

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

LETTERS PATENT APPEAL NO.510 OF 2009

Shri Arunkumar s/o Dwarklal Jaiswal
Aged about 56 years,
Prop. M/s. Akot Wine Mart,
Akot, Weekly Market, Akot,
Tahsil Akot, District Akola

...APPELLANT

VERSUS

1. State of Maharashtra through
the Secretary, State Excise Department,
Mantralaya, Mumbai – 32
2. The Collector,
Akola,
Tah. & District Akola
3. Smt. Kamlabai wd/o Dinkarrao Gawande
Aged about Adult,
R/o Shaniwarpura, Akot,
Tahsil Akot, District Akola

...RESPONDENT

Shri A.T. Jadhavar, Advocate with Shri I.D. Maniyar, Advocate for the
appellant.
Mrs. S.S. Jachak, Assistant Government Pleader for respondent
Nos.1 & 2/State.
Shri R.L. Khapre, Senior Advocate assisted by Shri S.G. Wadyalkar,
Advocate for respondent No.3.

CORAM : **A.S. CHANDURKAR AND**
URMILA JOSHI-PHALKE, JJ.

RESERVED ON : **SEPTEMBER 22, 2022.**

PRONOUNCED ON : **DECEMBER 02, 2022.**

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard learned counsel for the parties.

2. The appellant has challenged the order and judgment dated 08.10.2009 passed by the learned Single Judge in Writ Petition No.2122 of 2002 confirming the order passed by the respondent no.1.

3. Brief facts of the case are as follows :

A] In the year 1973 the Firm namely M/s Akot Wine Mart was constituted and licence for wine shop (Country and foreign liquor) was obtained in the name of M/s Akot Wine Mart. On 01.11.1978, the firm was reconstituted and three persons namely Vijaykumar Dwarkalal Jaiswal, Arunkumar Dwarkalal Jaiswal (Appellant) and Dinkarrao Pundlikrao Gawande were the partners of the firm. On 01.09.1992 a fresh deed of partnership was executed and as per Clause 10, on the death of a partner the firm was not to be dissolved. The legal heirs were disentitled from claiming any goodwill or rights of the firm. On 21.11.1994 Dinkarrao, a partner expired. The said partnership was again reconstituted on 23.12.1994 and the remaining two partners agreed to share profits and losses equally.

4. According to the appellant, as per the terms and conditions of the partnership Deed, on the death or retirement of any partner, rights pertaining to the licence or such other rights of the Firm were to vest in the remaining partners. As per the contention of the appellant, in view of terms and conditions of the partnership Deed, legal heirs of the deceased partner are not entitled to become a partner of the Firm. The partner namely Dinkarrao Gawande died on 21.11.1994 and in view of specific condition of the Deed of partnership referred above, name of Dinkarrao Gawande came to be deleted from the licence as per the order of the Collector i.e. respondent no.2 dated 24.06.1996. The appellant has deposited the necessary fees for deletion of name with the Treasury Office, Akola. In the year 1998, another partner Vijaykumar Jaiswal expressed his intention to retire from the Firm and in view of that Firm was dissolved on 01.04.1998 and thereby the appellant became the proprietor of the business Firm M/s Akot Wine Mart. He had taken over the business with all assets and liabilities. After dissolution of the Firm, the name of Vijaykumar Jaiswal came to be deleted from the licence as per the order dated 17.05.1998 passed by the respondent no. 2. Thus, the name of the appellant alone was continued in the licence of M/s Akot Wine Mart and the names of other two partners namely Dinkarrao Gawande and Vijaykumar Jaiswal were deleted on account of his death and name of Vijaykumar Jaiswal was deleted as he retired from the Firm

as per the orders of respondent no.2 - the Collector, Akola. Subsequently, respondent no.3 - wife of Dinkar Gawande had moved an application on 13.01.1999 before respondent no.2 - Collector for inclusion of her name in place of name of her husband. The Collector had rejected the said application by passing an order on 19.05.1999 and communicated to respondent no.3 that her name cannot be included in view of the terms and conditions of the Deed of Partnership. Respondent no.3 being aggrieved and dissatisfied with the order passed by the respondent no.2 - Collector preferred an appeal before the Commissioner of State Excise under Section 137 of the Bombay Prohibition Act, 1949. The Commissioner by passing an order dated 24.02.2000 rejected the appeal and confirmed the orders of the respondent no. 2 by assigning the reason that as per the clause 10 of the Deed of Partnership dated 01.11.1978, the name of the legal heirs of the deceased partner cannot be included in the partnership Firm and all the rights relating to the licence are bound to vest in the remaining partners. Therefore, respondent no. 3 had preferred the revision before the Minister of State, State Excise under Section 138 of the Bombay Prohibition Act, 1949. The Minister of State had allowed the Revision of the respondent no.3 by passing an order on 16.04.2002 and thereby set aside the order of respondent No.2-Collector and remanded the matter to the Collector, Akola for taking decision in accordance with law. The order dated 16.04.2002 passed by the Minister

