HIGH COURT OF GUJARAT *(D.B.)*

KESHAVLAL LALLUBHAI PATEL
V/S
PATEL BHAILAL NARANDAS

Date of Decision: 31 August 1966

Citation: 1966 LawSuit(Guj) 79

Hon'ble Judges: P N Bhagwati, A D Desai

Eq. Citations: 1968 AIR(Guj) 157, 1968 GLR 649

Case Type: First Appeal; Civil Appeal

Case No: 350 of 1966; 1032 of 1966

Head Note:

Partnership Act(IX of 1932) - S.32,S.37,S.39 - Issue of dissolution of partnership - Definition of partnership at will and determination as to nature of partnership - Provision relating to retirement of partner - Retirement of partner does not dissolve the firm.

On a plain reading of definition of partnership at will in sec 7 of the Partnership Act it is clear that two conditions must be satisfied before a partnership can be regarded as a partnership at will The first condition is that there should be no provision in the contract between the partners for the duration of their partnership and the second condition is that there should be no provision in the contract for the determination of that partnership If either of these provisions exists the partnership would not be a partnership at will. Now the duration of a partnership may be expressly provided for in the contract but even where there is no express provision the partnership will not be at will if any stipulation as to the duration can be implied. Where there is no express agreement to continue a partnership for a definite period there may be an implied agreement to do so

(Para 2) It is undoubtedly true that under the law of partnership in India as is England. a firm has no legal existence apart from the partners composing it and it is merely a compendious name to describe the partners collectively and. therefore according to the strict view of the law on any change amongst the partners comprising a firm there would in fact be a new firm but the law has in conformity with mercantile usage which recognizes a firm as a distinct person or quasi-corporation departed from the strict legal view and extended a limited personality to a firm so that a firm continues to exist despite changes in its constitution brought about by introduction retirement expulsion death or insolvency of a partner. The provisions in Chapter V clearly extend a limited personality to a firm and recognize continuity of existence of the firm despite internal changes is in the constitution of the firm such as introduction retirement expulsion death or insolvency of a partner. Held that retirement of a partner from a firm does not dissolve the firm that is determine the partnership infer se between all the partners but merely severs the partnership between the retiring partner and the continuing partners leaving the partnership amongst the continuing partners unaffected and the firm continues with the changed Constitution comprising the continuing partners. (Para 3) Further held that in the instant case Clause 7 of The partnership deed which contained a provision for retirement of a partner does not constitute an express provision made by contract between the partners for determination of their partnership within the moaning of sec. 7 of the Partnership Act and therefore does not operate to exclude the partnership from the category of partnership at will (Para 5) Crawshay v. Maule Thiagaraian v. Muthappa Sohanlal Pachisia and Co v Bilasray Meenakshi Achi v. P. S. M. Subramaniam Chettiar I. T. Commissioner v. A. W. Figgis and Company referred to

Acts Referred:

Partnership Act, 1932 Sec 39, Sec 32, Sec 37

Final Decision: Appeal dismissed

Advocates: I M Nanavati, V J Desai,K S Nanavati, J M Shah, S M Shah, C A K T Pathak, C A C M Trivedi

Reference Cases:

Cases Cited in (+): **8**

Cases Referred in (+): **5**

Judgement Text:-

Bhagwati J

[1] The short question that arises for determination in this appeal is as to the date of dissolution of a partnership constituted of the plaintiffs and the defendants. By a deed of partnership dated 4th July 1954 the plaintiffs and the defendants agreed to carry on business In partnership in the firm name of National Construction Company on the terms and conditions recorded in the partnership deed. The business of the partnership was stated in Clause 1 of the partnership deed to be construction of buildings, roads, dams, canals and other structures in various parts of India and production and transport work in connection with the same. Clause 2 of the partnership deed provided that none of the partners should withdraw the amount of capital invested by him until all the construction works undertaken by the firm were completed. The partners were divided into three groups: the first group consisting of the plaintiff and defendant No. 8, the second group consisting of defendants Nos. 2 and 3 and the third group consisting of defendants Nos. 4 to 7 and under Clause 5 of the partnership deed the management of the partnership business was entrusted to three Managing Partners, one drawn from each group. Clauses 6 and 7 of the partnership deed which are material Clauses for the determination of this appeal were in the following terms as translated in English: -

