firm is dealt with in Section 19 of the Indian Partnership Act, 1932, the relevant part of which reads thus:—

“(1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his “implied authority.”

(2) * * * * *

In view of the above-mentioned provision, the point for determination would be as to whether the act of Indraaj in purchasing the oil on credit from the plaintiff was done to carry on, in the usual way, the business of running the tube-well, which was carried on by the partnership. It has been found by the learned Additional District Judge that no capital or fund had been subscribed or supplied to the partnership. It is undisputed that the tube-well of the partnership could be worked only by running the engine and for that purpose oil was absolutely necessary. Since there was no money for the purchase of the oil, the same had to be bought on credit. Under these circumstances, the purchase of oil on credit was necessary to carry on, in the usual way, the business of the partnership. It was conceded by the learned counsel for the appellant that according to a number of decisions (e.g., *Mst. Dhanbai v. Daibai and others* (2), and *Md. Lutfulla Saheb v. Gauhati Bank Ltd., and others* (3), a partner in a trading firm might have the implied authority to borrow money for the purposes of the business of the partnership, because buying

(1) (1904) 6 Bom. Law Reporter 1106.

(2) A.I.R. 1926 Sindh 291.

(3) A.I.R. 1953 Assam 217.

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and selling were essential features of such a partnership. This principle, however, according to the learned counsel, would not apply to the instant case, since here the finding of the learned Additional District Judge was that it was not a trading partnership. I may at once state that there was no question of Indraj's borrowing money from the plaintiff-firm; he only purchased the goods on credit and it has been laid down in Lindley on the Law of Partnership, twelfth edition, page 178—

“There is a practical difference between borrowing money and procuring works and materials on credit, which requires notice. The difference consists in this, that he who possesses power to borrow on the credit of another, has a much extensive, and, therefore, more easily abused, trust reposed in him than one who is empowered only to pledge the credit of another for value received, when the pledge is given. A power, therefore, to incur debt, which is necessarily incidental to almost every partnership, by no means involves a power to borrow money; * * * *”

A power of a partner to purchase goods which are necessary for carrying on the business of the partnership, on credit is not confined to trading partnerships only. This is what is stated on this subject in the above-mentioned book on page 188:—

“The power of one partner to bind the firm by a purchase of goods on its credit is not confined to trading partnerships. Thus, where some printers and publishers agreed to share the profits of a work, and the publishers ordered paper for that particular work and became bankrupt, the printers were held liable for its price to the stationers who supplied it. It is of no consequence what the partnership business may be, if the goods supplied are necessary for its transaction in the ordinary way.”

I would, therefore, hold that in the circumstances of this case, Indraj had the implied authority to take the oil in question on credit from the plaintiff-firm for running the tube-well of the partnership and he could thereby make the other partners also liable for the payment of the price thereof.

In view of what I have said above, this appeal fails and is dismissed. There will, however, be no order as to costs.

B.R.T.