Before Viney Mittal, J.

STATE BANK OF INDIA—*Plaintiff/Appellant*

Versus

M/S SIMKO ENGINEERING WORKS & OTHERS—*Defendant/ Respondents*

*R.S.A. No.*527 OF 1984

11th August, 2004.

Code of Civil Procedure, 1908—Partnership Act, 1932—Ss.18, 19,20 and 22—Default in payment of loan by a partnership firm—Bank filing recovery suit—Trial Court decreeing suit while holding liable a partner who applied for grant of loan facilities, a manager who operated the accounts with the Bank and also the guarantor—Trial Court absolving the firm and remaining partners while relying upon Cls. 7 and 11 of the partnership deed—Cl. 7 provides that the Banking account of the firm will be operated by any of the partners or by the Manager as mutually decided by the partners—Cl.11 provides for appointment of a manager to carry on the business of the firm—Whether Cls.7 and 11 of the partnership deed absolve the firm & its remaining partners from the liability of the loan—Held, no—Provisions of S.19 of the Act provide that a partner is not only the agent of the firm but has implied authority also to bind the firm by any of the acts done by him for & on behalf of the firm—S.20 of the Act provides that unless and until the contrary is proved the implied authority of every partner to bind the firm and the remaining partners is inherent and the onus to prove that such an authority had been restricted would always be upon such person who claims such a restriction—Defendants failing to show that authority of only one partner had been restricted by them at any point of time—Appointment of a Manager by a partner could not be taken to have curtailed the inherent & implied authority or liability of the other partners— Appeal allowed while holding all the partners including the guarantor jointly and severally liable to repay the loan amount.

Held, that a conjoint reading of the provisions of Sections 18 and 22 of the Act would clearly show that a partner of a firm is not only the agent of the firm but has implied authority also to bind the

firm by any of the acts done by him for and on behalf of the firm. It may not be superfluous to add here that a partnership firm is in fact a compendious name given to the association of the partners. In that sense, a partnership firm has no independent entity of its own and all the liabilities against the firm or all acts done by any one of its partners for and on behalf of the firm shall bind all the other partners as well.

(Para 20)

Further held, that a perusal of Section 20 of the Act would also show that a partner in a firm may by contract between themselves extend or restrict the implied authority of any partner. However, it has further been provided that not withstanding any such restriction, any act done by a partner on behalf of the firm, which falls within his implied authority, binds the firm unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

(Para 21)

Further held, that unless and until the contrary is proved, the implied authority of every partner to bind the firm and the remaining partners is inherent and the onus to prove that such an authority had been restricted would always be upon such person who claims such a restriction. Even if Clauses 7 and 11 of partnership deed are taken into consideration, still nothing has been shown by defendants that authority of defendant No.5 had been restricted by them at any point of time. Clause 11 did provide for appointment of a Manager to carry on the business of a firm but by any stretch of imagination, the appointment of any such Manager could not be taken to have curtailed the inherent and implied authority or liability or the other partners. No such material has been brought on record by defendants in this regard. The Bank, as a stranger, could not be expected to have any knowledge of the inter se relationship or any restriction created by partners restricting the authority of any one of them. Once the Bank had proved that it had advanced loan and disbursed other amounts to the defendant—firm on the authority of any partner or a manager duly appointed, then the firm and all its partners including the guarantor are to be held jointly and severally liable to repay the loan amount.

(Para 22)

R. K. Chhibbar, Sr. Advocate with Lalit Thakur, Advocate, *for the appellant.*

Gopi Chand, Advocate with R. S. Sihota, Advocate for LRs of respondent No. 6 (Ramesh Malik).

JUDGMENT

VINEY MITTAL, J.

(1) The plaintiff, State Bank of India, has approached this Court through the present regular second appeal. The challenge made in the appeal is to the judgments and decree passed by the learned Courts below whereby the suit filed by the planintiff-bank for recovery has merely been decreed against defendants No. 5 and 6 only whereas the suit filed by the plaintiff-bank has been dismissed qua the remaining defendants No. 1 to 4. The plaintiff-bank has claimed that suit filed by it should have been decreed against all the defendants.