> "6. The duration of this partnership is not fixed and it will, therefore, be a partnership at will.
>
> 7. Each partner will be entitled to a share in the goodwill of the firm according to his share in the partnership. If any partner wishes to retire from the firm, he can do so by giving notice in writing to the other partners of his intention to retire after completion of the pending construction works and the retirement shall take effect after the pending construction works are completed, accounts in respect thereof are taken and the amount due at the foot of the accounts is paid or received by him, as the case may be. If the continuing partners take up any new construction work after receipt of such written notice from the retiring partner, the retiring partner shall not be liable in any manner in respect of such construction work. The retiring partner will

have no claim in respect of the goodwill of the firm and the goodwill shall belong to the continuing partners according to the shares mutually agreed between them."

The partnership obtained a contract for the construction of Raigadh Rattan Pole Section of National Highway No. 8 but before the completion of construction of the said work the plaintiff gave a notice dated 15th December 1956 to the defendants dissolving the firm. This action was taken by the plaintiff because according to him various irregularities and illegalities were being committed by defendant No. 6 in the management of the business of the partnership but we are not concerned with this allegation of the plaintiff since it has no bearing on the question whether the notice operated to dissolve the partnership. That question depends entirely on the construction of the partnership deed.

The notice was received by all the defendants and the last date of receipt was 18th December 1956, The plaintiff, therefore, contended that the partnership was dissolved on 18th December 1956 and he filed a suit in the Court of the Civil Judge, Senior Division, Ahmedabad, against the defendants for taking accounts of the dissolved partnership. The plaintiffs also prayed in the alternative that in any event by reason of the facts and circumstances set out in the plaint the partnership be dissolved by the Court. Originally in the suit, apart from the partners, one Ratilal Dahyabhai Patel was also impleaded as defendant No. 9 on the ground that he was a cashier in charge of the account books of the firm, but at the hearing of the appeal before us, Mr. J. M. Shah, learned advocate appearing on behalf of the plaintiff, applied that he may be permitted to drop defendant No. 9 from the suit and the name of defendant No. 9 was accordingly ordered to be struck off from the suit. Defendants Nos. 5 to 7 contended in their written statement that the partnership was not a partnership at will and was, therefore, not dissolved by the notice dated 15th December 1956, but it was a partnership for a venture and since the venture, namely, the construction of the road undertaken by the firm was not complete, the suit for dissolution of the partnership was not maintainable. In this stand defendants Nos. 5 to 7 were supported by defendant No. 4 who belonged to their group. The other defendants, however, agreed with the plaintiff that the partnership was a

partnership at will and was, therefore, dissolved by the notice dated 15th December 1956. The main dispute, so far as the issues for determination in a preliminary decree are concerned, therefore, was as to what was the date of dissolution of the partnership. The trial Court on a consideration of the provisions of the partnership deed held that the partnership was a partnership at will and must, therefore, be held to be dissolved from 18th December 1956, being the date of receipt of the notice dated 15th December 1956 by the defendants. The trial Court accordingly passed a preliminary decree on the basis that the partnership was dissolved from 18th December 1956. Defendants Nos. 5 to 7 were aggrieved by this determination of the trial Court and hence they preferred the present appeal in this Court.

[2] The notice dated 15th December 1956 given by the plaintiff to the defendants dissolving the partnership was avowedly given under sec. 43 of the Partnership Act and under that section it could operate to dissolve the partnership from the date of its receipt by the defendants only if the partnership was a partnership at will. The controversy between the parties, therefore, centred round the question whether the partnership was a partnership at will. Now what is a "partnership at will" is defined in sec. 7 and according to that definition:

> "Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is 'partnership at will."

