

The Municipal Committee, Nakodar
 v.
 Sadhu Ram and others

In this view of the matter the suit must be held to be incompetent and the plaint must be rejected under Order VII rule 11 (d) of the Code of Civil Procedure. It follows therefore that it is not necessary to discuss other issues raised or decided in the present case as the entire proceedings have been held to be invalid.

Bishan Narain,
 J.

The result is that this appeal succeeds and is accordingly accepted. The plaint is rejected under Order VII, rule 11(d), Civil Procedure Code. The parties are left to bear their own costs in this Court.

APPELLATE CIVIL

Before Bishan Narain, J.

FIRM RAM LAL-HARNAM DASS,—*Defendants-Appellants*

v.

SHRI BAL KRISHAN AND OTHERS,—*Petitioners-Respondents*

First Appeal from Order No. 157 of 1954.

1956

Oct- 23rd

Indian Partnership Act (IX of 1932)—Section 69—Scope of—Expression “or other proceeding”—Meaning of—Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Proceedings under by unregistered firm and its partners—Whether barred by section 69(3) of the Partnership Act—Interpretation of Statutes—General words following particular and specific word—Construction of.

Held, that section 69 of the Indian Partnership Act does not purport to make registration of a partnership compulsory nor does it prohibit enforcement of a claim by an unregistered firm. The language used in subsection (1) and (2) of the section suggests that the institution of a plaint was being prohibited and not any other proceedings and as a suit is instituted by filing of a plaint, the prohibition is against the institution of a suit only.

Held, that the words “or other proceeding” in section 69(3) of the Act relate to the proceedings of the nature of set-off and nothing else. These words do not apply to other judicial proceedings in contra-distinction to a “suit”

and are limited to proceedings taken to claim a set-off and similar claim in a written statement in suit.

Held further, that the proceedings taken under the Displaced Persons (Debts Adjustment) Act, 1951, by an unregistered firm or its partners are not barred by section 69(3) of the Partnership Act as these proceedings are distinct from a suit.

Held, that when general words follow particular and specific words, the general words are to be ordinarily construed to include only those things of the same class as specially mentioned.

First appeal from the decree of the Court of Shri Radha Krishen Baweja, Tribunal, Amritsar, dated the 17th day of July, 1954, passing a decree for Rs. 5,364-7-9 with proportionate costs in favour of the displaced creditors (petitioners) against respondents 1 and 2 and dismissing the suit against respondent No. 3 (Narain Dass) with costs.

A. N. GROVER, for Appellants.
S. L. PURI, for Respondents.

JUDGMENT

BISHAN NARAIN, J. This is a debtors' appeal under the Displaced Persons (Debts Adjustment) Act, against the decision of the Tribunal passing a decree for Rs. 5,364-7-9 in favour of the displaced creditors. The facts leading to this appeal are as follows.

Bishan Narain,
J.

The respondents who are partners of the Firm Murli Mal-Balmokand filed an application under section 13 of the Debts Adjustment Act against the appellant firm for the recovery of Rs. 14,000. The petitioners were carrying on their business at Peshawar under the name of Murli Mal-Balmokand before the partition of the country. The appellant firm is known as firm Ram Lal-Harnam Das carrying on business in Calcutta. The displaced creditors

Firm Ram Lal Harnam Dass v. Shri Bal Krishan and others
 Bishan Narain, J.

filed an application on the 1st of December, 1949, for leave to file a suit in *forma pauperis* to recover Rs. 12,900 from the Calcutta firm. This application was hotly contested. During the pendency of that application the Displaced Persons (Debts Adjustment) Act came into force on the 10th of December, 1951. The displaced persons then made the present application on the 31st of March, 1952, on the allegation that the Calcutta firm used to purchase goods from the Peshawar firm and there was a running account between them in which Rs. 14,000 were due to the petitioners. The Calcutta firm contested the claim and raised a preliminary objection *inter alia* that the displaced firm could not claim the amount as it was not a registered firm and section 69 of the Indian Partnership Act was a bar to the claim. On the merits it was denied that the Calcutta firm had ever any dealings with the Peshawar firm or that there was any kind of account between the parties or that any amount was due from it in that account. Various issues were framed on the pleas of the parties but it is not necessary to refer to them in detail. After the petitioners had led the evidence to show that there were dealings between the parties, Raghu Nath, proprietor of the Calcutta firm was examined on commission. In the course of his statement he admitted that there were dealings between the parties and that the accounts produced by the petitioners were correct subject to objections to four items. The Tribunal upheld the objections to the item of Rs. 5,183-13-0 but reduced the claim to Rs. 5,364-7-9. The Calcutta firm has filed this appeal but the displaced creditors have not filed any appeal against the decision reducing their claim.

