B. Ramulu Vs. E.N. Setty

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Court : Andhra Pradesh

Decided On : Feb-20-1998

Reported in : 1998(2)ALD824; 1998(3)ALT121

Judge : V. Rajagopala Reddy, J.

Acts : Partnership Act, 1932 - Sections 7, 31, 32, 32(1 and 2), 40 and 43

Appeal No. : C.C.C.A. No. 69 of 1990

Appellant : B. Ramulu

Respondent : E.N. Setty

Advocate for Def. : Mr. J.V. Suryanarayana, for Arbitration

Advocate for Pet/Ap. : Mr. M. Adinarayana Raju, Adv.

Judgement :

1. The appeal is brought by the defendant in O. S. 724 of 1983 on the file of the I Addl. Judge, City Civil Court, Hyderabad. The suit filed by the plaintiff-respondent was for dissolution of thepartnership firm 'Prakash Paints' and for rendition of accounts from 5.5.1965 till date and for a decree for the amounts found due towards the share of the respondent. The court below decreed the suit and a preliminary decree was passed with costs for dissolution of the firm and for rendition of accounts from 1-4-1982.

2. The relevant facts necessary for the disposal of the appeal are, briefly, as follows: Originally, the appellant, respondent. Smt. K.Sitaratnamma and R.P. Markanday constituted a partnership firm in the name and style of ''Prakash Paints and Varnish Works' under a partnership deed dt.5.5.1965. On 14.8.1971 Markanday retired from the partnership and the remaining three partners continued the business by reconstituting the firm under the name and style of 'Prakash Paints' and a fresh partnership deed was also executed on 1.9.1971. In 1982, Smt. Sitaratnamma wanted to retire. Accordingly an agreement was entered into on 5.7.1982 and the amounts payable to her were settled through arbitrators and also paid to her. There after, the respondent and the appellant continued the firm in the same name. The appellant was the Managing Partner of the firm. It was alleged that he was behaving as a sole proprietor of the firm and neglecting the respondent. When Smt. Sitaratnamma retired from the firm, the appellant and the respondent got equal shares in the profits and assets. It was also alleged that the appellant has been mismanaging the business and manipulating the accounts with a view to show loss to the respondent. Hence, the appellant was liable to render the accounts of the firm. The respondent valued his share at Rs.40,000/- tentatively and filed the suit for dissolution of the firm and for rendition of accounts.

3. The appellant, while admitting the original partnership and also the retirement of Markandey in 1971, however, pleaded that a new partnership was constituted among the respondent-appellant and Smt. Sitaratnamma on 1.7.1971 and the respondent suppressed the facts that followed the retirement ofSmt. Sitaratnamma and subsequent events that took place immediately thereafter. It was averred that Smt. Sitaratnamma wanted to retire from the partnership firm and all the partners agreed to arbitration on the dispute, referring the dispute to 3 arbitrators, who gave an award on 4.8.1982. As per the award the total amount payable to Smt. Sitaratnamma was Rs.1,65,657/-. The said amount was directed to be paid within six months from the date of award. Since it was found difficult to mobilise funds for payment of the said amount, the respondent and the appellant met on 5.8,1982 at the house of Dr. Rajalingam, one of the arbitrators, where the respondent pleaded his inability to contribute the necessary amount. Hence, he agreed to retire from the firm as per the same terms in the award. On such agreement the respondent executed a letter on the same dale in the house of the said arbitrator and the

amount was to be paid within six months from that date. Therefore, it was averred that the firm stood dissolved from 5.8.1982, in view of the agreement executed between the parties. In furtherance of the award, the appellant paid the amount to Smt. Sitaratnamma and he also obtained a Demand Draft on the same day from State Bank of India, Balanagar Branch, Hyderabad, in favour of the respondent, for Rs.91,609/- being the amount payable to the respondent and kept the same with Dr. Rajalingam, as requested by the respondent. However, the respondent with mala fide intention declined to accept the D.D. Hence it was pleaded that in view of the settlement between the respondent and the appellant, the respondent stood retired from the partnership and the firm consequently dissolved. Thereafter, the appellant constituted a new partnership with the same name. Hence, the question of dissolution of partnership did not arise, and that the respondent was not entitled for the relief claimed.