On a plain reading of the definition, two conditions must be satisfied before a partnership can be regarded as a partnership at will. The first condition is that there should be no provision in the contract between the partners for the duration of their partnership and the second condition is that there should be no provision in the contract for the determination of that partnership. If either of these provisions exists, the partnership would not be a partnership at will. Now the duration of a partnership may be expressly provided for in the contract but even where there is no express provision, it has been held that the partnership will not be at will, if any stipulation as to the duration can be implied. Sec Halsbury's Laws of England, Third Edition, Vol. 28, page 502, para 964, where it is said that where there is no express agreement to continue a partnership for a definite period, there may be an implied

agreement to do so. In Crawshay v. Maule, (1818) 1 Swan 495: 36 ER 479, the same principle has been laid down in the following words:

"The general rules of partnership are well-settled. Where no term is expressly limited for its duration, and there is nothing in the contract to fix it, the partnership may be terminated at a moment's notice by either party.....Without doubt, in the absence of express, there may be an implied, contract, as to the duration of a partnership. "

The same principle also applies to a case of determination. The contract may expressly provide that the partnership will determine in certain circumstances but even if there is no such express term, an implied term as to when the partnership will determine may be gathered from the contract and the nature of the business. Vide Thiagarajan v. Muthappa, A. I. R. 1961 Supreme Court 1225. What we have, therefore, to Sec is whether there is in the present case in the contract of partnership any express or implied provision as to the duration of the partnership or as to when the partnership will determine. It was conceded on behalf of defendants Nos. 5 to 7 that there was no provision in the contract of partnership express or implied in regard to the duration of the partnership and this concession was inevitable in view of Clause 6 of the partnership deed; but the contention of defendants Nos. 5 to 7 was that Clause 7 of the partnership deed contained an express provision for the determination of the partnership within the meaning of sec. 7 and the partnership was, therefore, not a partnership at will. Now Clause 7 on the face of it dealt with the subject of retirement of a partner and not dissolution of the partnership and the contention of defendants Nos. 5 to 7, therefore, appeared to be unsustainable, but defendants Nos. 5 to 7 sought to equate retirement with dissolution and contended that retirement of a partner operated to disrupt jural relationship of partners not only between the retiring partner on the one hand and the continuing partners on the other but also amongst all the partners inter se and a provision for retirement of a partner was, therefore, in effect and substance a provision for determination of the partnership within the meaning of sec. 7. It was also urged on behalf of defendants Nos. 5 to 7 that in any event even if retirement of a partner did not have the effect of dissolving the jural relationship of partners between all the partners inter se but merely disrupted the jural relationship between the

retiring partner on the one hand and the continuing partners on the other, such disruption of the jural relationship between the retiring partner and the continuing partners constituted determination of the partnership within the meaning of sec. 7 and a provision for retirement of a partner was, therefore, in any view of the matter a provision for determination of the partnership as contemplated in sec. 7. It is evident that if either of these contentions is well-founded, it would not be possible to say that there was no provision in the partnership deed for the determination of the partnership, for Clause 7 would clearly constitute such provision but in our view both the contentions are unsustainable.

