

**Jagdish Parshad and ors. Vs. Ram Kumar Goyal and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/684112](http://sooperkanoon.com/684112)

**Court :** Delhi

**Decided On :** Feb-07-1986

**Reported in :** ILR1988Delhi184

**Judge :** Jagdish Chandra, J.

**Acts :** [Arbitration Act, 1940](#) - Sections 41; [Partnership Act, 1932](#) - Sections 11(2)

**Appeal No. :** Interim Application No. 5833 of 1985 and Suit No. 1937A of 1985

**Appellant :** Jagdish Parshad and ors.

**Respondent :** Ram Kumar Goyal and ors.

**Advocate for Pet/Ap. :** R.P. Bansal and; K.R. Gupta, Advs

**Judgement :**

**Jagdish Chandra, J.**

(1) In the main petition under Section 20 of the [Arbitration Act, 1940](#) brought by the plaintiffs against the defendants for referring their disputes to arbitrator, the plaintiffs have put up this application under Sections 14 and 15 of the [Partnership Act, 1932](#) (in short the Act) and Section 41 read with II Schedule of the Arbitration Act, for the grant of temporary injunctions. Partnership was entered into between the parties vide partnership deed dated 23rd September 1982 and which was registered with the Registrar of Firms under the provisions of the Act and wherein

the defendants were partners Nos. 1 to 3 and the plaintiffs partners Nos. 4 to 7. The defendants contributed place of business, i.e. Shop No. C-5581, Lahori Gate, Naya Bazar, Delhi of which they were the tenants whereas the capital investment and other financial arrangements were to be made and contributed by the plaintiffs. Each of the defendants had 13 per cent share in the profits and losses whereas each of plaintiffs nos. 2 to 4, 15 per cent and plaintiff no. 1, 16 per cent. Since the entire finance turn the partnership was to be arranged by the plaintiffs, it was agreed that the plaintiffs alone shall be entitled to open and operate accounts in the banks on behalf of the firm. The account of the firm was opened in the Central Bank of India, Naya Bazar, Delhi under the signatures of the plaintiffs and with instructions to the bank to operate the account under the signatures of the plaintiffs only. Regarding the duration of the partnership business the partnership deed provided as under :-

'That the duration of the partnership business will be for 5 years (five years) subject to thereafter renewed subsequently if agreed by the aforesaid parties and the said business will be deemed in continuity of the partnership business by executing a fresh deed of partnership. In case the firm suffers losses for continuous two years then any two parties may claim for dissolution of the partnership business after giving four months' notice in writing of their intention for doing so, then the firm shall be dissolved.....'

(2) It is asserted that contrary to the provision regarding the duration of the partnership business for a period of five years the defendants are not permitting the plaintiffs to carry on any business from the aforesaid premises, nor do they permit any access to the safe/cash book and to operate the bank account notwithstanding that the payments have to be made to the creditors of the firm and have in furtherance of their aforesaid nefarious design written a letter to the bank and got the operation of the aforesaid account unauthorisedly stopped which they had no right to do and which was in violation of the terms of the partnership deed. It is further alleged that approximately a sum of Rs. 1,34,000 is lying to the credit of the partnership firm in the account of the firm maintained in the bank and all the books of account and the cash balance to the tune of about Rs 1,35,000 are also lying in the safe in the aforesaid premises of the firm. The partnership started and

worked under the name and style of 'M/s. Jai Ambey Trading Co.'.

(3) 'THE following restraint orders are sought by the plaintiffs against the defendants -

'(I)restraining the respondents from interfering with the operation of the bank account by the petitioners and/or giving any instructions to the Central Bank of India, Naya Bazar, Delhi, for stopping the operation of the bank account of M/s. Jay Ambey Trading Co.

(II)to take action against the respondents for their preventing the petitioners from entering the shop premises;

(III)directing the respondents to remove the sign-board put up by them in the name of M/s. Ram Kumar Naresh Kumar and .restraining them from putting up any board other than in .the name of the partnership firm, i.e. M/s. Jay Ambey Trading Co. restraining the respondents from doing any business or storing any goods in the business premises except of the partnership firm M/s. Jay Ambey Trading Co.

(IV)restraining the respondents from carrying on any other business or activity from the aforesaid business premises of 'the partnership.

(V)restraining the respondents from obstructing in any way the entry of the petitioners.

(vi) allowing the petitioners to make use of the business premises for making recoveries of the partnership debts and dues and other activities of the firm known as Jay Ambey Trading Co.

(VIII)directing the respondents to hand over against receipt the account books of the partnership business and also the keys to the Safe in the business premises.'