4. On the above pleadings thefollowing issues were framed:

' 1. Whether the plaintiff had already retired from partnership of Prakash Paints and Wamish Works and the said firm stooddissolved as contended by the defendant?

2. Whether the arrangement pleaded by the defendant in his written statement is true?

3. Whether the agreement dt. 5.8.1982 referred to by the defendant in his written statement is true and valid?

4. Whether the valuation as given in the plaint is not correct?

5. To what relief?'

5. The learned Judge held that the relationship between the partners was still subsisting as the deed of dissolution was not executed and the mere expression to retire was not sufficient to put an end to the relationship between the partners. Hence, the respondent was held to be entitled for dissolution of the firm. Regarding the rendition of accounts, it was found that the respondent was entitled for rendition of accounts w.e.f 1-4-1982, since the arbitrators passed the award dt.

4-8-1982 after going through the accounts produced by the partners upto 1-4-1982 and after due hearing of the partners.

6. The following points arise for consideration in this appeal :-

(1) Whether relationship between the appellant and the respondent was subsisting till the date of the suit?

(2) Whether Ex.B.7 did not put an end to the relationship of partners between the appellant and the respondent?

(3) Whether the respondent is entitled for rendition of accounts w.e.f 1-4-1982?

(4) Whether the respondent is entitled for any other relief?

Points Nos. 1 and 2 :

7. Both the points can be considered together as they depend upon the same set of facts and evidence.

8. The respondent examined himself as P.W.1 to prove this case, whereas the appellant and the arbitrator Dr. Rajalingam have been examined as D.Ws. 1 and 2. It is not disputed that from 1971, after the partner Markandey retired from the partnership, the three partners have been doing business under the name and style of Prakash Paints. It is also not disputed that another partner Smt. Sitaratnamma retired from partnership on 5.7.1982, as per memo Ex.B.4 and thereafter the parties in the appeal/suit continued business, the appellant as the Managing Partner. It is the case of the respondent that as the appellant was totally neglecting him and mismanaging the business the respondent felt aggrieved and filed the suit. However, in his evidence as P.W. 1, he states that he agreed to retire on payment of Rs. 3.5 lakhs, by agreement dt.5.8.1982 and the said agreement provided for execution of dissolution deed. However, the appellant neither paid any such amount nor executed the dissolution deed. It was, therefore, stated that the agreement was not acted upon and hence the respondent was continuing as partner. It was further stated that the award passed by the arbitrators was not served upon him and that he did not participate in the arbitration

proceedings. There is thus a clear diviation from the pleadings and his evidence. A new case was sought to be put in his evidence stating that he agreed to retire on certain conditions, but as the conditions were not complied with, the agreement was not acted upon and he continued to be a partner. The consistent case of the appellant, as evidenced from his written statement and his evidence a D.W.1, is that on 5,7.1982 Ex.B.4 agreement was entered into between the 3 partners, when Smt. Sitaratnamma wanted to retire and as per the said agreement an award, Ex.B.6, dt 4.8.82 was passed. Under the said award a total amount of Rs. 1,65,657/-was directed to be paid by the remaining partners to Smt. Sitaratnamma, within six months thereof On the next day of passing the award i.e., on 5.8.1982, the respondent also expressed his intention to retire on the same conditions as contained in Ex.B.6 andthe said amount also should be paid to him within 6 months. Accordingly, agreement Ex.B.7 dt. 5.8.1982 was entered into between the appellant and respondent Accordingly, the amount payable to Smt. Sitaratnamma was paid by the appellant. A.D.D. (the counter foil Ex.B.4) dt. 5.2.1983 was taken for a total amount of Rs.91,609/- payable to the respondent as agreed to, and handedover the same to D.W.2 Dr. Rajalingam, as requested by the respondent. But the respondent declined to accept the D.D. stating that the D.D. was not valid. Hence, D.W.2 returned the D.D. to the appellant. In support of his case, the appellant has examined Dr. Rajalingam as D.W.2.