[3] We cannot assent to the proposition that retirement of a partner has the effect of dissolving the jural relation of partnership inter se amongst all the partners. The law of partnership draws a distinction between retirement of a partner and dissolution of a firm. Sec. 39 defines dissolution of a firm as dissolution of partnership between all the partners, partnership is the jural relation between partners who are collectively called a firm and when this jural relation is snapped between all the partners inter se that constitutes dissolution of the firm. But there any be cases where a partner may wish to withdraw from the firm without affecting the jural relation subsisting between the other partners. He may wish to sever his jural relation as a partner with the other partners leaving the jural relation to the other partners inter se unaffected. He can do so in the cases set out in sec. 32 and when he does so, he is said to retire from the firm. When a partner retires from a firm, there is no dissolution of partnership between all the partners: there is no severance of the jural relation of partnership inter se between all the partners: the only alteration of jural relationship which takes place is that the jural relation of the retiring partner with the other partners is severed but the jural relation of partnership subsisting between the other partners remains unaffected. Out of several strands of jural relations which go to make up the juridical concept of partnership between certain specified individuals, those connecting the retiring partner with the continuing partners are snapped but the others connecting the continuing partners inter se remain intact and the partnership continues as between the continuing partners. There is thus a clear and well recognised distinction between retirement of a partner from a firm and dissolution of a firm. These terms are not synonymous either in their juridical content or their legal implications and consequences. They are treated separately by the law of partnership: one is dealt with in sec. 32 while the other is dealt with in Chapter VI commencing with sec. 39. If as alleged by defendants Nos. 5 to 7

retirement of a partner from a firm has the effect of bringing about dissolution of the partnership between all the partners, it is difficult to imagine what should have induced the Legislature to treat retirement as a separate topic under Chapter V and not regard it as one of the modes of dissolving the firm dealt with under Chapter VI. Secs. 32(1) (c) and 43 would also in that event overlap for a notice of retirement under sec. 32(1) (c) would have the effect of dissolving the partnership between all the partners, that is, of dissolving the firm which according to sec. 43 must needs be done by a notice of dissoluiion. This distinction between retirement of a partner from a firm and dissolution of a firm is also recognised by judicial decisions of which we may cite only two, namely, Sohanlal Pachisia & Co. v. Bilasray, A. I. R. 1954 Calcutta 179 and Meenakshi Achi v. P. S. M. Subramaniam Chettiar, A I. R. 1957 Madras 8. In the former case Bose J. said: -

> "But it is clear from sec. 32 of the Partnership Act read with the relevant sections in Chapter VI of the said Act that by mere retirement of a partner, a firm is not dissolved but the retiring partner must give notice of his intention to dissolve the firm in order to bring about a dissolution. The old firm continues, with the continuing partners as its members."

and in the latter case Division Bench of the Madras High Court reiterated the same view in the following words: -

> "Retirement is not the same as dissolution. On retirement of a partner, the firm continues to exist as such, which is not the case when a partnership is dissolved."

This proposition of law was however disputed on behalf of defendants Nos. 5 to 7 and it was contended that under the law of partnership in India a firm is not a legal entity but is merely a compendious name for the partners and therefore when a partner A retires from a firm of A, B and C, the firm of A, B and C cones to an end and the firm which continues is the firm of B and C which is not the same as the firm of A, B and C. It is, therefore, not correct to say that on retirement of a partner, the firm continues to exist as such. The firm consisting of the retiring partner and the continuing partners, that is, of A, B and C in the illustration taken by us, ceases to exist and the firm of the continuing partners, that is, of B and C continues to carry on the partnership

business. There is, therefore, necessarily in the eye of the law, argued defendants Nos. 5 to 7, a dissolution of the firm when a partner retires from the firm.