(2) Certain facts be noticed ;

(3) A suit for recovery of Rs. 3,46,718.28 was filed by the plaintiff-Bank against defendants No. 1 to 6. Defendant No. 1 is M/s Simko Engineering Works, a partnership concern. Defendants No. 2 to 5 are the partners of the aforesaid firm. Defendant No. 6 was sued as a guarantor. It was claimed by the plaintiff-bank that defendants approached the plaintiff-Bank to grant cash credit facility under the Small Scale Industries and small business market segment advances whereby various loans such as cash credit (special hypothecation), cash credit (under lock and key), over drafts bills and medium term loan (against pledge of moveable machinery) in the sum of Rs. 3,05,000 were sanctioned. Various documents were executed and signed for and on behalf of defendant No. 1 by its partners, including defendant No. 5 Smt. Kusum Malik in favour of the plaintiff-Bank. Defendant No. 6, Vallab Dass Malik, stood as guarantor for repayment of the loan amount. The plaintiff-Bank claimed that there was a default in the payment and, therefore, a suit for recovery of Rs. 3,46,718.28 was filed claiming future interest as well.

(4) Despite the service, defendants No. 1, 2, 5 and 6 chose not to appear and they were proceeded against *ex parte* by the learned trial Court. Defendants No. 3 and 4 put in appearance. They contested

the suit filed by the plaintiff-Bank by filing a joint written statement. Various technical objections were taken with regard to the maintainability of the suit. It was also claimed that there was no privity of contract between the plaintiff and the aforesaid defendants No. 3 and 4. The said defendants claimed that Ramesh Malik, who was husband of defendant No. 5 was formerly a partner in defendant No. 1-firm but later on joined the service of the State Bank of India. It was further alleged that Vidhya Wanti, defendant No. 2, was mother of Ramesh Malik. Aforesaid Ramesh Malik obtained signatures of defendants No. 3 and 4 on certain unfilled forms and in connivance with defendants No. 2, 5 and 6 fabricated certain documents. The said defendants pleaded that they had never requested for any loan facilities from the plaintiff-Bank nor any amount had been received by them.

(5) The learned trial Court on the basis of the evidence available on the record found that the plaintiff-Bank had been able to prove that the aforesaid amount was due to the plaintiff-Bank but held that in view of the stipulation contained in clause 11 of the partnership deed, the defendant-firm and defendants No. 2 to 4 would not be liable for the aforesaid amount. It was further held by the learned trial Court that the liability could be fastened upon Kusum Malik, defendant No. 5 who chose to apply for the grant of aforesaid facilities and thereafter authorised Mr. M. R. Kathuria, to operate the accounts with the plaintiff-Bank. Similarly, it was held that defendant No. 6, Vallab Dass Malik who was guarantor for the aforesaid facilities granted to defendant No. 1, at the behest of defendant No. 5 was also jointly and severally liable. On the basis of the aforesaid findings, the learned trial court decreed the suit filed by the plaintiff against defendant No. 5 and 6 alongwith future interest at the rate of 14% per annum from 1st April, 1977 till the institution of the suit, with a further interest at the rate of 18% per annum from the date of filing of the suit till the date of realisation. However, the suit against the remaining defendants No. 1 to 4 was dismissed.

(6) Aggrieved against the aforesaid judgment and decree of the learned trial Court, the plaintiff-Bank took the matter in appeal. The learned first appellate Court also, on the basis of the interpretation of clauses 7 and 11 of the partnership deed came to the similar conclusions as were arrived at by the learned trial Court. Consequently, the appeal filed by the plaintiff-Bank was also dismissed.

(7) The plaintiff-Bank has still remained dissatisfied and has approached this court through the present regular second appeal.

(8) I have heard Shri R. K. Chhibbar, the learned senior counsel appearing for the plaintiff-Bank and S/Shri Gopi Chand Bhalla and R. S. Sihota, the learned counsel appearing for legal representatives of respondent No. 6 and with their assistance, have also gone through the record of the case.