9. Learned Counsel for the appellant strenuously contended that the respondent having agreed to retire, as evidenced by Ex.B.7 dt.5.8.82, on the same terms and conditions of Ex.B.6, cannot claim that he continued to be a partner. Learned senior Counsel for the respondent contends that the respondent did not retire from the partnership firm. He only expressed his intention to retire, but on certain specific conditions, and since the said conditions were not complied with by the appellant, inasmuch as the amounts agreed were not paid and dissolution deed was not executed, the respondent continues to be a partner. Learned Counsel in support of his contention relies upon Ex.B.7. It was the case of the respondent in his evidence that under an agreement he agreed to retire only on payment of Rs.3, 5 lakhs, and the said agreement was not acted upon as the amounts were not paid. The said case is now given up. He now admits that Ex.B.7 dt.5.8.1982 was the agreement that was entered into between them. Learned Judge therefore

proceeded on the basis that Ex.B.7 was genuine. It, therefore, follows that the plea taken by the respondent in the plaint as well as his evidence that there was an agreement to pay an amount of Rs.3.5 lakhs to him and that it was not acted upon, were untrue. Thus, the respondent has been wholly inconsistent in his case. The respondent having pleaded a set of facts and brought the action before the court, should be able to sustain the plea by hisevidence. Unfortunately, the learned Judge has not even framed an issue placing the burden upon the respondent-plaintiff to prove that he continued to be a partner till the filing of the suit. When the appellant has disputed the case of the respondent and pleaded that in view of Ex.B.7 respondent was no longer a partner and that he was not entitled for the relief claimed, the respondent should have filed a re-joinder denying Ex.B.7 or stated that Ex.B.7 was not complied with or acted upon. He has not filed any rejoinder. All the issues were framed placing the burden of proof upon the appellant-defendant to prove Ex.B-7. Be that as it may, when the respondent having admitted Ex.B.7 stating that he had expressed his intention to retire, the further question whether the appellant had complied with the conditions under Ex B. 7, in my view, may not arise. It was never the case of the respondent, either in the plaint or in his evidence, that the conditions have not been complied with. Ex.B.7, therefore, demolishes the case of the respondent The respondent cannot be allowed to shift his case from stage to stage depending upon the pleadings and the evidence of the defendant-appellant. His case should succeed/ fail on his own strength/weakness. In my view, the respondent having come to the court that he never expressed his intention to retire and that he continued to be the partner, but when he admitted in the course of his evidence that he did express his intention to retire under Ex.B-7, it should be held that the respondent did not establish his case that the respondent and the appellant continued to be the partners.

10. Learned Judge found that Ex.B.7 did not put an end to their relationship as partners, on the ground that the appellant has not complied with the conditions stipulated therein. According to the learned Judge, the conditions are -- (1) the accounts of the respondent were not settled by the arbitrators regarding appreciation of assets and goodwill, as on 5.8.1982; (20 the said amounts were not paid within six months, and (3) the dissolution deed was not executed.

11. Learned Counsel for the appellant contends [hat the accounts have already beensettled by the arbitrators when Smt. K. Sitaratnamma, was retired under Ex.B.6 and hence no further ascertainment was called for. It was further contended that partnership between the appellant and the respondent stood dissolved on the expression of intention of the respondent to retire in Ex.B.7 5.8.1982, and that the execution of deed of dissolution is not a condition precedent to effect retirement and it did not prevent the partnership from dissolution on the retirement of the respondent. Learned senior Counsel for the respondent, however, disputes the above proposition and submits that Ex.B.7 contemplates dissolution of partnership and not of retirement and unless the deed of dissolution was executed, it cannot be held that the respondent retired from partnership.