Shri Amar Nath Grover has argued on behalf of the appellants that (1) the petitioners could

not file this petition as the said firm was not a registered firm, and (2) the objections to the other three items should also have been given effect to.

Firm Ram Lal-
Harnam Dass
v.

Shri Bal
Krishan
and others

—
Bishan Narain,
J.

I shall first deal with the objection relating to section 69, Partnership Act. It is common ground that the Peshawar firm was not a registered firm. The learned counsel for the appellants has argued that this petition under section 13 could not be filed by the partners of the firm Murli Mal-Balmokand as the said firm was not a registered firm and therefore section 69 of the Partnership Act bars such an application. The argument is that the proceedings under the Debts Adjustment Act are in the nature of a suit and section 69(3) is applicable to them. It is conceded that these proceedings are not a suit and therefore section 69(2) has no application. Section 69(3) reads—

“The provisions of subsections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect—

- (a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or
- (b) the powers of an official assignee, receiver or Court under the Presidency Towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, to realise the property of an insolvent partner.”

The argument is that this subsection makes the prohibition laid down in subsections (1) and (2)

Firm Ram Lal- applicable to all kinds of proceedings, in which
 Harnam Dass a right arising under a contract is sought to be en-
 v. forced through Court. On the other hand, the argu-
 Shri Bal ment of the learned counsel for the respondents is
 Krishan that the words "other proceeding" occurring in
 and others this subsection relate to and are limited to pro-
 _____ ceedings in a suit and not to any proceedings which
 Bishan Narain, may be in the nature of a suit.
 J.

Now, section 69 does not purport to make registration of a partnership compulsory nor does it prohibit enforcement of any claim by an unregistered firm. In subsections (1) and (2) a suit for this purpose, however, is not allowed to be instituted. Obviously subsections (1) and (2) to section 69 bar a suit and the language "no suit to enforce a right arising from a contract shall be instituted in any Court" suggests that the institution of a plaint was being prohibited as a suit is instituted by filing of a plaint. Subsection (3) proceeds to extend the prohibition to "a claim of set-off or other proceeding." Now, a claim of set-off can be made only in defence, i.e., only in a written statement. Thus an unregistered firm cannot claim a set-off by virtue of section 69(3) in a written statement. Thus far the position is clear. The exception mentioned in section 69(4)(b) also makes the position clear as it mentions only a suit and a claim for set-off and does not mention other proceedings. The difficulty arises by the use of words "or other proceeding" after "set-off". It appears to me that these words which are of very wide import should be limited in this context to any proceedings in the nature of a claim of set-off, for example, a claim which defeats the suit entirely or a counter-claim seeking a decree against the plaintiff. These claims are to be made in a written statement. Therefore, "other proceeding" should be read to mean "other proceedings in the suit"—

This is also consonant with the exceptions laid down in subsection (3) which refers to suits. If the legislature intended to use these words "other proceeding" in section 69(3) in contradistinction to "suit" as contended by Shri Amar Nath Grover, then these words would have been placed next to "suit" in subsections (1) and (2) to section 69 and not to "set-off" in section 69(3). Further, I fail to see anything common between "set-off" and "other proceeding." "Set-off" relates to a claim while "other proceeding" relates to the proceedings taken to enforce the claim and I do not understand why the legislature should use these very two different matters in juxtaposition. The necessary inference is that the use of these two terms was intended to convey same kind of matter. Moreover, if it is correct that the bar laid down in section 69 is applicable to all kinds of judicial proceedings, then it is not understood why a specific mention is made in subsection (3) of a claim for set-off because this claim would also be covered by "other proceeding" and there is no reason why the legislature should have particularly emphasised a claim for set-off. It is well-established that when general words follow particular and specific words then the general words are to be ordinarily construed to include only those things of the same class as specifically mentioned. Obviously if in the present case the legislature intended to use "other proceeding" in a general sense as including all kinds of judicial proceedings, then the "claim of set-off" would not have been mentioned. I am therefore of the opinion that the words "or other proceeding" in section 69(3) relate to the proceedings of the nature of set-off and nothing else. This view is in consonance with the view taken by a Division Bench of the Nagpur High Court in *Jamal Usman Kachi v. Firm Umar Haji Karim Shop* (1). The learned

Firm Ram Lal-
Harnam Dass

v.

