authorised to drive it by the driver Baldev Raj, there is no escape from the conclusion that both Baldev Raj and the State of Haryana were rightly held liable for the payment of the amount awarded as compensation.

(12) The other point raised in this appeal was with regard to the quantum of compensation awarded to the claimants. In dealing with this matter, it will be seen from the evidence on record that Pawan Kumar deceased was only 23 years of age when he died. He was employed as a conductor in the Haryana Roadways and his total emoluments were slightly over Rs. 300 per month. He died leaving behind his young widow, a minor daughter and also his parents. Considering the circumstances of the deceased and the claimants in the context of the principles laid down by the Full Bench in *Lachhman Singh* v. *Gurmit Kaur* (3), the appropriate multiplier to be applied in this case would clearly be 16 and the loss to the claimants deserves to be taken at Rs. 3,000 per annum. So computed, the compensation payable to the claimants would work out to Rs. 48,000. The amount awarded must consequently be reduced to this sum, but the claimants shall be entitled to interest thereon at the rate of 12 per cent per annum from the date of the application to the date of the payment of the amount awarded, subject of course to the maximum amount of Rs. 60,000 which was the amount awarded to them by the Tribunal. Out of the amount awarded, a sum of Rs. 8,000 shall be payable to the parents of the deceased, Rs. 10,000 to the minor daughter and the balance to his widow.

(13) This appeal is accepted to the the extent indicated above. There will, however, be no order as to costs.

H.S.B.

Before G. C. Mital, J.

NARINDER SINGH RANDHAWA AND ANOTHER,—*Appellants*

versus

HARDIAL SINGH DHILLON AND OTHERS.—*Respondents.*

First Appeal from Order No. 353 *of* 1976.

August 7, 1984.

Arbitration Act (X *of* 1940)—*Section* 44(*g*)—*Arbitration clause in partnership deed providing for a settlement of dispute through*

(3) 1979 P.L.R. 1.

Arbitration—Suit filed by a partner for dissolution unaer section 44(g), pleading that it would be just and equitable to dissolve the partnership—Said partnership at will—Whether stands dissolved by the mere filing of the suit—Question as to whether it would be just and equitable to dissolve the partnership—Whether can be decided by the Arbitrator.

Held, that merely by filing a civil suit for dissolution of partnership at will, the partnership does not stand dissolved and it will stand dissolved from a date which may be fixed in the preliminary decree passed by the Court unless it is found in the suit on merits that the partnership had already stood dissolved. Where, therefore, the plaintiffs are seeking dissolution of partnership, section 44(g) of the Partnership Act would be attracted. Since the dissolution is sought on the basis of justice and equity, this matter can be gone into by a Civil Court and not by the Arbitrators and as such the application under section 34 of the Indian Arbitration Act, 1940 was not maintainable for staying the suit.

(Para 3)

First Appeal from the order of the Court of Shri I. C. Aggarwal, Sub-Judge Ist Class, Amritsar, dated the 29th May, 1976, accepting the application and the proceedings in the suit are stayed with no order as to costs.

D. V. Sehgal, Sr. Advocate with B. R. Mahajan, Advocate and P. S. Rana, Advocate, *for the Appellant.*

Harinder Singh, Advocate, *for the Respondent.*

JUDGMENT

G. C. Mital, J. (oral)

(1) Narinder Singh and Smt. Harprit Randhawa filed a suit for dissolution of partnership and rendition of accounts of Messers Janta Rice Mills, Mehta, District Amritsar. Onreceipt of the notice of the suit, Hardial Singh Dhillon filed an application under section 34 of the Indian Arbitration Act for staying the suit on the pleas that the firm had already been dissolved and in the partnership deed it was agreed between the parties that they would get their disputes settled through arbitrators and hence, the dispute in the present suit should be referred to the arbitrators and the suit be stayed. The plaintiffs contested the suit. The trial Court framed the following issues:—

(1) Whether there is valid and subsisting agreement between the parties relating to the subject-matter of the dispute? OPA

(2) If issue No. 1 is proved whether the proceedings in the suit are liable to be stayed? OPD

(3) Relief.