12. In view of the above contentions, it is now necessary to examine Ex.B.7, which is the basis for the rival contentions. It reads as follows:

'On 5-87-1982 we the following two partners of Prakash Paints 1) Mr. E.N.Setty 2) B. Ramuloo and their sister concern Prakash Distempers represented by their wives 1) E. Adilakshmi Devi 2) B. Krupavathi met at the residence of Dr. A. Rajarangam at Khairatabad in his presence who have come to this settlement, that Mr.E.N. Setty and E.Adilakshmi Devi have agreed to retire from Prakash Paints and Prakash Distempers and execute the dissolution deed on the terms and conditions settled by the arbitrators in the case of K. Sitaratnamma and K. Santosh Kumar. Witnesses: Signature:''

13. A perusal of Ex.B,7, therefore, makes it clear that - (1) the appellant and the respondent arrived at a settlement; (2) the respondent agreed to retire from the firm and to execute the dissolution deed, and (3) the retirement is on the same terms and conditions settled in the case of Smt. K. Sitaratnamma. Thus, a clear and unambiguous expression of the respondent of his intention to retire from the firm and to execute a dissolution deedand acceptance of the same by the appellant is manifest in Ex.B.7. The respondent's intention to retire was not conditional upon any other subsequent happening. The conditions as to the execution of the dissolution deed or payment of the amounts as paid to Suit. Sitaratnamma, were only secondary. The arguments now proceeded on the

premise that there was a clear expression of intention of the respondent to retire in Ex.B.7. The dispute, however, is whether the retirement of the respondent would come into effect if the dissolution deed was not executed and the amounts were not paid?

14. This a case of 'partnership at will'. Section 7 of the Indian Partnership Act, 1932 (for short 'the Act'), speaks of partnership at will. If a partnership deed does not provide for its duration and for its determination, then such a partnership is called partnership at will.

15. The retirement of a partner and the dissolution of a partnership are two different concepts and incidents in a partnership and they are dealt with in two different Chapters in the Act, Chapters V and VI.

16. Section 32 of the Act deals with retirement of a partner. There are 3 modes of retirement - (a) with the consent of all the other partners, (b) in accordance with an express agreement by the partners, or (c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire. In the instant case, the respondent expressed his intention to retire and the appellant, who was the only other partner, has agreed for the same. They entered into an agreement Ex.B.7. Thus, clause (c) of Section 32(1) of the Act is complied with and the respondent should be held as retired. On such retirement, as per Section 32(2), he is discharged of any liability to any third party. Section 32(2) provides, however, for. the issue of public notice of such retirement with which we are presently not concerned. The contention that unless the firm was dissolved by executing a dissolution deed, the partnercould not be held as retired and he continues to be a partner till such dissolution, is therefore, wholly misconceived. Whether a partner retired from a firm or not does not depend upon the dissolution of the firm. Section 40 and 43 of the Act may be usefully noticed in this regard. Section 40 of the Act deals with dissolution of firm. According to this provision a firm can be dissolved with the consent of all the partners or in accordance with a contract between the partners. Thus, the partnership dissolves on mutual agreement. In the instant case, Ex.B.7 is the agreement whereby the two parties agreed to dissolve the firm and the respondent specifically staled that he would

execute the dissolution deed. Putting its terms into writing, by drafting the dissolution deed, is not essential for effecting dissolution of the firm. The question whether a firm was dissolved or not, or on what date it was dissolved, is a question that could be inferred from the facts of each case. Sec.43 of the Act speaks of the dissolution of a partnership at will. The partnership at will, can also be dissolved by giving notice to all the other partners, of his intention to dissolve the firm and the firm is dissolved from the date mentioned in the notice as the date of dissolution and if no date is mentioned, from the date of communication of the notice. In the instant case, both the parties consented for the retirement of the respondent and also for dissolution of the firm. Hence, the issue of notice in writing is redundant- Further, as the firm consisted of only two partners, the appellant and the respondent, on retirement of one partner, the appellant herein, the firm stood dissolved, since a firm cannot exist with one partner. Thus, from the above discussion, it is clear that from the date of Ex.B.7 the firm stood dissolved and the view taken by the learned Judge that Ex.B.7 was only an intention to retire and that the firm stood dissolved from the date of suit notice, is unlawful and illegal.