Shri Bal
Krishan
and others

Bishan Narain,

J.

Firm Ram Lal-
Harnam Dass
v.
Shri Bal
Krishan
and others

—
Bishan Narain,
J.

counsel for the appellants relied on *Abdul Jabbar and others v. Audhesh Singh-Ram Agyan Singh and others* (1), where it was held that proceedings under the U.P. Encumbered Estates Act, are proceedings within section 69 of the Partnership Act and a claim by an unregistered firm cannot be enforced in these proceedings. There is no discussion in this judgment and the provisions of the U.P. Act have not been brought to my notice. It may be that under that Act the proceedings are deemed to be a suit and this may be borne out by the fact that the learned Judges had applied section 69(1) to the case and not section 69(3). Reliance was also placed on *Babulal Dhandhanian v. Messrs Gauttam and Co.* (2) and *Meghraj Sampatlal v. Raghunath and Son* (3), by the learned counsel for the respondents but in these cases all that was held was that arbitration without intervention of Court are not proceedings under the Act. These decisions are of no assistance in determining the present matter. For all these reasons I am of the opinion that the words "other proceeding" in section 69(3) do not apply to other judicial proceedings in contradistinction to a "suit" and are limited to proceedings taken to claim a set-off and similar claim in a written statement in a suit. Therefore, the contention of the learned counsel for the appellants fails and I hold that section 69(3) does not relate to other proceedings as distinct from a suit and, therefore the present proceedings taken under the Debts Adjustment Act, are not barred.

In this view of the matter it is not necessary to decide whether the provisions of section 69, Partnership Act, are applicable to proceedings under the Debts Adjustment Act, or not. I, would, however, be reluctant to exclude displaced partners of an unregistered firm from the benefit of

(1) A.I.R. 1954 All. 310
(2) A.I.R. 1950 Cal. 391
(3) A.I.R. 1955 Cal. 278

the Debts Adjustment Act when the definition of "displaced person" in the Act included such partners.

This brings me to the second argument of the learned counsel for the appellants. He has limited his arguments to the items (1) Rs. 117-13-3, (2) Rs. 3,000 and (3) Rs. 997-5-3 I shall deal with each item separately.

v.
Shri Bal
Krishan
and others
Bishan Narain,
J.

As regards the first item the learned counsel's argument is that it relates to a Bikaner firm of the appellants and not to the Calcutta firm. There is, however, no evidence or even a statement by Raghu Nath of the Calcutta firm that this item does not relate to the appellant firm, at least no such evidence was brought to my notice.

The next objection related to the item of Rs. 3,000. The Peshawar firm drew a *hundi* on the Calcutta firm on the 30th of January, 1946, for Rs. 3,000. This *hundi* was presented to the payee in due course and payment was made by a cheque on a Calcutta bank. The objection is that credit for this amount has not been given by the respondents in their account-books. There is no force in this objection. This amount was transmitted to Peshawar and its credit was given for Rs. 2,997-8-0 on the 19th of February, 1946. The difference in the two amounts represents banking charges. There is no suggestion that the Calcutta firm made any other payment of the like amount between these two dates. Therefore, this entry in the account-books of the Peshawar firm must be held to relate to the *hundi* of the 30th of January, 1946.

The third objection relates to the item of Rs. 997-5-3 and it arises in this way. There is an entry in the account produced by the petitioners on the debit side of Rs. 3,185-1-6. It relates to

Firm Ram Lal- supply of 26 bags of raisins to the Calcutta firm
 Harnam Dass in 1940. The relevant invoice, Exhibit P. 4, shows
 v. that the amount due was Rs. 2,187-12-3. This
 Shri Bal being so, there is a discrepancy of Rs. 997-5-3. This
 Krishan is admitted to be correct by the learned counsel for
 and others the respondents before me. The explanation
 Bishan Narain, given by the Peshawar firm, however, is that this
 J. entry of Rs. 3,185-1-6 is due to a clerical mistake
 and that, in fact, the amount actually due was
 Rs. 2,187-12-3 as argued by the appellants. But
 it is stated that only this latter amount which was
 really due was taken into consideration when the
 debit items were totalled. This explanation was
 accepted by the Tribunal and has also been check-
 ed up by Shri Amar Nath Grover and found to be
 correct. Accordingly, the objection to this item
 also fails. No objection to any other item figuring
 in the account-books produced by the Peshawar
 firm was raised and all these objections have been
 found by me to be groundless.

