

Lordships do not help the learned counsel's argument since it has not been pleaded that any rules have been framed by the Legislature providing the procedure for the exercise of pleasure by the President under Article 310 of the Constitution or Section 18 of the Army Act. No rules have been brought to my notice whereby power to issue Show Cause Notice on behalf of the President under Section 18 of the Army Act has been delegated to any subordinate officer. In the absence of any such rules it has to be held that the power under section 18 of the Army Act has to be exercised by the President himself and not by any Officers subordinate to him.

(6) For the reasons given above, I hold that the Show Cause Notice issued to the petitioner on May 3, 1969, in pursuance of the direction of the Deputy Secretary to the Government of India; dated April 11, 1969, is without jurisdiction and has to be quashed.

(7) Accordingly, this writ petition is accepted with costs and the impugned Show Cause Notice, dated May 3, 1969, and the direction of the Deputy Secretary to Government of India, dated April 11, 1969, are quashed. Counsel's fee Rs. 100.

R. N. M.

APPELLATE CIVIL

Before Mehar Singh, C.J. and R. S. Narula, J.

NAGIN CHAND,—Appellant.

versus

SHADI LAL AND OTHERS,—Respondents.

Letters Patent Appeal No. 273 of 1964

January 19, 1970.

Woollen Yarn (Procurement and Distribution) Control Order (1960)—Object of—Partnership Act (IX of 1932)—Section 55—Partnership firm doing hosiery business—Such firm dissolved passing the goodwill to one partner—After dissolution quota allotted in the name of the firm on the basis of three years consumption just before the date of dissolution—Right to procure the quota—Whether part of the goodwill and passes only to partner getting goodwill—Other partners—Whether entitled to the share thereof.

Held, that the sole object of Woollen Yarn (Procurement and Distribution) Control Order, 1960, is to ensure fair distribution, among manufacturers of woollen products, by giving them ratably raw material as wool

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yarn so that they may be able to continue their manufacturing business. For the matter of distribution some method has to be evolved and obviously the basis made is the three years' consumption of raw material.

(Para 4)

Held, that in defining what is "goodwill", the emphasis is on the name, the place of business, reputation, connection of a business and the attractive force to bring in custom. The procurement of raw material for running and maintaining a manufacturing business is not part of its goodwill. Where a partnership firm doing the hosiery business and entitled to quota of woollen yarn on the basis of three years' consumption just before the date of dissolution is dissolved passing its goodwill to one of the partners, such a partner alone is not entitled to the entire quota of the woollen yarn of the firm. The allotment of quota of wool yarn was not because of the name of the old firm or because of the situation of that firm in a particular locality, nor because of anything connected with its reputation as a business house specially attracting custom. The basis of its allotment has been the consumption of wool yarn for manufacturing during the three years preceding the date of dissolution of the partnership of the parties. It is not an advantage or benefit which is born of the goodwill of the partnership firm. Hence all the partners of the dissolved firm are entitled to their respective shares of the quota of woollen yarn for which the firm was entitled.

(Para 4)

Letter Patent Appeal from the decree of the Court of the Hon'ble Mr. Justice S. S. Dulat of this Hon'ble Court in R.S.A. 725 of 1962, dated the 6th day of September, 1963, accepting the appeal of the defendants, and setting aside the decree of Shri Mohinder Singh Joshi, Senior Sub-Judge, with enhanced appellate powers, Ludhiana, dated the 27th April, 1962, and restoring that of the Sub-Judge, IInd Class, Ludhiana, dated the 21st June, 1961, dismissing the plaintiffs suit.

H. L. SARIN, SENIOR ADVOCATE, WITH A. L. BAHL & H. S. AWASTHI, ADVOCATES, for the appellant.

N. K. SODHI, ADVOCATE, for the respondents.

JUDGMENT.

MEHAR SINGH, C.J.—This will dispose of two appeals Nos. 273 and 274 of 1964, under clause 10 of the Letters Patent, the first by Nagin Chand and the second by Ramesh Chand, to which the main opposite party is their third brother Shadi Lal, respondent, from the judgment, and decree, dated September 6, 1963, of a learned Single Judge accepting two appeals by the respondent from the appellate decrees of the first appellate Court, which had reversed the decree of the trial Court and decreed the two suits, one by each one of

the two appellants, against the respondent. So the learned Single Judge dismissed the suits of the appellants.