This contention rests on a too literal emphasis on the theory that in the law of partnership in India a firm is not recognised as a legal entity but is merely a compendious name for the persons who constitute the partnership and it ignores the scheme of the Act and some of its basic provisions. It is undoubtedly true that under the law of partnership in India, as in England, a firm has no legal existence apart from the partners composing it and it is merely a compendious name to describe the partners collectively and, therefore, according to the strict view of the law, on any change amongst the partners comprising a firm, there would in fact be a new firm but the law has, in conformity with mercantile usage which recognizes a firm as a distinct person or quasi-corporation, departed from the strict legal view and extended a limited personality to a firm so that a firm continues to exist despite changes in its constitution brought about by introduction, retirement, expulsion, death or insolvency of a partner. Chapter V contains provisions relating to introduction, retirement, expulsion, death or insolvency of a partner without dissolution of the firm. Where a person is introduced as a partner in a firm under sec. 31 or a partner retires from a firm under sec. 32 or is expelled from a firm under sec. 33, there is no dissolution of the firm but the firm continues as such with its constitution changed by the introduction of a partner or the retirement or expulsion of a partner. The language of Secs. 21, 32 and 33 clearly postulates that the firm continues to exist as if it were a legal persona despite changes in the constitution contemplated in those sections. Sec. 36(1) also supports this conclusion and the words "an outgoing partner may carry on a business competing with that of the firm" and "he may not... solicit the custom of persons who were dealing with the firm before he ceased to be a partner" in that section indubitably suggest that the firm is not dissolved by the outgoing of a partner but continues to exist as it were a legal entity despite such outgoing. If introduction, retirement, or expulsion of a partner had the effect of bringing about dissolution of the firm, we should have expected provisions relating to those topics to find a place in Chapter VI which deals with the subject of dissolution of a firm rather than in Chapter V. As a matter of fact cases where a firm is

dissolved by death or insolvency of a partner are dealt with in sec. 42 which occurs in Chapter VI and it is only where by reason of a contract to the contrary, the firm is not dissolved by death or insolvency of a partner but continues to exist, that provision is nude in Secs. 34 and 35 in Chapter V. Secs. 34 and 35 on their plain terms deal with cases where death or insolvency of a partner does not operate to dissolve the firm but the firm continues as such with changed constitution. Sec. 38 also postulates that changes in the constitution of a firm do not affect the continuity of existence of the firm. It provides that a continuing guarantee given to a firm, or to a third party in respect of the transaction of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm. This provision would have been totally unnecessary if a change in the constitution of a firm had the effect of dissolving the firm and bringing into existence a new firm. The provisions in Chapter V therefore clearly extend a limited personality to a firm and recognize continuity of existence of the firm despite internal changes in the constitution of the firm such as introduction, retirement, expulsion, death or insolvency of a partner. In this respect the law of partnership in India represents a compromise between the strict view of the English Law which refuses to accord a legal personality to a firm and regards it merely as a compendious name for the partners and the mercantile usage which recognizes a firm as a distinct entity or quasi-corporation. This view is clearly supported by the following observations of Mahajan J. in I T. Commissioner v. A.. W. Figgis & Company, A. I. R. 1953 S. C. 455 at 456: -

"It is true that under the law of partnership a firm has no legal existence apart from its partners and it is merely a compendious name to describe its partners but it is also equally true that under that law there is no dissolution of the firm by the mere incoming or outgoing of partners. A partner can retire with the consent of the other partners and a person can be introduced in the partnership by the consent of the other partners. The reconstituted firm can carry on its business in the same firm's name till dissolution. The law with respect to retiring partners as enacted in the Partnership Act is to a certain extent a compromise between the strict doctrine of English Common Law which refuses to Sec anything in the firm but a collective name for individuals carrying on business in partnership and the mercantile usage which

recognizes the firm as a distinct person or quasi-corporation."

The conclusion which we must, therefore, inevitably reach is that retirement of a partner from a firm does not dissolve the firm, that is, determine the partnership inter se between all the partners but merely severs the partnership between the retiring partner and the continuing partners, leaving the partnership amongst the continuing partners unaffected and the firm continues with the changed constitution comprising the continuing partners. The first contention on behalf of defendants Nos. 5 to 7 must, therefore, be rejected.