17. Learned counsel for the appellant has cited the decision in Erach F.D. Mehta v. Minoo F.D. Mehta, : [1971]2SCR99 , in support of his contention that partnership stood dissolved on the expression of intentionof retirement. This is also a case of two partners and that it was agreed between them that one of the partners was to retire from the partnership. The court held -

'... When the partnership consisted of only two partners and one partner agreed to retire, there can be no doubt that the agreement that one of the partners will retire amounts to dissolution of the partnership.''

18. Again, Chuntlal Bhagwandas Gandhi v. Ahamed Rowther, AIR 1960 Kerala 156, cited by the learned Counsel for the appellant, is a case of partnership between two partners. It was held that if one of them retires, the partnership ceases to exist and the suit filed by such partnership was liable to be dismissed.

19. In M/s Vaiyapnri Mudaliar and Sons, Avanashi v. M/s Sri Arunodaya Textiles, Erode, : AIR1996 Mad19 , dealing with the question whether notice in writing under Section 31(c) of the Act is necessary, it was held that in cases of

partnership at will it was not necessary to issue notice before retirement when there is an agreement between the parties. It was observed:

'When the partnership itself came into being only by consent of all partners, why then, a partner cannot retire by consent of all other partners? Further, when all partners consent for retirement, there is no need to issue any notice. Notice to consenting partners would be meaningless, wasteful and an exercise in futility, Consent presupposes not only prior notice and knowledge of retirement but also agreement and willingness of all partners for such retirement- While being so, compulsory written notice to other partners who have notice and knowledge of retirement and who are also agreeable for such retirement, shall serve no useful purpose and shall prove to be an empty formality and waste of time and stationary.

'... Section 32(2) of the Act had been enacted to enable a partner of apartnership at will to retire from the firm when all other partners either do not agree to the retirement of a partner or all the other partners are not readily available to give consent for the retirement."

The above decisions support my view taken supra.

20. Now, it has to be considered whether the learned Judge was right in holding that the respondent has not established that the amounts were not paid under Ex.B.7. There is no dispute that the appellant has taken a Demand Draft on 5.2.1983. Ex.B. 14 is the counterfoil of the said D.D. for Rs.91,609/- in favour of the respondent. As per Ex.B.6 the amount was to be paid within six months. The Demand Draft, having been taken on 5.2.1983, the payment may not be beyond six months. If a strict view is adopted, it may be the next day after the expiry of six months. The calculation of the time as if it was a period for limitation, in my view is not warranted, in finding whether the amount was paid or not. It is not the case of the respondent that as the amount was not paid in time, he declined to accept the Demand Draft. On the other hand, P.W.1 stated that the Demand Draft was not given to him at all. I am therefore, clearly of the view that the stipulation of time for payment within six months was complied with by the appellant