of State, State Excise was challenged by the appellant by preferring Writ Petition No.2122 of 2002 before this Court on the ground that the name of the Dinkar Gawande was deleted in view of the terms and conditions of the Partnership Deed and the Minister of the State had not considered the said fact. The order passed by the Minister was wrong and illegal.

5. After hearing both the sides, the learned Single Judge dismissed the Writ Petition by observing that the revisional authority had considered all the facts that were obtainable in the instant case. The point on which the right of respondent no.3 was required to be decided was on the basis of relevant Government policy. The impugned order did show any reason that as legal heir of Dinkar Gawande, respondent no.3 was entitled to have her name substituted in place of her husband and there was such a right recognized by the Government while passing the impugned order. This very right of the legal representative had been recognized by the Government by issuing Circular dated 25.02.1994 and in terms of the said Circular, respondent no.3 had a legal right to be substituted in place of her husband as a partner in the licence. It is further observed by the learned Single Judge that Clauses of the Partnership Deed clearly show that mere death of a partner shall not dissolve the partnership Firm. Then Clause 10 also does not prohibit a legal representative from being brought in place of the deceased partner

in strict sense. Therefore, such clause making any prohibition for the legal heirs of the deceased partner must yield to the authority and power of the Government.

6. It is further held by the learned Single Judge that there is no dispute that respondent no.3 is the widow of deceased Dinkar, who wanted her name to be substituted in place of her husband. Government Circular dated 25.02.1994 shows that in respect of individual licences, names of legal representatives will have to be substituted in the licences. In case of partnership Firm also the names of the legal representatives of dead partner will have to be brought on licences by applying the same rule.

7. Being aggrieved and dissatisfied with the findings of the learned Single Judge present appeal is preferred by the appellant on the ground that respondent no.3 had suppressed the subsequent Circular dated 20.08.1996 issued by the respondent no.1 therefore, question of relying on the earlier Circular by the learned Single Judge does not arise at all. The appellant further raised the ground that the Clause 11 of the partnership Deed dated 01.09.1992 specifically states that in the case of retirement or death of any partner all the licence rights or any other rights which the firm has got at present or may get later on shall

absolutely vest in the remaining partners. Therefore, the observation of the learned Single Judge recognizing the right of respondent no.3 is wrong and illegal and liable to be set aside.

8. Heard Shri A.T. Jadhavar, learned Counsel for the appellant. He submitted that the partnership Firm Akot Wine Mart was formed between Arunkumar Jaiswal, Vijaykumar Jaiswal and Dinkar Gawande. Admittedly, it was reconstituted on 01.11.1978. On 21.11.1994 Dinkar Gawande died and therefore, the partnership Firm was continued with the remaining partners i.e. the Appellant Arunkumar Jaiswal and Vijaykumar Jaiswal. He invited our attention towards the Partnership Deed and submitted that the terms and conditions no.9 shows the duration of the Firm which is AT WILL. It shows that any partner willing to retire from the Firm shall give one month's notice of his intention to do so to the other parties. Clause 10 of the partnership Deed shows that the Firm shall not be dissolved on the retirement or death or insolvency of any of the partners but the remaining partners may continue the same business. It specifically states that outgoing partners or legal heirs of the deceased partner shall not be entitled to claim anything on account of goodwill or rights of the Firm.

9. Clause 11 specifically states that in case of retirement or death of any partner all the licence rights or any other rights which the

Firm has got at present or may get later shall absolutely vest in the remaining partners. He further submitted that in view of specific terms and conditions in the Partnership Deed respondent no.2 rightly rejected the application of respondent no.3. The order passed by the Collector was confirmed by the Commissioner by observing that as per the terms and conditions of the Partnership Deed which were not in dispute, respondent no.3 was not entitled for inclusion of her name as a partner in the partnership Firm. The State Minister had not considered the same. He further submitted that Circular dated 25.02.1994 was relied upon by the learned Single Judge, however said Circular was modified by subsequent Circular dated 20.08.1996. He further submitted that conjoint reading of Clauses 9, 10 and 11 of the Partnership Deed reveals that only remedy available to the legal heirs of a deceased partner is to seek for the settlement of the accounts but they cannot insist for inclusion of their names in the licence. Clause 11 of the Deed prohibits claiming any rights by the legal heirs. Therefore, the order passed by the learned Single Judge is liable to be set aside.

