

this amount of Rs. 100 wrongfully. He is said to have died during the pendency of the appeal. His estate is bound to refund Rs. 100 along with interest at 6 per cent per annum from 1st October, 1945, to the date of actual payment to the plaintiff.

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We, therefore, modify the decree of the trial Court and dismissing the plaintiff's suit for specific performance pass a decree in favour of the plaintiff for Rs. 100 along with interest at 6 per cent per annum from 1st October, 1945, to the date of its payment to the plaintiff. This amount will be recoverable from the estate of Pindi Das. The parties shall bear their own costs throughout.

Chopra, J.  
B. R. T.

I agree.

#### APPELLATE CIVIL

(Letter Patent Appeal)

Before Bhandari, C. J. and Grover, J.

MESSRS. BHOLABHAI-BHOGILAL,—Appellant.

*versus*

RATTAN CHAND AND OTHERS,—Respondents.

Letter Patent Appeal No. 84 of 1954.

*Code of Civil Procedure (Act V of 1908)—Order XXX—Object of—Whether an exception to section 45 of the Indian Contract Act—Suit by partner in his own name and not in the name of the firm—Whether governed by Order XXX—Letters Patent Appeal—Finding of fact by single Judge—When can be interfered with in appeal. ... ..*

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Held, that order XXX was introduced into the Code of Civil Procedure as an exception to the provisions of section 45 of the Indian Contract Act, and it is an enabling provision in as much as it allows two or more partners to sue, provided the suit is brought in the name of the firm. But

where one of the partners of a firm sues in his own name and not in the name of the firm, the suit is not governed by Order XXX of the Code of Civil Procedure.

*Held*, that although there is no such rule either of procedure or practice by which a Bench hearing an appeal under clause 10 of the Letters Patent is debarred from examining and reversing a finding on a question of fact given by the learned Single Judge, nevertheless, the appeal Court would be reluctant to interfere with that finding unless there are very strong reasons for doing so.

*Letters Patent Appeal under Clause 10 of the Letters Patent Appeal against the Judgment of Hon'ble Mr. Justice Bishan Narain, dated the 20th September, 1954, in F.A.O. 38 of 1945, reversing that of Shri Jasmer Singh, Tribunal, Jullundur, dated the 14th October, 1953, holding that the present petition is competent and remanding the case for disposal of the application in accordance with law.*

D. D. KHANNA, for Appellant.

ROOP CHAND for Respondents.

#### JUDGMENT

Grover, J.

GROVER, J.—The facts giving rise to the present appeal under clause 10 of the Letters Patent may be briefly recapitulated. Firm Chuni Lal-Dewan Chand carried on cloth business in Sialkot before the partition of India in 1947. Under a scheme of cloth control which had been enforced by the Punjab Government certain cloth dealers were appointed as group leaders for the purposes of distribution of cloth to other dealers who were grouped together. Firm Chuni Lal-Dewan Chand is said to have been nominated as a group leader and in that capacity Messrs B. holabhai-Bhogilal, cloth merchants, Ahmedabad, who are now the appellants, were appointed as purchasing agents for the purpose of buying cloth and sending the same to the Sialkot firm. It is alleged that the Sialkot firm deposited a sum of Rs. 30,000 as

security with the Ahmedabad firm and that out of the payments made for the cloth supplied on accounts a sum of Rs. 1,564 was due to the Sialkot firm by the Ahmedabad firm, apart from the amount which had been deposited by way of security. On the 31st March, 1952, Rattan Chand who is admittedly one of the partners of the firm Chuni Lal-Dewan Chand instituted an application under section 13 of the Displaced Persons (Debts Adjustment) Act, 1951 (Act No. LXX of 1951), in the Court of the Senior Subordinate Judge, Jullundur, who was acting as the Tribunal under that Act. In this application he impleaded as respondents firm Bholabhai-Bhogilal of Ahmedabad and Chuni Lal and Dewan Chand who were stated to be the partners of the firm Chuni Lal-Dewan Chand. The application was filed by Rattan Chand describing himself as one of the proprietors of Chuni Lal-Dewan Chand and was signed and verified by Rattan Chand alone. In this application he claimed that a sum of Rs. 31,564-8-6 plus Rs. 243-15-0 was due from the Ahmedabad firm and that a decree be passed against the Ahmedabad firm together with interest at the rate of 6 per cent.