(4) The partnership deed in its para no. 16, contained the arbitration clause whereby any conflict or dispute arising between the partners in regard to any matter is to be referred to Shri Ram Charan and such other arbitrators as are appointed by them and his/their decision will be final and binding upon all the parties. This arbitration clause further provides that the arbitrator shall not be

empowered to decide about the tenancy right or interest of any partner of the firm in A regard to the premises which is in the occupation of the defendants and would be made over with vacant possession after two months of the dissolution of the partnership-firm and the plaintiffs would cease to use the premises inspire of the fact that the work of dissolving the partnership and preparing the final accounts is outstanding at that time after two months of the dissolution.

(5) Regarding the shop premises no. 885-C, Lahori Gate, Naya Bazar, Delhi wherein the partnership business was to be carried on by the parties, it was provided in para 6 of the partnership deed that the defendants had the exclusive tenancy rights thereof at which the parties had agreed to carry on the business of the partnership and that the tenancy rights of the said premises shall remain the exclusive property of the defendants and shall not at any time become the part of the assets of the partnership and further that the defendants had allowed the facility to the partnership to carry on its business in the said premises in consideration of which the defendants would be entitled to share in the profits and losses of the firm as already referred to above. It was further provided that the defendants would be solely responsible for the payment of all rents, rates and taxes etc. in respect of the said premises and on dissolution of the firm, the aforesaid facility afforded by the defendants shall automatically cease.

(6) In the face of the initial duration of five years for the existence and continuance of the partnership of the parties as stipulated in the partnership deed and already referred to above, and that duration not having expired and which is to expire on 23-9-1987 (partnership deed having been executed on 23-9-1982) and there being no prima facie evidence regarding the firm having suffered losses for a continuous period of two years in which contingency any two partners may claim dissolution of the partnership business after giving four months notice in writing of their intention for doing so whereupon the firm shall be deemed dissolved, the plaintiffs do appear to have a prima facie case in their favor for continuing the partnership business in the said premises along with the defendants and which right of the plaintiffs cannot be denied by the defendants. Section 42(S) of the Act provides that subject to contract between the partners a firm is dissolved, if constituted for a fixed term, by the expiry of that term. The partnership was to continue for five

years subject to further renewal and it could be dissolved earlier than five years under the contract if the firm suffered losses for a continuous period of two years and that too by giving four months' notice in that regard.

(7) It was contended by the learned counsel for the defendants that, as provided in the partnership deed, the tenancy lights in the aforesaid premises were to be held exclusively by the defendants and the same could not become a part of the assets of the partnership and instead only a facility had been granted to the partnership to use the said premises for carrying on the business of the partnership therein and, thus, the plaintiffs could not have any claim upon the same. This contention is erroneous inasmuch as the plaintiffs nowhere claim these premises as vesting in the partnership, nor do they claim any right of their in the same except, as provided for in the partnership deed itself. The facility in respect of these premises for carrying on the business of the, partnership which is unquestionably there and the plaintiffs do not claim in any manner in excess of that facility, and in the presence of the provision regarding that facility in the partnership deed itself the plaintiffs cannot be denied the same at the hands of the defendants. Section 14 of the Act relied upon by the learned counsel for the defendants is of no avail to him as that provision is subject to the contract between the parties and, as already pointed above, the contract of partnership provides for a facility for carrying on the business of partnership in the said premises. But for the contract of partnership this facility of user by the partnership would be tantamount to an interest in the property and such interest could form an integral part of the property of the partnership under Section 14 of the Act.

(8) The aforesaid facility of user in respect of these premises for carrying on the business of the partnership is still subsisting as the duration of five years for the continuance of the partnership has no', expired. The contention of the learned counsel for the defendants that there was an only decision of the parties on 31-3-1984 to dissolve the partnership and was acted upon, cannot be accepted merely for the reason that two of the plaintiffs started a business similar to that of the partnership in question in partnership with some other persons in some other premises, nor can that factor be accepted as a conduct on the part of the plaintiffs, as further contended in the alternative on behalf of the defendants, indicating their

dis-continuance with the partnership with the defendants. Section 11(2) of the Act reads as follows :-

'Notwithstanding anything contained in Section 27 of the Indian Contract Act, 1872, such contracts may provide that a partner shall not carry on any business other than, that of the firm while he is a partner.'