[4] The second contention is equally unsustainable. What sec. 7 requires is that there should be no provision made by contract between the partners for the duration of their partnership or for the determination of their partnership. The important words are "their partnership" and since the pronoun "their" in the context stands for the partners, these words have clearly reference to partnership between all the partners and not partnership of any one partner with the rest. A provision for retirement of a partner which has the effect of disrupting the partnership only as between the retiring partner and the continuing partners and not as between all the partners inter se cannot therefore be regarded as a provision for determination of "their partnership" within the meaning of sec. 7. Reliance was however placed on behalf of defendants Nos. 5 to 7 on the following observations contained in the Report of the Special Committee regarding the proposed sec. 39 when the Partnership Act was on the anvil of the Legislature where, speaking of the phrase "dissolution of a firm, " the Special Committee observed: -

"This phrase used in preference to 'dissolution of partnership,' which has an element of ambiguity, as it may refer to severance of the connection of one partner with the firm, or to the complete breakdown of the relation of partnership between all the partners. "

These observations, it was contended, showed that "dissolution of partnership" was an ambiguous expression and it was capable of meaning severance of the connection of one partner with the firm and, therefore, the meaning which defendants Nos. 5 to 7 wanted to place on sec. 7 was a reasonably possible meaning. Now whatever may be the ambiguity in the expression "dissolution of partnership" about which we do not wish to

express any opinion, it must be remembered that the expression which has been used by the Legislature in sec. 7 is not "dissolution of partnership" or what is the same thing in other words "determination of partnership" simpliciter but "determination of their partnership" and the expression "determination of their partnership" is, in the context in which it stands, wholly unambiguous and capable of bearing only one meaning, namely, determination of partnership inter se between all the partners. On a plain grammatical meaning of the words therefore the construction contended for on behalf of defendants Nos. 5 to 7 cannot be accepted. But apart from the fact that the suggested construction is opposed to the language of the enactment, we find that it is also contrary to the scheme of the Act, and, if accepted, is likely to lead to rather extraordinary consequences. On the suggested construction even a provision in the partnership deed for expulsion of a partner would be liable to be regarded as a provision for determination of "their partnership" within the meaning of sec. 7 and would take the partnership out of the category of partnership at will. In such a case though there may be no provision, express or implied, laying "down that the firm shall be of a particular duration or that the firm shall be dissolved in a particular manner so as exclude by necessary implication dissolution at the will of a partner, such right of dissolution at will be denied to a partner. Even a provision saying that a partner may retire by giving notice in writing to all the other partners of his intention to retire would on this view take the partnership out of the definition of partnership at will and the right of dissolution at will not be available to a partner though there may be to express or implied provision in the partnership deed in regard to the duration or dissolution of the firm which would by nesessary implication exclude such right. The result will be that in such a case a partner will be entitled to retire at will but despite there being no express or implied provision in regard to the duration or dissolution of the firm negativing his right, he will not be entitled to dissolve the firm at will These are consequences which are plainly opposed to reason and principle and could not have been intended by the Legislature. As observed by the Supreme Court in Thiagarajan v. Muthappa (supra) at page 1230 of the report: -

"... the essence of a partnership at will is, that it is open to either partner to dissolve the partnership by giving notice. Relinquishment of one partner's

interest in favour of the other....."

or retirement of a partner which is the same thing "is a very different matter." The dissolution of the partnership between all the partners is what is contemplated in the definition of partnership at will and retirement of a partner has no bearing on it. The second contention of defendants Nos. 5 to 7 must also, therefore, be rejected.