(2) The two appellants and Shadi Lal, respondent are three brothers. They were having a partnership hosiery business in Ludhiana, with the name and style of their partnership as Jain Bodh Hosiery. On March 31, 1959, the three brothers dissolved the partnership. The appellants went out of the partnership leaving the business of Jain Bodh Hosiery with Shadi Lal, respondent. The dissolution deed is Exhibit D. 1 of that date. Clauses 2 and 3 of the same read—"2. That entire business assets of the firm along with its goodwill and liabilities have been taken over by the parties of the First part and parties of the Second and Third parts shall have no concern absolutely with the affairs of 'Messrs Jain Bodh Hosiery' hereinafter. 3. Income-tax and Sales-tax and other taxes cases of the firm have not yet been settled and there might be some other liabilities unexpected at this time. If any liability will arise all the partners (retiring as well as continuing) will pay according to the share". The first party was Shadi Lal, respondent, the remaining two parties to this document were the two appellants. It has been admitted at this stage in these appeals that after the dissolution of the partnership between the three brothers, the two appellants went into the very same business, but independently. So that on and from the date of dissolution of the partnership on March, 31, 1959, the three brothers started hosiery business, but separately, Shadi Lal, respondent continuing it in the name of the original firm and each one of the two appellants taking a new name of his business. However, all the three continued in hosiery business. Sometime after the dissolution of the partnership between the three brothers, there came a control over the raw material that they were using in their hosiery business. The Central Government having made, under the provisions of the Essential Commodities Act, 1955 (Act 10 of 1955); the Woollen Yarn (Production and Distribution) Control Order, 1960, the Textile Commissioner framed a scheme for distribution of wool yarn by fixing quotas, the basis for distribution with regard to the same having been adopted at the time with reference to the actual consumption of yarn by various manufacturers during the years 1956-57, 1957-58, and 1958-59. It will be seen that the basis for allotment of quota of yarn, a controlled commodity, by that time came to be the actual consumption of such wool yarn by the manufacturers during the three years preceding the dissolution of the firm of three brothers. The Textile Commissioner, according to the scheme of

distribution, having passed on the distribution of wool yarn to the Hosiery Industry Federation, each one of the two appellants instituted a separate suit against the Federation, Shadi Lal, respondent and the other appellant, for permanent injunction restraining the Federation to allot and Shadi Lal, respondent to accept quota of wool yarn beyond one-third share of this respondent, because, according to the two appellants, either has been entitled to half of the remaining two-third share of the wool yarn quota. The two main matters for consideration before the learned trial Judge were whether either appellant was entitled to one-third share of the quota of wool yarn, and whether civil Court had jurisdiction in the suits of the type, out of which these appeals have arisen. The learned Judge dismissed the claims of the appellants, but, on appeals by the appellants, the learned Judge in the first appellate Court reversed the decree of the trial Court and granted a decree as claimed by each one of the appellants, finding the two main matters of controversy, as above, in favour of that particular appellant. It was Shadi Lal, respondent who was in second appeal in this Court and a learned Single Judge by his judgment and decrees of September 6, 1963, reversed the decrees of the first appellate Court, restoring those of the trial Court, thus dismissing the suit of each one of the appellants. The learned Single Judge proceeded on the basis that "it is not possible to frame a comprehensive definition of 'goodwill' as its actual content would continue changing with the change in the business methods and activities, but one thing is not in my opinion in doubt and that is that the goodwill of a business house includes every advantage that accrues to the business house in the future on account of its business activity in the past. Such an advantage was deliberately agreed to be made over by the two plaintiffs-respondents to Shadi Lal appellant at the time of the dissolution. The allocation of yarn quota was certainly an advantage that accrued to the firm after the dissolution of the previous partnership and it accrued on account of the previous business activity of the firm. It is thus an advantage included in the goodwill of the firm of which Shadi Lal appellant was the owner after the 31st March, 1959". As stated, it is the appellant in each appeal who has come in appeal under clause 10 of the Letters Patent from the judgment and decree of the learned Single Judge dismissing his suit.

(3) It is clear from what has already been stated that the facts are not in dispute. The three brothers dissolved their hosiery business partnership on March 31, 1959. Each one of the three brothers

