

Bhagwanji Morarji Goculdas - - - - - *Appellant*

v.

The Alembic Chemical Works Company Ltd. and others *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 26TH FEBRUARY, 1948

Present at the Hearing :

LORD NORMAND

LORD MACDERMOTT

SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from the judgment and decree of the High Court of Judicature at Bombay dated the 24th November, 1943, dismissing the appellant's appeal from the judgment and decree dated the 16th December, 1942, of Mr. Justice Chagla exercising original civil jurisdiction of the High Court.

In the suit out of which this appeal arises the appellant, who was plaintiff, claimed against the first respondent, The Alembic Chemical Works Company Limited (hereinafter referred to as "the company") Rs.9,00,000 damages for breach of an agreement of the 7th December, 1907, to employ the firm of Kotibhasker Amin and Company, of which the appellant claimed to be a member, as managing agents of the company.

The claim arises in this way. The company was formed in the year 1907 and under clause 6 of the Memorandum of Association it was provided that the members who then constituted or who might thereafter constitute the firm of Messrs. Kotibhasker Amin and Company were thereby appointed secretaries, treasurers and agents of the company upon the terms contained in the agreement annexed to the Articles of Association, and it was expressly provided that in consideration of the services rendered by them in promoting the company, the appointment of the said firm as secretaries, treasurers and agents of the company should not be liable at any time thereafter to be revoked or cancelled on any ground or for any reason whatever, save and except their being found guilty of fraud in the management and discharge of their duties as such secretaries, treasurers and agents, and that the remuneration payable to the said firm should be as therein mentioned. Clause III of the Articles of Association was expressed in much the same terms and referred to the agreement thereto annexed and marked A.

The agreement referred to in the Memorandum and Articles of Association was dated the 7th December, 1907, and was made between the company of the one part and Anant Shridhar Kotibhasker, Bhailal Dajibhai Amin, Krishnalal Tribhowandas Gajjar then a minor by his guardian Tribhowandas Kalyandas Gajjar and Moreshwar Bhalchandra Bhatvabeker, carrying on business in Bombay under the name and style of Messrs. Kotibhasker, Amin and Company of the other part. The agreement so far as material provided that in consideration of the agreement of the company thereafter contained they, the four persons of the second part, promised and agreed on behalf of themselves and each of them and

the members or member of the said firm of Messrs. Kotibhasker, Amin and Company, for the time being, thereafter referred to as the said firm (Clause 1) That they would faithfully and to the best of their ability perform the offices of secretaries, treasurers and agents of the said company for the purpose of carrying on to the best advantage the business of the said company so long as the said company and the said firm should continue to carry on their respective business at the remuneration upon the terms and subject to the conditions thereafter mentioned. (Clause 2.) That in consideration of the agreement thereinbefore contained on the part of the said firm, and in further consideration of the said firm having promoted the said company, the company thereby promised and agreed with the said firm and its members or member for the time being that the said firm should be employed as, and should be the secretaries, treasurers and agents of the said company as long as the said firm and the said company should exist and continue to carry on the business either in the present or any name, and that such appointment should not be liable to be at any time revoked or cancelled on any ground or for any reason whatever except their being found guilty of fraud in the management and discharge of their duties of secretaries, treasurers and agents; and the said company thereby for itself and for its successors covenanted with the said four persons of the second part and the said firm severally and jointly that the said company should from time to time when the constitution of the said firm changed by death, retirement, admission of any new partner or otherwise, enter into a fresh agreement if necessary with the said firm and the partner or partners therein in the terms of that agreement.

It was admitted by counsel for the respondents before the Board that the said managing agents' agreement was executed by the company after its incorporation, though that fact does not appear from the record.

The subsequent history of the constitution of the firm is as follows:—

In the year 1910 A. S. Kotibhasker died. In the year 1911 the said Bhatvabeker assigned his share in the firm to T. K. Gajjar. In the year 1919 T. K. Gajjar assigned his share to K. T. Gajjar, who already possessed one share. In 1920 K. T. Gajjar assigned his two shares to one N. Purshottam. In the year 1922 the said N. Purshottam assigned his shares to the appellant. The firm then consisted of the said B. D. Amin, one of the original partners, and the appellant. On the 5th October, 1939, the said B. D. Amin assigned his share in the firm to his son, the second respondent. It is not disputed that on the occasion of any change in the constitution of the firm notice of the fact was given to the company who recorded such fact in its minutes, but it is not alleged that on any of these occasions an express fresh agreement was entered into by the company with the reconstituted firm as contemplated in clause 2 of the managing agents' agreement.