10. In support of his contention he placed his reliance on ***Davesh Nagalya (Dead) and ors. Vs. Pradeep Kumar (D) thr. LR's and ors. in Civil Appeal No.3477 of 2010*** decided on 10.08.2021 wherein it is held by the Hon'ble Apex Court that on the death of both the partners

and in the absence of any clause permitting continuation of the partnership by the legal heirs, the non-residential tenanted premises was deemed to be vacant in law as the tenant is deemed to have ceased to occupy the building.

11. On the other hand learned Senior Counsel Shri R.L. Khapre for respondent no.3 submitted that partnership is not a legal entity. Licence was given to three persons. Dinkar died on 21.11.1994 and at that time Circular dated 25.02.1994 was in existence. The partnership decides the rights of the partners *inter say*. He further submitted that the Revisional Authority had considered all the facts. The right of respondent no.3 was decided on the basis of relevant Government policy. The learned Single Judge did not commit any error by relying upon the Circular dated 25.02.1994 though it was not referred to initially by the parties. In view of the Circular dated 25.02.1994, the legal heir of Dinkar i.e. respondent no.3 was entitled to have her name substituted in place of her husband and her right was recognized by the Government while passing the impugned order. He further submitted that the various clauses of the Partnership Deed clearly show that mere death of a partner shall not dissolve the Partnership Firm. Clause 10 also did not prohibit the legal heirs from being brought in place of deceased partner in strict sense. Therefore, the order passed by the learned Single Judge was legal and proper hence, no interference was called for.

12. In support of the submission, learned Senior Counsel Shri Khapre placed his reliance on ***Khushal Khemgar Shah and ors. Vs. Mrs. Khorshed Banu Dadiba Boatwalla and anr. AIR 1970 SC 1147*** wherein it is held that in interpreting the deed of partnership, the Court will insist upon some indication that the right to a share in the assets is, by virtue of agreement that the surviving partners are entitled to carry on the business on the death of the partner, to be extinguished. In the absence of a provision expressly made or clearly implied, the normal rule that the share of a partner in the assets devolves upon his legal representatives will apply to the good-will as well as to other assets. He further relied upon the decision in case of ***The Collector of Bombay and ors. Vs. Meena Narayan Idnani AIR 1995 Bom 363*** wherein it is held that when licence is in favour of partnership firm, death of one partner out of the two surviving partners desiring to hold licence by deletion of name of deceased, such request amounts to application for transfer of licence.

13. He further placed his reliance on :

- (i) Hindustan Petroleum Corporation Ltd. Vs. Mayzur Islam Mallick and ors. (AIR 1999 SC 2190)
- (ii) Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and ors. (AIR 1974 SC 2105)
- (iii) Puran Singh and ors. Vs. State of Punjab and ors. (AIR 1996 SC 1092)

- (iv) State of Punjab and ors. Vs. Dr. R.N. Bhatnagar and anr. (AIR 1999 SC 647)
- (v) Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and ors. (AIR 1999 SC 3609)
- (vi) M.C. Mehta Vs. Union of India and ors. (AIR 1999 SC 2583)
- (v) Chennuru Sitharamamurthi Chetty and ors. Vs. Chennuru Guruswami Chetti and ors.
- (vi) Shamlal Jaglal Jaiswal Vs. The State of Maharashtra and ors. 1998 (1) Bom.C.R. 13
- (vii) S.V. Chandra Pandian and ors. vs. S.V. Sivalinga Nadar and ors. (1993) 1 SCC 589

14. On the basis of above catena of decisions he submitted that the order passed by the learned Single Judge was legal and proper and no interference was called for.

15. Mrs. Jachak, learned Assistant Government Pleader supported the contention of respondent no.3.

16. We have heard the parties at length. Perused the record.

17. It is not disputed that in the year 1973 the Firm namely M/s. Akot Wine Mart was constituted and licence for wine shop (Country and Foreign liquor) was obtained in the name of M/s. Akot Wine Mart. It is

further not disputed that said partnership Deed was reconstituted on 01.11.1978 between Vijaykumar Dwarkadas Jaiswal, Arunkumar Dwarkadas Jaiswal and deceased Dinkarrao Pundlikrao Gawande.