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The Ahmedabad firm contested the application made by Rattan Chand on several grounds. Another ground was sought to be raised at a fairly late stage of the case by means of amendment of the written statement, which was allowed on 9th June, 1953, by the Tribunal. The material plea that was introduced was to the effect that Piare Lal was also a partner of the firm Chuni Lal-Dewan Chand and as he had not been impleaded the application was not maintainable. Four preliminary issues were framed in the case which are given below :—

- (i) Was Rattan Chand, applicant, a partner of firm Chuni Lal-Rattan Chand of

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Sialkot and so is competent to make the present application ?

- (ii) Could this application be filed by the applicant and respondents Nos. 2 and 3 only and the applicant alone cannot maintain this application ?
- (iii) Are the particulars of the debts given in the schedule incomplete and what is its effect ?
- (iv) Is Piare Lal a partner of firm Chuni Lal-Dewan Chand and what is its effect ?

The Tribunal by its order, dated 14th October, 1953, decided issue No. (i) in favour of the applicant Rattan Chand and on issues (ii) and (iv) it came to the conclusion after a consideration of the documentary and oral evidence that Piare Lal was a partner and that he should have been joined as a party to the proceedings. The Tribunal held that the application filed by Rattan Chand was not in the name of the firm but by Rattan Chand alone and, therefore, Order XXX of the Code of Civil Procedure would not be applicable and the matter would be governed by section 45 of the Indian Contract Act. As Piare Lal had not been impleaded the Tribunal held that the application of Rattan Chand was not maintainable. Issue No. (iii) was found against the Ahmedabad firm. In the result the application was dismissed on 14th October, 1953.

Rattan Chand filed an appeal to this Court, which was heard and decided by Bishan Narain, J., by his judgment dated the 20th September, 1954. The learned Judge came to the conclusion that Rattan Chand was not claiming any rights in his individual capacity but was asking for a decree in favour of the firm (Chuni Lal-Dewan

Chand) and the application being in substance by one of the partners of the firm for a decree in favour of the firm, Order XXX of the Code of Civil Procedure was applicable, and the application under section 13 filed by Rattan Chand was competent. He further held that even if that be not so, it was open to one of the partners who was a displaced creditor as defined in the Act to make an application under section 13 and his application did not become incompetent simply because one of the alleged partners had not been impleaded. The learned Judge examined the question whether Piare Lal was a partner of firm Chuni Lal-Dewan Chand. He came to the conclusion that it was not proved on the record that Piare Lal was a partner of the firm Chuni Lal-Dewan Chand. In view of all this the appeal was accepted and the order of the Tribunal was set aside. It is against that decision that the present appeal is directed.

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Mr. Roop Chand Chaudhry, learned counsel for the respondents, raised a preliminary objection that the appeal was barred by time. He contended that Chuni Lal who was a respondent in the application under section 13 had died and his grandsons Kasturi Lal and Kapur Chand had been impleaded as his legal representatives when the appeal was filed in this Court in March, 1954. When the present appeal under clause 10 of the Letters Patent was filed, Chuni Lal who had died much earlier was shown as respondent No. 2 in the array of respondents and his grandsons, Kasturi Lal and Kapur Chand, who were his legal representatives and who were already on record of the appeal that had been decided by the learned Single Judge, were not made parties. He pointed out that it was by means of an application dated the 7th January, 1955, that the appellant firm sought to implead the legal representatives of

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the deceased Chuni Lal, their names being stated in paragraph 9 of the petition. It was, therefore, urged that the appeal be deemed to have abated and that, in any case, it was barred by time if Kasturi Lal and Kapur Chand were made parties long after the period of limitation for filing the appeal, which was 30 days, had expired.

