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DSK Legal Knowledge Center

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MISCELLANEOUS UPDATE

V. Subramaniam v/s Rajesh Raghuvendra Rao

The Supreme Court of India on March 20, 2009 passed an order in favour of Mr. V. Subramaniam (“Appellant”) in the appeal impugning the order passed by the Hon’ble Bombay High Court. The original suit was filed before the Bombay City Civil Court by the Appellant inter alia praying for dissolution of an unregistered partnership firm between the Appellant and Mr. Rajesh Raghuvendra Rao (“Respondent”). Before the Bombay City Civil Court the Respondent took defense under Sub-section 2A of Section 69 (“the Impugned Section”) of the Indian Partnership Act, 1932 (“the Act”) that the suit was not maintainable. The Bombay City Civil Court was of the view that the Impugned Section, which was introduced by the Maharashtra Amendment to the

Act, being the Maharashtra Act No. 29 of 1984, was unconstitutional being violative of Articles 14 and 19 (1)(g) of the Constitution of India (“the Constitution”) and therefore made a reference to the Bombay High Court under Section 113 of C.P.C. The High Court however held that Impugned Section is not unconstitutional and the submissions of the Respondents were upheld.

The Impugned Section states as follows-

“(2A) No suit to enforce any right for the dissolution of a firm or for accounts of a dissolved firm or any right or power to realize the property of a dissolved firm shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or have been a partner in the firm, unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm:

Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of a dissolved firm or to realize the property of a dissolved firm."

Till the Impugned Section came into force, a partner in a firm could file a suit for dissolution of an unregistered firm or for accounts of the dissolved firm or realize properties of a dissolved firm. As per the Impugned Section, a partner in an unregistered partnership firm in the State of Maharashtra is prohibited from filing a suit for dissolution or for accounts of the dissolved firm or realize properties of the dissolved firm unless the duration of the firm was only for six months or its capital is upto Rs. 2000/-.

The Supreme Court has stated that a partnership firm, whether registered or unregistered, is not a distinct legal entity and hence, the property of the firm really belongs to the partners of the firm. The Impugned section virtually deprives a partner in the unregistered firm from recovery of his share in the property of the firm or from seeking dissolution of the firm.

Article 14 of the Constitution guarantees the right to equality and states that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Article 19(1)(g) of the Constitution provides that all persons have the right to practice any profession or to carry on any occupation, trade or business. Clause (6) of that Article enables the State to make any law imposing, in the interest of general public, reasonable restrictions on the exercise of the right conferred under Sub-clause (g) of Article 19(1).

Article 300A of the Constitution of India states that "No person shall be deprived of his property save by authority of law"

The Supreme Court took into account that the primary object of registration of a firm is the protection of third parties who were subjected to hardship and difficulties in the matter of proving as to who were the partners. Under the earlier law, a third party obtaining a decree was often put to expenses and delay in proving that a particular person was a partner of that firm. The registration of a firm provides protection to the third parties against false denials of partnership and the evasion of liability. Once a firm is registered under the Act, the statements recorded in the Register regarding the constitution of the

firm are conclusive proof of the fact contained therein as against the partner. A partnership firm can come into existence and function without being registered. However, the Impugned Section effects such stringent disabilities on a firm as are crippling in nature. The Supreme Court analyzed that the effect of the Impugned Section was that a partnership firm was allowed to come into existence and function without registration but it could not go out of existence (with certain exceptions). This can result into a situation where, in case of disputes amongst the partners, the relationship of partnership cannot be put an end to by approaching a court of law. A dishonest partner, if in control of the business, or if simply stronger, can successfully deprive the other partner of his dues from the partnership. It could result in extreme hardship and injustice. Might would be right. An aggrieved partner is left without any remedy whatsoever. He can neither file a suit to compel the mischievous partner to cooperate for registration, as such a suit is not maintainable, nor can he resort to arbitration.

Therefore, the Supreme Court, in its order, has pronounced that the Impugned Section as introduced by the Maharashtra Legislature is clearly violative of Articles 14, 19(1)(g) and 300A of the Constitution of India and hence ultravires the Constitution. The Supreme Court has therefore declared the Impugned Section unconstitutional. The appeal

has consequently been allowed and the judgment of the Bombay High Court has been set aside.

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