[5] It is clear from the foregoing discussion that Clause 7 of the partnership deed which contains a provision for retirement of a partner does not constitute an express provision made by contract between the partners for determination of "their partnership" within the meaning of sec. 7 and, therefore, does not operate to exclude the partnership from the category of partnership at will. It was then contended on behalf of defendants Nos. 5 to 7 that in any event even if there was no express provision, there was clearly an implied provision in the partnership deed for the determination of the partnership between all the partners and that provision was that the partnership should not be determined until the pending construction works were completed. But this contention is also, like the preceding contentions, ill-founded. In the first place Clause 6 of the partnership deed expressly declares that the partnership shall be a partnership at will and in view of the clear and explicit declaration contained in this clause there is no room or scope for making a contrary implication: such an implication is clearly excluded by the plain unambiguous and deliberate expression of intention of the parties manifested in this clause. Secondly, the implication Secms to be altogether without any basis. The circumstances which were strongly relied upon on behalf of defendants Nos. 5 to 7 for making the implication were: (1) Clause 2 of the partnership deed provided that no partner shall be entitled to withdraw the moneys brought by him until the construction works undertaken by the firm were completed; (2) Clause 7 of the partnership deed prevented a partner from retiring before completion of the pending construction works; and (3) the object for which the partnership was founded was to take up heavy construction works such as roads, bridges etc. and the nature of this business was such that it would take considerable time for the completion of the construction works undertaken by the firm and it would not be possible to complete them without availability of large funds. Bat these circumstances, in our opinion, do not support the implication suggested on behalf of defendants Nos. 5 to 7. Clause 2 of the partnership deed merely contains a provision in regard to the capital contribution to be made by the partners and declares in express terms what, in the absence of a provision to the contrary, is

ordinarily implicit in all partnership, namely, that no partner should be entitled to withdraw the capital contributed by him so long as the partnership business is continuing which in the present case would mean so long as the construction works undertaken by the firm are pending. It is difficult to Imagine how a provision which merely creates a bar against a partner claiming return of any part of the capital brought in by him whilst the partnership business in the shape of execution of the construction works undertaken by the firm is going on can have any relevance on the question as to when the partnership is intended to be dissolved. Clause 7 of the partnership deed also does not help in this connection, for, as pointed out earlier, that clause deals with retirement and not dissolution. It confers a right on a partner to retire at any time by giving notice in writing of his intention to retire to the other partners. When such notice is given, the retiring partner ceases to be liable, eo instanti from the service of the notice, for any new contracts which may be undertaken by the firm subsequent to the service of the notice but so far as the pending contracts are concerned, they are required to be completed and accounts in respect thereof have to be made up between the retiring partner and the continuing partners. This provision, we do not think, throws even the remotest light on the intention of the parties as regards the dissolution of the partnership. All that it says is that a partner may retire at any time but the contracts pending at the time must be completed and this is no different from the result which flows from a dissolution of the partnership. Sec. 47 provides that on the dissolution of a firm, the authority of ach partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to complete transactions begun but unfinished at the time of the dissolution and, therefore, even where a partnership is dissolved, the pending contracts can be completed and for the purpose of completion of the pending contracts, the mutual rights and obligations of the partners continue as if there was no dissolution. The provision in clause 7 of the partnership deed cannot, therefore, be read as suggestive of an intention on the part of the partners that the partnership should not be dissolved until the pending contracts are completed. So. far as the nature of the business of the partnership is concerned, that also, in our view, does not support the inference contended for on behalf of defendants Nos. 5 to 7. The object of the partnership was to take up contracts for heavy construction work in various parts of India and before any contracts pending at a particular point of time were completed, the partnership could very well take up other contracts and it is difficult to Sec how it could be said that the partnership was not intended to be dissolved until completion of the pending contracts. The expression "pending contracts" would have meaning only in reference to a given point of time and it would make no sense to speak of an implied agreement between the partners that the

partnership should not be dissolved until the pending contract are completed. We are, therefore, of the view that there was no implied agreement between the partners for the determination of the partnership.

[6] The partnership was, therefore, clearly a partnership at will and it was validly dissolved on 18th December 1956 by the plaintiff giving the notice dated 15th December 1956 to the defendants. The learned trial Judge was, therefore, right in taking the view that the partnership was dissolved on 18th December 1956 and passing a preliminary decree on that basis.

[7] These were the only contentions urged in support of the appeal and since in our view there is no substance in them, the appeal fails and is dismissed. The appellant will pay the costs of the appeal to respondent No. 1, respondents Nos. 2 and 6 and respondents N22os. 3 and 4 in three separate sets. Respondent No. 5 shall not be entitled to any costs of the appeal since he has supported the appellant.

Appeal dismissed.