It would be altogether unnecessary to decide the preliminary objection inasmuch as the question of examining it will not arise in view of the decision which can be given on the merits. Mr. Durga Das Khanna who appears for the appellants firm challenged the correctness of the view of the learned Single Judge that the application filed by Rattan Chand was covered by the provisions of Order XXX of the Civil Procedure Code. He referred to the heading of the application and the relevant paragraphs as also to the signatures of Rattan Chand and the verification by him. It is quite clear that the application is not by the firm or in the name of the firm. The applicant is Rattan Chand who describes himself as one of the proprietors of Messrs Chuni Lal-Dewan Chand and in various paragraphs of the application he refers to himself as initially a permanent resident of Sialkot where he was carrying on business in partnership with Chuni Lal and Dewan Chand. He further states that he left his place of residence for Jammu and thereafter he came to reside at Jullundur City since January, 1948. Even in paragraph 9 he says that he was engaged in the business of a wholesale dealer in West Punjab, and, therefore, he became a displaced person. Towards the end of the application the signatures are to be found as given below :—

“Rattan Chand, son of L. Panna Lal Jain,  
Jullundur City.

(Sd.) Rattan Chand.”

The verification is by Rattan Chand alone. With all respect to the learned Single Judge, it is difficult to see how the application can be said to have been brought on behalf of the firm or in the name of the firm to which Order XXX of the Code of Civil Procedure would apply. order XXX, rule 1(1) provides that—

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“Any two or more persons claiming or being liable as partners and carrying on business in the States may sue or be sued *in the name of the firm* (if any) of which such persons were partners \* \* \*  
\* \* \* \*”

Then sub-rule (2) is to the effect that—

“Where persons sue or are sued as partners *in the name of their firm under sub-rule (1)*, it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.”

There can be little doubt that Order XXX was introduced into the Code as an exception to the provisions of section 45 of the Indian Contract Act, and it is an enabling provision inasmuch as it allows two or more partners to sue, provided the suit is brought *in the name of the firm*. This matter was examined fully by a Division Bench of the Lahore High Court in *Hari Singh v. Karam Chand-Kanshi Ram* (1). It was observed at page 10 of the report as follows :—

“Order XXX of the Civil Procedure Code enables a firm’s name to be used instead

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(1) I.L.R. 8 Lah. 1

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of the names of the partners composing that firm, as a convenient method for denoting the persons who comprise the firm at the time when the name is used, and, therefore, when a suit is brought in the name of a firm it is precisely as though it were brought in the name of all the partners."

In *Mohan Lal-Ram Gopal v. Udai Ram-Sewa Ram and others* (1), the plaintiff in the heading of the plaint had stated "Firm Mohan Lal-Ram Gopal,.....through Babu Bhagat Lall, proprietor of the said firm" and the plaint was signed by Babu Bhagat Lall. The Division Bench came to the conclusion that the plaintiff was not suing in the firm's name but in his own name, and the mere fact of the firm's name being mentioned in no way affects the matter. What is contemplated by Order XXX, rule 1, is that two or more persons under a firm may sue without mentioning the names of the individuals. A Division Bench of the Rangoon High Court in *P. R. N. S. P.-Subramanian Chettyar v. T. R. M. T. S. T. Firm of Ela* (2), laid down that the correct way of bringing a suit under Order XXX, rule 1, was to bring it in the name of the firm as plaintiff, and no other name should be mentioned, as plaintiff, at the head of the plaint, but in the signature and verification of the plaint the person signing and verifying should describe himself as one of the partners of the firm which brings the suit. In the present case neither in the heading of the plaint is it stated that the firm is the applicant nor has Rattan Chand signed as a partner of the firm. In view of the clear language of Order XXX of Code of Civil Procedure and the rule adopted in the decisions mentioned above, it must be held

(1) A.I.R. 1936 Pat. 140

(2) A.I.R. 1935 Rang. 209



that the application filed by Rattan Chand was not governed by Order XXX of the Code of Civil Procedure.

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The appeal, however, cannot succeed unless the finding of the learned Single Judge that Piare Lal was not a partner of the firm Chuni Lal-Dewan Chand is reversed. If Piare Lal was not a partner of the firm the application would be perfectly competent as the other two partners, namely, Chuni Lal and Dewan Chand had been duly impleaded, and the rule that when one of the several partners in a firm sues in his own name to enforce the performance of a contract entered into by the firm he must under the provisions of section 45 of the Contract Act implead the other partners, was fully complied with.