21. Under Ex.B.6 the arbitrators found that Smt. Sitaratnamma was entitled for Rs.40,000/- towards the increased share value, Rs. 11,059/- towards the goodwill. All the three partners were entitled likewise, towards the increased share value and goodwill. Towards credit balance, it was found by a look into the recent book that the respondent was having an amount of Rs.40,550/-. There were no loan amounts in favour of the respondent. Thus, the total amount due to the respondent was Rs.91,609/-. It has come in evidence of the appellant and D.W.2, the arbitrator, that at the request of the respondent the Demand Draft has been handedover to D.W.2. D.W.2 has deposed clearly and his evidence was notdisbelieved by the court below though he was subjected to much cross-examination, that the respondent has declined to receive the D.D. stating that it was not a valid one and was bogus. Demand Draft taken from a Bank can never be invalid or bogus. However, the court below commented upon the conduct of the appellant in not issuing the notice to the respondent when the Demand Draft was not taken by the respondent. On the other hand, in my view, it is for the respondent to have issued anotice to the appellant, if the appellant did not pay the amount as per Ex.B.7. He was the person who wanted to retire as per the terms and conditions, by which Smt Sitaratnamma retired. Admittedly he has not issued any such notice. The appellant, towards his part, had taken the Demand Draft within the specified time and handed over the same to the arbitrator. It is not as though the appellant kept the Demand Draft with him. The arbitrator's evidence cannot be disbelieved, since both parties approached him for settlement of disputes and in fact, his evidence was not disbelieved by the court below.

22. It should also be noticed that, as is evident from Ex.B.9, the appellant in his letter dt. 11.8.1982 has requested permission of the Co-operative Industrial Estate Limited, Balanager, Hyderbad, for giving consent for the retirement of the respondent, and reconstituting the firm with his son Shantikumar and to run the firm under the same name and style of 'Prakash Paints.'' Accordingly, consent was given by the Industrial Estate. Again as per Ex.B.8 dt. 22.9.82, the State Bank of India wrote a letter to the firm in response to the letter of the appellant dt. 9.8.82 intimating the change and the reconstitution of the firm. Thus, the Bank has recognised the same and requested the appellant to send the necessary documents by the existing as well as new partners and the guarantors of the firm.

It is significant that the respondent did not choose to cross-examine the appellant with reference to the above documents. The appellant has given the D.D. to the arbitrator, to be given to the respondent. From the above evidence the learned Judge appears to havecommitted a serious error in holding that the appellant has not complied with the conditions in Ex.B.7 in paying the amounts to the respondent.

23. In this context the decision cited by the learned Counsel for the appellant in Mr Abdul Khaliq (dead) by L.Rs. vs Abdul Gaffar Sheriff (died) by Lrs, AIR 1985 SC 608, has to be noticed. In that case the question involved was whether the partner retired from the partnership with the consent of the other partners and whether there was a dissolution of the firm consequent upon his retirement. The Supreme Court held, relying upon the letter of one of the partners to the Bank intimating the retirement of another partner and requesting for dosing of the account of the firm and opening of new account in the name of the remaning two partners, that the firm was dissolved on the date on which the retirement was intimated. On the same analogy it has to be held in the present case, in view of the letter written to the Bank as well as to the Industrial Estate informing about the retirement and reconstitution of new firm, that not only the conditions under Ex.B.7 were complied with, but also the respondent retired from partnership and the firm was dissolved.

24. Learned Counsel for the respondent however, contended that the amounts due under Ex.B.7 were not ascertained at all and only the amounts due to Smt. Sitaratnamma were ascertained by the arbitrators and paid under Ex.B.6. However, learned counsel for the appellant submits that the increased share value, goodwill were already ascertained and the same were to be paid to the respondent also. As far as the capital balance is concerned, it is only a question of looking into accounts to know the capital balance with regard to the respondent. Admittedly, there were no loansamounts to be given to the respondent. It cannot, therefore, be contended that the amounts were not ascertained to be paid. However, it must be noticed that neither in his evidence nor in the cross-examination, it was the case of the respondent that because the amounts were not ascertained the D.D. was not accepted byhim. In the circumstances, the respondent is not entitled to make out a new case, which was neither pleaded nor