After evidence was led, the trial Court by judgment dated 29th May, 1976, allowed the application of the defendant and stayed the suit after giving findings on all the issues in favour of the defendant. This is plaintiff's appeal.

(2) After hearing the learned counsel for the parties I am of the view that this appeal deserves to succeed. In the plaint, the plaintiffs have clearly prayed that the facts of the case are such which render it just and equitable that the partnership should be dissolved. In this respect section 44(g) of the Partnership Act is clearly attracted. The learned counsel for the plaintiffs has urged that whenever dissolution of partnership is sought under section 44(g), then it is for the Court to decide, whether it would be just and equitable to dissolve the partnership or not and such a matter cannot be left to be gone into and decided by the arbitrator in pursuance of the arbitration clause contained in the partnership deed. In support of his argument, reliance is placed on *Dwarka Nath Kaur* v. *Rameshwar Nath and others* (1) *and Nitya Kumar Chatterjee* v. *Sukhendu Chandra* (2). On going through the aforesaid decisions, I am of the view that they fully support the contention of the learned counsel for the plaintiffs. Before this matter is finally decided in favour of the plaintiffs, it will have to be seen, whether the partnership stood dissolved by filing the suit as held by the Court below, because, in case the partnership stood dissolved by filing the suit, the question, whether it would be just and equitable to dissolve the partnership, would not survive for consideration.

(3) The Court below relied on certain observations in *Manohar Lal etc.* v. *Moti Lal etc.* (3) by R. S. Narula, J. in coming to the conclusion that the moment a suit is filed for dissolution of partnership, a partnership at will stands dissolved merely by filing of the suit. Since the instant partnership was a partnership at will, the trial Court followed the observations in the aforesaid judgment and held that by filing of the suit, the partnership stood dissolved

(1) 1966 P.L.R. (Delhi Section) 91.
(2) A.I.R. 1977 Calcutta 130.
(3) 1974 Curr L. J. 423.

and therefore, section 44(g) of the Partnership Act could not be relied upon by the plaintiffs to seek dissolution of partnership through Court on just and equitable grounds. Firstly, the learned counsel for the plaintiffs urged that the facts of the aforesaid decision were distinguishable and secondly, he argued that it was not a correct decision in view of the judgment of the Supreme Court in *Banarsi Das* v. *Kanshi Ram* (4) and *Khushi Ram Behari Lal and Co* v. *State of Punjab and another* (5). In *Banarsi Das's case* (*supra*) it was ruled by the Supreme Court as follows:—

> "Now, it will be clear that this provision contemplates the mentioning of a date from which the firm would stand dissolved. Mentioning of such a date would be entirely foreign to a plaint in a suit for dissolution of partnership and there fore such a plaint cannot fall within the expression 'notice' used in the sub-section. It would follow therefore that the date of service of a summons accompanied by a copy of a plaint in the suit for dissolution of partnership cannot be regarded as the date of dissolution of partnership and section 43 is of no assistance."
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> * * * *
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> "In a partnership at will, if one of the partners seeks its dissolution, what he wants is that the firm should he wound up that he should be given his individual share in the assets of the firm ..... and that the firm should no longer exist. He can call for the dissolution of the firm by giving a notice as provided in sub-section (1) of section 43, i.e. without the intervention of the Court, but if he does not choose to do that and wants to go to the Court for effecting the dissolution of the firm, he will, no doubt, be bound by the procedure laid down in Order 20, rule 15 of the Code of Civil Procedure .....This rule makes the position clear. No doubt, this rule is of general application, that is, to partnership at will as well as those other than at will; but there are no limitations in this provision confining its operation only to partnerships other than those at will."