Now all that remains to be considered is the claim of interest made by the creditors. This is an item of Rs. 2,144-6-0 and the creditors justify this amount on the basis of trade usage. Admittedly there is no agreement that the Calcutta firm will pay interest on the amounts due from it. Two witnesses other than the claimant's *munim* support this usage set up by the displaced creditors but they have not produced their books or any other document in support of their assertion. Mohan Lal P.W. 3, was examined on commission but he also does not advance the case of the respondents. It may be that on account of dispersal of all the Hindu businessmen of Peshawar all over India it is not possible to produce them but there must be many firms in Calcutta and other places in India that were dealing in dry fruits with Peshawar firms and no effort has been made to

produce any of them. It is, therefore, impossible to accept the *ipse dixit* of the witnesses produced in this case. Moreover, the claimants' accounts disprove the trade usage set up in this case. No interest has been shown to have ever been charged from the Calcutta firm although the accounts produced date from the year 1937 to 1947. In my view this course of dealings as evidenced by the claimants' account-books definitely establishes that no such trade usage exists as set up by them.

Firm Ram Lal-
Harnam Dass
v.
Shri Bal
Krishan
and others

—————
Bishan Narain,
J.

The parties dealt with each other for a number of years and the nature of transactions is that the plaintiff firm sold dry fruits and the Calcutta firm purchased them. The claimants' account-books show that all the debit items relate to price of goods supplied to the Calcutta firm and all the credit items consist of monies received from it. Therefore, the balance due is really the price of the goods supplied to the Calcutta firm. That being so, section 61(2) of the Indian Sale of Goods Act applies to the case. The interest claimed and allowed by the Tribunal is at 6 per cent per annum and I do not consider it to be at all excessive.

The way the amount of interest has been calculated by the claimants is not clear from the record. In the absence of any data available under section 61(2)(a) it will be fair to allow interest on the last debit entry in the account-books produced by the claimants particularly when the appellants have not produced their books and their explanation of their loss is not convincing. The date of the last entry is the 13th of March, 1947. On this date the amount admittedly due comes to Rs. 3,220-1-9. I am of the opinion that the claimants are entitled to interest at 6 per cent per annum on this amount from the 13th of March, 1947, till the application

Firm Ram Lal- was made under section 13 of the Displaced Persons
 Harnam Dass (Debts Adjustment) Act, before the Tribunal on
 v. the 31st of March, 1952. Thus the appellant firm
 Shri Bal shall pay interest at 6 per cent per annum from
 Krishan the 13th of March, 1947, till the 31st of March,
 and others 1952.

Bishan Narain,

J.

The result is that the appeal is accepted to the extent that the amount of interest awarded by the Tribunal is reduced to the extent indicated above. Inasmuch as the appeal in substance fails and the conduct of the appellant firm was not helpful in the proceedings before the Tribunal, I order the appellants to pay costs of this appeal.

APPELLATE CIVIL

Before Kapur and Passey, JJ.

SHRI KRISHAN TALWAR,—*Defendant-Appellant*

v.

THE HINDUSTAN COMMERCIAL BANK, LIMITED,
 ETC.—*Defendant-Respondents*

Civil Regular First Appeal No. 84 of 1951.

1956

Nov. 5th

Contract Act (IX of 1872)—Section 141, Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Sections 17 and 22 (g)—Benefits of section 17, whether available to a debtor even in a civil court—Security lost by Act of God—Surety, whether discharged—Section 141 of the Contract Act, whether applies—Liability of the Principal as well as of the surety, whether ceases under sections 17 and 22 (g) of the Displaced Persons (Debts Adjustment) Act.

Practice and Procedure—Appeal—Change in law during pendency of—Effect of.