On the 20th November, 1939, the company, by their attorneys, wrote to the firm alleging that since the 5th October, 1939, when B. D. Amin, the only remaining original partner, assigned his share in the firm, the firm with which the company had entered into the agreement of the 7th December, 1907, ceased to exist, and that such agreement had come to an end, and informing the firm that the then firm of Kotibhasker, Amin and Company was not entitled to act as secretaries, treasurers and agents of the company and to be paid remuneration as such. After some correspondence between the parties this suit was filed on the 14th March, 1940, by the appellant against the company, the second respondent, who was not willing to join as plaintiff, and certain other parties whose position is not now material. The claim, as already stated, was for damages for breach of the agreement of 7th December, 1907.

The learned trial judge dismissed the suit primarily upon the ground that the firm of Kotibhasker, Amin and Company existing at the commencement of this suit, and consisting of the appellant and respondent No. 2, neither of whom was a partner at the date of the managing agents' agreement, was not the same firm as that which had entered into such agreement, and that the appellant, not having been a party to such agreement could not enforce the rights, nor be rendered liable for the obligations, of the firm arising thereunder.

An appeal to the High Court in its Appellate Jurisdiction was dismissed substantially on the same grounds. Their Lordships think that the decisions of the courts in India upon this point were right.

Before the Board it was argued that under the Indian Partnership Act, 1932, a firm is recognised as an entity apart from the persons constituting it, and that the entity continues so long as the firm exists and continues to carry on its business. It is true that the Indian Partnership Act goes further than the English Partnership Act, 1890, in recognising that a firm may possess a personality distinct from the persons constituting it; the law in India in that respect being more in accordance with the law of Scotland, than with that of England. But the fact that a firm possesses a distinct personality does not involve that the personality continues unchanged so long as the business of the firm continues. The Indian Act, like the English Act, avoids making a firm a corporate body enjoying the right of perpetual succession. The agreement of the 7th December, 1907, was made between the company and four named individuals, and when all of those four individuals had ceased to be members of the firm, there was no privity between the company and the firm as it then existed.

In the Court of Appeal the appellant sought to raise a further point. It was contended that as the company had recognised B. D. Amin and the appellant as their managing agents from 1922 to 1939 it must be inferred that the company had entered into an agreement with the said B. D. Amin and the appellant to employ them as managing agents upon the terms of the agreement of the 7th December, 1907. To this contention it was pointed out that in the plaint there was no plea of estoppel against the company, and no allegation of any implied agreement between the company and the appellant, and that damages were claimed only for breach of the agreement of the 7th December, 1907. Thereupon the appellant asked for leave to amend the plaint by alleging an implied agreement made in 1922 between the company on the one hand and B. D. Amin and the appellant on the other, and claiming damages for the breach of such agreement. The court refused leave to amend, and the appellant has argued before the Board that such refusal was wrongful. In their Lordships' view the Court of Appeal in India was right to refuse leave to amend, since at the time when leave to amend was sought any claim under the alleged implied agreement would have been barred by limitation.

In the trial court and before this Board some reliance was placed on section 87B (c) of the Indian Companies Act. That sub-clause was introduced into the Companies Act by the amending Act of 1936. The sub-clause renders a transfer of his office by a managing agent void unless approved by the company in general meeting, but there is a proviso removing from the operation of the sub-clause any change in the partners of a managing agent's firm so long as one of the original partners continues to be a partner in such firm, and "original partners" are defined to mean, in the case of managing agents appointed before the commencement of the amending Act, 1936, partners who were partners at the date of the commencement of the Act. So, for the purposes of the proviso, the appellant was to be regarded as an original partner. Their Lordships agree with the learned trial judge that this section of the Companies Act has no application to the present case. It places the appellant in the position of an original partner for the purposes of the proviso, but does not make him an original partner for the purposes of the managing agents' agreement.

For these reasons their Lordships will humbly advise His Majesty that this appeal be dismissed with costs.

In the Privy Council

BHAGWANJI MORARJI GOCULDAS

v.

THE ALEMBIG CHEMICAL WORKS
COMPANY LTD. AND OTHERS

DELIVERED BY SIR JOHN BEAUMONT

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