The aforesaid passages were relied upon by a Division Bench of this Court in *Khushi Ram Behari Lal and Co.'s* case (*supra*) and it

(4) A.I.R. 1963 S.C. 1165.
(5) 1971 Rev. L.R. 253.

was ruled that dissolution of partnership would take place under Order 20 Rule 15 of the Code of Civil Procedure even if it is at will and from a date fixed in the preliminary decree, unless the partnership is dissolved under section 43 of the Partnership Act. Admittedly, in the present case partnership was not dissolved under section 43 of the Partnership Act and the plaintiffs straightaway filed a suit for dissolution of partnership. Therefore, it is clear that some observations contained in the judgment of R. S. Narula, J., go counter to the observations of the Supreme Court and in the Division Bench decision of this Court. I am bound by the judgment of the Supreme Court and the Division Bench and following the same, I hold that merely by filing a civil suit for dissolution of partnership at will, the partnership does not stand dissolved and it will stand dissolved from a date which may be fixed in the preliminary decree passed by the Court unless it is found in the suit on merits that the partnership had already stood dissolved as pleaded by Hardial Singh Dhillon defendant. Hence, for the present, it is to be treated on the face of the plaint that the plaintiffs are seeking dissolution of partnership and accordingly section 44(g) of the Partnership Act would be attracted. Since the dessolution is sought on the basis of justice and equity, this matter can only be gone into by a Civil Court and not by the arbitrators. The decision to the contrary is hereby reversed.

(4) The Court below was also wrong in coming to the conclusion that even if the partnership stood dissolved, the suit for rendition of accounts on the facts of the present case could only be decided by the arbitrators. R. S. Narula, J. had held in the same judgment that since the partnership stood dissolved, the arbitration clause was not helpful for dissolution of partnership and therefore, it was the Civil Court which had to decide about the rendition of accounts. That part of the decision was wrongly distinguished by the Court below. The wording of the arbitration clause in the two cases is almost identical. Even if the partnership had stood dissolved, the question of rendition of accounts could not be gone into by the arbitrators after the dissolution of partnership and had to be decided by the Civil Court. This part of the judgment of the Court below is also reversed.

(5) For the reasons recorded above, this appeal is allowed, the judgment of the Court below is hereby set aside and the application of the Hardial Singh Dhillon defendant filed under section 34 of the Arbitration Act is hereby dismissed. However, the parties are left to bear their own costs.

(6) The parties through their counsel, who are represented before me, are directed to appear before the trial Court on the 27th day of August, 1984 for proceeding with the suit.

H.S.B.

Before J. M. Tandon, J.

RAJ KUMARI GOYAL,—*Petitioner*

versus

PUNJABI UNIVERSITY PATIALA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 480 of 1984

August 22, 1984

Constitution of India 1950—Article 14—Punjabi University Calendar, Chapter XXVI, Paragraph 2(iii)—Student standing first in the University Examination applying for re-evaluation of answer book—Marks reduced in re-evaluation and said student relegated to second position—Paragraph 2 of Chapter XXVI providing that the awards shall be made to the candidates obtaining first division only or to candidates obtaining the highest aggregate marks in the examination—Decision of Syndicate deciding that merit list prepared before re-evaluation be treated as final for purposes of University medals and scholarships—Such decision—Whether violates paragraph 2(iii) aforesaid—Said decision—Whether also violative of Article 14.

Held, that the object of the decision of the Syndicate to the effect that the University medal and scholarship be awarded on the basis of merit list prepared on declaration of result of original evaluation is to make the merit determined on the basis of the first re-evaluation incorporated in the declared result final and not to let it remain fluid till the re-evaluation result is declared which may come about after the admission in other classes are over. It may not be prudent to keep the merit fluid even for the purpose of admission to other class till the finalisation of the re-evaluation result. It is understood that a candidate who has not secured first division in the first evaluation incorporated in the declared result shall not be entitled to the award in terms of paragraph 2(iii) of Chapter XXVI of the Punjabi University Calendar. There is, therefore, no conflict between paragraph 2(iii) and the decision of the Syndicate aforesaid.

(Para 11).

Held, that the decision of the Syndicate has been taken by the competent authority with an object to make the merit list prepared