Mr. Durga Das Khanna, the learned counsel for the appellant firm, contended strenuously that the finding of the learned Single Judge as to whether Piare Lal was a partner of the firm Chuni Lal-Dewan Chand was erroneous. He invited our attention to a number of documents which have been relied upon by the Tribunal for coming to the conclusion that Piare Lal who is a brother of Rattan Chand, applicant, was a partner of the firm. He laid particular stress on Exhibits R/1 and R/2 which are two letters dated 10th February, 1947, and 11th June, 1947. These letters were addressed to the appellant firm. In the first letter of 10th February, 1947, the appellant firm was authorised as commission agents to take delivery of the February quota. The letter was signed in the following manner :—

“For Chuni Lal-Dewan Chand  
Piare Lal Prop.  
(Group Leader).”

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The other letter of 11th June, 1947, was also signed for Chuni Lal-Dewan Chand by Piare Lal, Partner. Great stress was laid on a hundi Exhibit R/6, which was also signed for Chuni Lal-Dewan Chand by Piare Lal, Proprietor.

It was contended that Piare Lal could not have signed all these documents and described himself as a partner unless in fact he was a partner. It is perfectly true that these documents are signed by Piare Lal who describes himself as a partner. But although the aforesaid documents are perfectly relevant, they could by no means be treated as conclusive as at best they are admissions by Piare Lal in his own favour. Both Chuni Lal and Dewan Chand who appeared in the witness box stated that Piare Lal was never a partner of Firm Chuni Lal-Dewan Chand, and they do not seem to have been questioned properly with regard to these documents. The learned Single Judge did not entirely ignore this evidence, his view being that the aforesaid documents merely contained assertions of Piare Lal that he was a partner and that was not sufficient to prove that in fact it was so. He believed the statement of Dewan Chand and gave various other reasons for not accepting the evidence that Piare Lal was a partner of the Sialkot firm.

Although there is no such rule either of procedure or practice by which a Bench hearing an appeal under clause 10 of the Letters Patent is debarred from examining and reversing a finding on a question of fact given by the learned Single Judge, nevertheless, the appeal Court would be reluctant to interfere with that finding unless there are very strong reasons for doing so. In the present case no such reasons are to be found justifying a reversal of the finding given by the learned Single Judge on a pure question of fact. If,

therefore, Piare Lal was not a partner of the firm Chuni Lal-Dewan Chand, the application filed by Rattan Chand was perfectly competent as instituted.

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As a result of what has been found above, no other point arises and the present appeal must be dismissed with costs.

BHANDARI, C.J.—I agree.  
B.R.T.

Bhandari, C. J.

APPELLATE CIVIL.

*Before Chopra and Gosain, JJ.*

FIRM M/S. SUNDER LAL-BRIJ LAL,—Plaintiff-Appellant.

*versus*

THE UNION OF INDIA,—Defendant-Respondent.

**Regular First Appeal No. 114 of 1950.**

*Railways Act (IX of 1890)—Section 77—Loss—Meaning of—Code of Civil Procedure (Act V of 1908)—Section 80—notice under—Construction and object of—Each Railway administration owned by the Central Government—Whether separate entity—Notice to each Railway administration sought to be made liable Whether necessary—Non-issue of such notice—Effect of—Railways Act (IX of 1890)—Section 80—Goods consigned for transport from one place to another over two or more railways—Goods lost in transit—Which Railway administration liable for loss—Relationship between the Receiving Railway and the Delivering Railway—Whether of principal and agent—Liability towards consignor—Whether of Receiving Railway or of Delivering Railway. . . .*

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*Held*, that the term 'loss' in section 77, Indian Railways Act, does not include non-delivery of the goods and, therefore, when a suit is brought against a Railway administration based upon non-delivery of goods which had been delivered to it for carriage by railway, notice of the claim is not necessary in the manner provided by section 77.