Section 27 of the Indian Contract Act, 1872 provides that every agreement, by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void: Notwithstanding, this provision of law Section 11(2) of the Act provides that such a contract may provide that a partnership shall not carry on any business other than that of the firm while he is a partner. The contract of partnership in the case in hand does not provide for any such bar for a partner for not carrying on any business other than that of the firm while he is a partner and consequently the starting of a business similar to that of the partnership in question two of the plaintiffs in partnership with some others is not hit by Section 11(2) of the Act. Thus, the setting up of another business by two of the plaintiffs in partnership with some others is not tantamount to conduct E on the part of the plaintiffs so as to indicate their dis-continuance of the partnership in question and the plaintiffs do retain the right to use the premises in question for carrying on the business of the partnership in question, and it is nowhere their case that they want to do it to the exclusion of the defendants, and on the other hand it was made clear by the learned counsel for the plaintiffs during the course of arguments that they want to carry on the business of the partnership in these premises along with the defendants for the duration of the term of five years which is to expire on 23-9-1987. In this view of the matter, the contention of the learned counsel for the defendants that a partner seeking an injunction against his co-partner must come with clean hands in that the plaintiffs on account of their aforesaid conduct cannot be said to have come with clean hands for seeking injunction, must be discarded. The further reliance of the learned counsel for the defendants on the provision of law contained in S. 16(b) of the Act is also unwarranted because the same simply talking of the liability of a partner to account for and pay to the firm the profits made by him in any other business of the same nature as and competing with that of the partnership, in no way imposes

a penalty of bar in the matter of using the premises allowed to the partnership for carrying on its business.

(9) It was also pointed out by the learned counsel for the defendants that in another Suit No. 1869/1984 filed By the defendants against the present plaintiffs for dissolution of this very partnership the application under Section 34 of the [Arbitration Act, 1940](#) filed by the present plaintiffs was dismissed for which reason the present main petition of the plaintiffs under S. 20 of the [Arbitration Act, 1940](#) Has also to be dismissed. This contention cannot be accepted because the controversies in the two suits are distinct from each other as much as in Suit No 1869 of 1984 the present defendants had sought a decree for dissolution of the partnership under Section 44(g) of the Act on the ground that it would be equitable and just that the firm should be dissolved and under that provision of law the jurisdiction of determining the partnership and passing a decree for dissolution of partnership rests with the Court and that was not a matter which could be the subject matter of the arbitration clause entered into between the parties in the partnership deed, whereas in the suit in hand the controversy is that the present plaintiffs want to enforce against the defendants the continuance of partnership for a period of five years from its inception which dispute appears to be covered by the Arbitration clause. The perusal of the order dated 1-11-1985 dismissing the application being I.A. 197/85 under Section 34 of the [Arbitration Act, 1940](#) in the defendants suit No. 1869 of 1984 clearly brings out this distinction and consequently the contention raised by the learned counsel for the defendants is erroneous and must be discarded.

(10) Thus, the defendants, even though the exclusive tenants of the premises in question, have no right to obstruct or exclude the plaintiffs from carrying on the business of the partnership in question in these premises and consequently the plaintiffs have a prima-facie case in their favor.

(11) The balance of convenience was asserted by the learned counsel for the defendants as being in favor of the defendants by asserting that the plaintiffs have started business along with other partners in almost the same firm name as that of the partnership in question and the defendants have to use these premises which

are in their exclusive tenancy rights, to earn their livelihood and they should not be deprived of the same especially when quarrels and disputes have arisen between the parties in respect of the partnership in question. This argument hardly commends itself for the reason that the defendants by their own obstructionist attitude cannot be allowed to play mischief with the plaintiffs by shutting them out from the exercise of their lawful right in the matter of carrying on business of the partnership in the said premises as per the terms of the partnership deed, as otherwise it would be tantamount to feeding the mischief of the defendants who in order to cut short the duration of the partnership, as provided for in the partnership agreement, have tried to shut out the plaintiffs from the user of the premises in question for carrying on the partnership business. The writing of the letter by the defendants to the bank instructing the stoppage of the duration of the partnership account therein is an additional act of mala fides on the part of the defendants in contravention of the partnership agreement. The partnership has been financed entirely by the plaintiffs and the right to operate the bank account has been given to them alone under the partnership deed. The balance of convenience, thus, appears) to be on the side of the plaintiffs who would suffer an irreparable loss if the temporary injunctions as prayed for, are not granted.

(12) For the reasons aforesaid accepting this application of the plaintiffs the temporary injunctions, as prayed, by the plaintiffs against the defendants, are granted till the disposal of the suit.

(13) For these very reasons I.A. 5931/85 of the defendants in this very suit as also I.A. 6887/84 in other suit No. 1869/84 are dismissed. No order as to costs.

(14) It is clarified that it need hardly be said that the observations made in this order shall not in any way affect the decision of the cases on merits.