(9) It may be noticed that the other respondents, although having been served, have chosen to remain unrepresented.

(10) Before delving any further in the controversy involved in the case, it may be relevant to notice that a perusal of the cause title of the suit filed by the plaintiff-Bank shows that defendants No. 2 to 5 are partners of the firm-defendant No. 1. Defendant No. 2 Vidya Wanti is the wife of defendant No. 6, Vallab Dass Malik. Defendant No. 5 Smt. Kusum Malik, is the wife of Ramesh Malik who is shown to be the son of Vallab Dass Malik and Vidya Wanti. Thus, it is apparent that the stand adopted by the defendants is only with a view to stall and delay the recovery of the amount due from the defendants to the plaintiff-Bank.

(11) At the out-set, Shri R. K. Chhibbar, the learned senior counsel, on instructions from the plaintiff-Bank, has specifically made a statement that no amount has been repaid by the defendants to the plaintiff-Bank inspite of a decree against defendants No. 5 and 6 by the learned trial Court and the entire decretal amount alongwith the continuing interest is still due.

(12) Shri R. K. Chhibbar, the learned counsel for the plaintiff-Bank has vehemently argued that the dismissal of the suit filed by the plaintiff-Bank by the learned courts below qua defendants No. 1 to 4 was wholly erroneous and contrary to the provisions of the partnership deed. It has further been argued that the evidence on the record clearly showed that all the loan amount and other advances had been disbursed by the plaintiff-Bank to defendant No. 1-M/s Simko Engineering Works through its various partners and defendant No. 6, Vallab Dass Malik, had stood as a guarantee. The learned senior counsel has pointedly drawn my attention to clauses No. 7 and 11 of the partnership deed (Ex. D1) which have been relied upon by the

learned courts below and has argued that the aforesaid terms were merely governing the relationship *inter se* between partners and were not binding, in any manner, on the plaintiff-Bank who was a stranger to the aforesaid partnership deed.

(13) On the other hand, the learned counsel appearing for the respondents have defended the conclusions arrived at by the learned courts below and have contended that in view of the aforesaid clauses 7 and 11 of the partnership deed (Ex. D1), the bank could not enforce any liability against defendants No. 1 to 4, inasmuch as before dealing with Kusam Malik, defendant No. 5 and the manager, M.R. Kathuria, it was incumbent upon the plaintiff to prove that the aforesaid persons were acting and on behalf of the partnership firm and its partners.

(14) From the aforesaid arguments of the learned counsel for the parties, I find that the following substantial questions of law arise for consideration in the present appeal :—

(a) As to whether the partners, constituting a partnership firm can absolve their liability qua a stranger on account of some stipulation in the partnership deed ?.

(b) As to whether the partners of a partnership firm being agent of the firm under section 18 of the partnership Act are not bound in law to honour the commitments made by any one of the partners for and on behalf of the firm ?

(c) As to whether in the present case the provisions of section 20 of the Partnership Act would operate for the benefit of the firm and its partners as against a stranger when it had been specifically provided under section 20 of the Act that notwithstanding any such restriction, the implied authority of a partner would bind the firm when the stranger does not know of any such restriction imposed upon the authority ?

(15) It is no more in dispute, as has also been found as a fact by the learned courts below, that the plaintiff-Bank had advanced the amount claimed by it to defendant No. 1 through Kusum Malik, defendant No. 5 and M. R. Kathuria, who was claimed to have been appointed as a Manager by Kusum Malik. The only question which

remains to be adjudicated upon is as to whether clauses 7 to 11 of the partnership deed (Ex.D1) absolve the partnership firm and its remaining partners from the liability of the aforesaid advances and loans. Clauses 7 and 11 of the partnership deed (Ex. D1) may be noticed, at this stage.

> "Clause 7. That a banking account of the firm shall continue to be with State Bank of India, Ballabgarh. It will be operated by any of the partners or by the Manager as mutually decided by the partners.
>
> Clause 11 : The partners will employ a Manager to carry on the business of the firm. He will be given such powers as the partners may mutually decide."