then entered into the very same hosiery business, but independently. Shadi Lal respondent, under the terms of the dissolution deed, continued his business in the name of the old firm, Jain Bodh Hosiery, and each one of the appellants took a new name to his hosiery business. After the dissolution of the partnership and sometime in 1960 on account of statutory control over distribution of wool yarn, according to the scheme of such distribution, allotment of quotas of yarn, raw material for hosiery business, was made on the basis of manufacturers' consumption in the three years preceding the year of the dissolution of the partnership of the three brothers. The quota of yarn having come to be controlled by the year 1960, according to law, raw material for hosiery business was obviously not available to businessmen of this type in the open market. They had, therefore, to obtain quota under the relevant scheme from the proper authority or the proper body, such as the Federation in this case, who had been given the facility of distributing such quota. The basis for the allotment of quota, as stated, was the actual use of the raw material by the manufacturers in three years preceding the date of the dissolution of the three brothers' partnership. Each one of the three brothers could, on the basis of manufacture of hosiery goods during the three years preceding the year of dissolution of their partnership, lay claim to one-third of the quota that was his share of the business of the partnership, the dissolution of the partnership in this respect having no effect whatsoever. If this was not so, the dissolution in the wake of this new unexpected development about the control of wool yarn would have thrown two out of three former partners, the two appellants, out of business, a contingency never in the contemplation of the parties when they came to execute the dissolution deed, Exhibit D. 1, on March 31, 1959. Obviously, in the circumstances, the whole of the quota could not possibly have been claimed by Shadi Lal respondent alone merely on the basis of having the right to use the name of the old firm for the purposes of his business. So naturally argument turned to the meaning and scope of the word 'goodwill' before the learned Single Judge, and it is with reference to the same, as has already been shown, that the learned Judge has come to the conclusion that the quota that was available to firm Jain Bodh Hosiery was available to it as a part of its goodwill, which having, under the dissolution deed, passed to Shadi Lal respondent alone, the appellants have no claim to any share in it.

(4) In Volume 29 of Halsbury's Laws of England, Third Edition, page 360, paragraph 715, this is the meaning given to goodwill—"The

goodwill of a business is the whole advantage of the reputation and connection formed with customers together with the circumstances, whether of habit or otherwise, which tend to make such connection permanent. It represents in connection with any business or business product the value of the attraction to customers which the name and reputation possesses. "In Volume 28 of the same treatise, at page 580, paragraphs 1139 and 1140, this is what is stated with regard to goodwill." The goodwill of the business carried on by a partnership forms part of the assets to be realised upon distribution. If the goodwill is not sold, each partner may use the name of the firm, if by doing so he does not hold out the other partners as being still partners with him. If a partner agrees to retire and his partners buy his share, but do not take any express assignment of the goodwill, they are not entitled to continue the use of his name as part of the style of the firm, and where a business is carried on under the name, solely or with any addition, of an outgoing partner, who is still living and not bankrupt, a purchaser of the business including the goodwill is not entitled to use the name of the outgoing partner in such a way as to suggest that he is still connected with the business, unless the right to use the firm name is expressly assigned. Where the goodwill becomes on dissolution the property of one of the partners (either by purchase in the ordinary way or pursuant to a provision in the articles), the outgoing partner or partners may not carry on a similar business in the name of the old firm.... 'An agreement that on dissolution the partnership assets shall be taken by one partner includes goodwill, and it must be valued on the footing that the outgoing partner is entitled to carry on a similar business.' In *The Commissioner of Inland Revenue v. Muller and Co's Margarine, Limited* (1), Lord Macnaghten, delivering his speech in the House of Lords observed—"What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation, and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start. The goodwill of a business must emanate from a particular centre or source. However widely extended or diffused its influence may be, goodwill is worth nothing unless it has power of attraction sufficient to bring customers home to the source from which it emanates. Goodwill is composed of a variety of elements. It differs in its composition in different trades and in different businesses in the same trade. One element may preponderate here and another

(1) (1901) A.C. 217 at p. 223.

element there." In *New Gujarat Cotton Mills Ltd. v. Labour Appellate Tribunal* (2), Shah J., delivering the judgment of the Division Bench, observed at page 115 ".....the goodwill of a business is inclusive of positive advantages such as carrying on the commercial undertaking at a particular place and in a particular name, and also its business connections, its business prestige, and several other intangible advantages which a business may acquire." In *Dulaldas Mullick v. Ganesh Das Damani* (3), P. B. Mukharji J., delivering the judgment of the Division Bench, observed that "Goodwill represents business reputation which is a complex of personal reputation, local reputation and objective reputation of the products of the business. Which one of these elements will predominate will depend on the facts and circumstances of each case. Except where the reputation of a business and where the product of the business more than its proprietor have won widespread popularity and universal approval and except in the case of well-known patents and manufacturing processes in which event the personal and objective reputations predominate, it is the local reputation or the attribute of locality which forms the largest content of goodwill in almost every other business. Specially is the attribute of locality the most important consideration in the business of an ordinary trader or a dealer." While there is emphasis in these statements on what is goodwill, on the name, the place of business, reputation, connection of a business, and the attractive force to bring in custom, none of the authorities referred to has even hinted in the least that procurement of raw material for running and maintaining a manufacturing business is a part of its goodwill. It is a basic requirement for the existence of such a business. When it has been procured and run through a manufacturing process, the products will attract custom because of the reputation of the business as from its name and as from its situation in a particular locality. I find it rather difficult to agree with the learned Single Judge that procuring raw material for a manufacturing business is an advantage which is part of the goodwill of such business. Normally, if there was no statutory control, raw material in the shape of wool yarn would have been available to all the three parties in the open market, and it is because this raw material has become a controlled commodity that each one of the three parties have had to resort to the allotment of quota of wool yarn for its hosiery manufacturing business. The allotment of quota of wool yarn was not