proved. In my view no further ascertainment of accounts was called for in view of Ex.B.7. Further, the circumstances in which Ex.B.7 came to be executed have to be noticed. It was agreed between the partners to pay an amount of Rs.1,65,657/- to Smt. Sitaratnamma as awarded under Ex.B.6. The very next day, the respondent and the appellant approached the arbitrator and dispute arose in mobilising the funds for payment of the said amount to her. During the said talks with the arbitrator -on 5.8.82 the respondent expressed his intention to retire on the same conditions as mentioned in Ex.B.6. By that time, the amounts to be paid to Smt. Sitaratnamma were also not paid. Accordingly Ex.B.7 was executed and within six months the appellant has paid to Smt. Sitaratnamma and also to the respondent the amounts as agreed upon. The arbitrators had settled the account up to 1.4.82 to all the partners and directed to pay her share to Smt. Sitaratnamma. Hence-the respondent is also entitled for the payment of his share of the account as on 1.4.1982. It is therefore, not correct to contend that the respondent was entitled for accounts up 5.8.1982. A perusal of Ex.B.6 clearly shows that Smt. Sitaratnamma was paid the credit balance after debiting the current account and increase in the value of the assets of the firm and in addition to the above two amounts her share in the goodwill of the firm. Increase in the share value and goodwill is common to all the partners. As far as credit balance is concerned it is to be arrived at only after perusal of the Accounts Books. In addition to the above, Smt. Sitaratnamma was paid the loans which she has given to the family members. Admittedly the respondent had no such loans. The above three amounts came to Rs.99,533/, which was paid by the appellant. Thus, the question of ascertaining the amounts due to the respondent upto 5.8.1982 does not arise. The respondent was only entitled for payment of the amounts found due as on 1.4.1982 as was found due with regard to Smt. Sitaratnamma. Admittedly, allthe accounts have been looked into and amounts have been arrived at by the arbitrators with regard to all the partners. In the circumstances, it should be held that the appellant had paid the amount within the specified time, but the respondent has declined to receive the same. Thus, in my view, the respondent did not establish that lie remained as a partner in the partnership firm till the date of the suit. It is clear that Ex.B.7 has put an end to the relationship of the respondent as a partner in the firm and the firm has been dissolved w.e.f 5.8,1982.

The points are answered accordingly.

25. Point No. 3:

It is contended by the learned counsel for the respondent that even assuming that the partnership was dissolved w.e.f 5.8.1982, the respondent was entitled for rendition of accounts from 1.4.1982 upto the date of the suit.

26. The court below found that the appellant was liable to render accounts from 1-4-1982 till the dale of dissolution, the date of suit notice. In my view, the respondent is not entitled for accounting at all. Admittedly, accounts have been settled upto 1 -4-1982 by the arbitrators under Ex.B.6, and the amounts due were paid to Smt. Sitaratnamma. In view of the discussion on Points 1 and 2 and the findings thereon that the respondent was only entitled for the amounts arrived at by the arbitrators as on 1-4-1982, the question of rendering of accounts further from 1-4-1982 does not arise. The respondent filed the suiton the premise that he continued to be the partner and hence for dissolution of the firm. As I have already held that he did not continue to be a partner and he ceased to be the partner as on 5-8-1982 resulting dissolution of the firm, the respondent is not entitled for the relief of dissolution of firm and the rendition of accounts.

27. Point No. 4:

It should be noted that the appellant has kepi with himself the D.D. for Rs.91,609/-, for which the respondent was entitled to, though he declined to receive the D.D. However, when the respondent filed the suit, the appellant should have deposited the amount to the credit of the suit, he has not done so. Hence, the appellant is liable to pay the amount to the respondent along with interest at the rate of 12% per annum from the date of the suit The amounts, if any paid by the appellant pending the appeal, shall be given credit to and if the amount is found in excess, it must be refunded. The point is accordingly answered.

28. In the result, the appeal is allowed partly. The Judgment and decree of the lower court are set aside. The suit for the relief of dissolution of the firm and the rendition of accounts is dismissed with costs. But there shall be a decree against

the appellant directing him to pay a sum of Rs. 91,609/- (Rupees ninety one thousand six hundred nine) along with interest at 12% per annum, from the date of the suit till payment. There shall be no order as to costs in the appeal.