(16) The courts below have been convinced by the fact that the aforesaid partnership deed (Ex.D1) was available with the plaintiff-Bank and as such, they were aware of the stipulations contained therein. It has also been noticed by the learned courts below that the bank account was by and large operated by M. R. Kathuria, thereby creating the liability in guestion. It is also not disputed that Kusum Malik, defendant No. 5, as a partner of defendant No. 1-firm, had issue a communication Ex.DC to the bank, requesting to honour all cheques drawn on the account by M. R. Kathuria. On the basis of the aforesaid fact, alone, the learned courts below have held that because of the operation of the clauses 7 and 11 of the partnership deed, other remaining partners of the firm, as such, had incurred no liability *qua* the aforesaid advances and loan.

(17) In my view, the aforesaid conclusion drawn by the learned courts below is wholly erroneous and contrary to law.

(18) Section 18 of the Partnership Act provides that subject to the provisions of the Act, a partner is the agent of the firm for the purposes of the business of the firm. Section 19 of the Act further provides that subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. It is further provided that the authority of a partner to bind the firm conferred by this section is called his "implied authority".

(19) Section 22 of the Act also provides that in order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

(20) A conjoint reading of the aforesaid provisions would clearly show that a partner of a firm is not only the agent of the firm but has implied authority also to bind the firm by any of the acts done by him for and on behalf of the firm. It may not be superfluous to add here that a partnership firm is in fact a compendious name given to the association of the partners. In that sense, a partnership firm has no independent entity of its own and all the liabilities against the firm or all acts done by any one of its partners for and on behalf of the firm shall bind all the other partners as well. Section 20 provides an exception to the aforesaid implied authority. The provisions of section 20 may be noticed as follows :

> 20. Extension and restriction of partner's implied authority: The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner.
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> Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner."

(21) A perusal of section 20 of the Act would also show that a partner in a firm may by contract between themselves extend or restrict the implied authority of any partner. However, it has further been provided that notwithstanding any such restriction, any act done by a partner on behalf of the firm, which falls within his implied authority, binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

(22) From the perusal of the aforesaid provision, it is apparent that unless and until the contrary is proved, the implied authority of every partner to bind the firm and the remaining partners is

inherent and the onus to prove that such an authority had been restricted would always be upon such person who claims such a restriction. In the present case, even if clauses 7 and 11 of partnership deed (Ex.D1) are taken into consideration, still nothing has been shown by defendants No. 1 to 4 that authority of defendant No. 5 Kusum Malik had been restricted by them at any point of time. Clause 11 did provide for appointment of a Manager to carry on the business of a firm, but by any stretch of imagination, the appointment of any such Manager could not be taken to have curtailed the inherent and implied authority or liability of the other partners. No such material has been brought on the record by defendants No. 1 to 4 in this regard. As a matter of fact, the pleadings contained in the written statement of defendants No. 3 and 4 do not show that any such objection was even taken by them. The Bank, as a stranger, could not be expected to have any knowledge of the *inter se* relationship or any restriction created by partners restricting the authority of any one of them. Since defendants No. 1 to 4 have completely failed in discharging the onus required of them to take advantage of section 20 of the Act, therefore, the learned courts below were not justified in law to grant them the benefit of the aforesaid provision. Once the bank had proved that it had advanced loan and disbursed other amounts to the defendant-firm on the authority of any partner or a manager duly appointed, then the firm and all its partners including the guarantor/defendant No. 6 are to be held jointly and severally liable to repay the aforesaid amount.

(23) Accordingly, the substantial question (a), (b) and (c) framed above are answered in favour of the plaintiff-bank and against the defendants and it is held that the defendants No. 1 to 4 were not entitled in law to be excluded from the liability of the firm or any one of its partners, in any manner nor the provisions of section 20 of the Act were attracted in any manner to the detriment of the plaintiff-Bank.

(24) In view of the aforesaid discussion, the present appeal is allowed and after modification of the judgments and decree of the learned courts below, the suit filed by the plaintiff-Bank is decreed as against all the defendants jointly and severally with costs throughout.

R.N.R.