(2) A.I.R. 1957 Bom. 111.

(3) A.I.R. 1957 Cal. 280.

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because of the name of the old firm or because of the situation of that firm in a particular locality, nor because of anything connected with its reputation as a business house specially attracting custom. The basis of its allotment has been the consumption of wool yarn for manufacture during the three years preceding the date of dissolution of the partnership of the parties. It is the consumption of wool yarn for this particular purpose which has entitled a party to share in the raw material for manufacture, in this case wool yarn, which, as has been stated, but for statutory control would have been available in the open market. The availability of the raw material in the open market could not possibly be said to be part of the goodwill of the original partnership firm, and it is difficult to accept that it has become part of the same simply by reason of statutory control and its distribution according to a statutory scheme. So it is not an advantage or benefit which is born of the goodwill of the partnership under the name of Jain Bodh Hosiery. If this were so, a matter to which reference has already been made, it would mean that the two appellants would immediately go out of business on the coming into force of the Woollen Yarn (Procurement and Distribution) Control Order of 1960. Actually the sole object of that order was to ensure fair distribution, among manufacturers of woollen products, by giving them ratably raw material as wool yarn so that they may be able to continue their manufacturing business. For the matter of distribution some method had to be evolved and obviously the basis made was the three years consumption of raw material, those three years happening to be the three years preceding the date of dissolution of the partnership between the parties in these cases. So that it is evident that the claim to raw material as wool yarn under the statutory scheme as quota for continuing their hosiery business in the case of each appellant cannot be said to have been lost because any such claim is inconsistent with the goodwill of the original partnership remaining with Shadi Lal respondent under the dissolution deed, Exhibit D. 1. It has to be particularly noted that this dissolution deed does not debar the appellants from doing the very same business of hosiery manufacture in their own capacity and, as stated, the admitted fact is that ever since the dissolution of the partnership they have been independently under the new names of their firms carrying on the very same business. Mere transfer of the goodwill of the original partnership to Shadi Lal, respondent could not be read as having debarred them from entering into and continuing the very same business. This is apart from the fact that Shadi Lal, respondent has never questioned the right of the appellants to entering into and running the very same business. So an

opportunity to procure raw material in the shape of wool yarn by the appellants was, in my opinion, not part of the goodwill of the partnership Jain Bodh Hosiery, which goodwill was left with Shadi Lal, respondent in consequence of dissolution of that partnership firm.

(5) In the approach as above, the appeals of the appellants are accepted and, reversing the decrees of the learned Single Judge, the decrees of the first appellate Court are restored so that the claims of the appellants stand decreed in the terms of the decrees of the first appellate Court, but, in the peculiar circumstances of these appeals, there is no order in regard to costs.

R. S. NARULA, J.—I agree.

R. N. M.

REVISIONAL CIVIL

Before Mehar Singh, C.J., and R. S. Narula, J.

DR. PIARA LAL KAPUR,—*Petitioner.*

versus

KAUSHALYA DEVI AND ANOTHER,—*Respondents.*

Civil Revision No. 738 of 1967.

January 22, 1970.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 2(a) and 13(3) (a) (iii)—Portion of a demised building in dangerous condition—Such portion—Whether constitutes 'building' for the purpose of section 13(3) (a) (iii)—Removal or demolition of unsafe and unfit portion of the building—Whether takes the case out of the section.

Held, that the 'building' has been defined in section 2(a) of East Punjab Urban Rent Restriction Act to mean "any building or part of a building let for any purpose--." A portion of building which forms tenancy premises, in respect of which the question of its dangerous condition etc. has to be decided is a 'building' for the purpose of sub-clause (iii) of clause (a) of sub-section (3) of section 13 of the Act, irrespective of the fact whether the rest of the building belonging to the landlord is or is not in a dangerous condition.

(Para 7)

Held, that for the applicability of sub-clause (iii) of clause (a) of section 13 (2) of the Act, it is not necessary that the entire demised