18. As per the said partnership Deed the partners have decided to continue said partnership business on the decided terms and conditions. The relevant clause of the said partnership Deed i.e. Clause Nos.9, 10 and 11 are reproduced here for the reference :

“9. That the duration of the firm shall be ‘AT WILL’ any partner willing to retire from the firm shall give one month’s notice of his intention to do so to the other parties.

10. The Firm shall not stand dissolved by retirement or death or insolvency of any of the partners but the remaining partners may continue the same business as a going concern. The outgoing partner or legal heirs of a deceased partner shall not be entitled to claim anything on account of goodwill or rights of the Firm. Likewise while admitting any new partner no consideration shall be taken towards the goodwill or rights of the Firm. The goodwill or rights of the Firm shall always belong to the Firm.

11. In case of retirement or death of any partner all the licence rights or any other rights which the firm has got at present or may get later on shall absolutely vest in the remaining partners.”

19. Thus, it is not disputed that in the light of the Clause 10 the Firm shall not stand dissolved by retirement or death or insolvency of any of the partners but remaining partners may continue the same

business as a going concern. It is specifically agreed between the partners that the outgoing partner or legal heirs of a deceased partner shall not be entitled to claim anything on account of goodwill or rights of the Firm. In view of Clause 11 it is specifically agreed that in case of retirement or death of any partner all the licence rights or any other rights which the firm has got at present or may get later on shall absolutely vest in the remaining partners. Dinkarrao Gawande died on 21.11.1994. The said partnership Deed was again reconstituted on 23.12.1994 due to the death of third partner, Dinkarrao Gawande. It is also not disputed that respondent no.3 who is the wife of the deceased partner Dinkarrao Gawande made an application for inclusion of her name in the licence. It is a matter of record that after the death of Dinkarrao Gawande remaining partners approached the Collector for deleting the name of Dinkarrao Gawande from the licence. Accordingly, name of Dinkar Gawande was deleted from the said licence by respondent no.2-Collector. The order passed by the Collector dated 24.06.96 shows that name of Dinkar Gawande was deleted from the licence. The appellant has deposited the necessary fees for deletion of name with the Treasury Office, Akola. It is also not disputed that in the year 1998 another partner namely Vijaykumar Jaiswal expressed his intention to retire from the Firm, accordingly, the Firm was dissolved on 01.04.1998 by executing Deed of dissolution. After the retirement of Vijaykumar Jaiswal

his name was also deleted from the said licence and the present appellant became the proprietor of the Firm namely M/s Akot Wine Mart.

20. In the light of the above factual scenario, the issue involved before us is that whether respondent no.3 is entitled to include her name as a partner on the licence. Before adverting to the above said issue, it is necessary to refer to the relevant statutory provisions. Section 4 of the Indian Partnership Act, 1932 (hereinafter referred to as 'the Act' for short) defines Partnership, which reads thus : -

“4. Definition of “partnership”, “partner”, “firm” and “firm name” – “Partnership” is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.....”

21. Section 42 of the Act states about the dissolution of the partnership at will. Section 42 of the Act reads as under :

“42. Dissolution on the happening of certain contingencies – Subject to contract between the partners a firm is dissolved -
(a) if constituted for a fixed term, by the expiry of that term;
(b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;
(c) by the death of a partner; and
(d) by the adjudication of a partner as an insolvent.”

22. Dissolution of a partnership Firm on account of death of one of the partner is subject to the contract between the parties. In the present case the relevant Clause regarding the duration of the partnership is Clause 9. It states that the duration of the Firm shall be 'AT WILL. Any partner willing to retire from the Firm shall give one month's notice of his intention to do so to the other parties. Clause 10 stipulates that the Firm shall not be dissolved by retirement or death or insolvency of any of the partners but the remaining partners may continue the same business. It is specifically mentioned that outgoing partner or legal heirs of a deceased partner shall not be entitled to claim anything on account of goodwill or rights of the Firm. Clause 11 states that in case of retirement or death of any partner all the licence rights or any other rights which the Firm has got at present or may get later on shall absolutely vest in the remaining partners. Thus, Clause 11 prohibits the legal heirs of the outgoing partner or deceased partner from claiming any rights in the licence. Respondent no.3 approached to the Collector and the Collector had rejected the application on the ground that Clause 11 specifically prohibits the legal heirs and the said terms and conditions were agreed by Dinkarrao Gawande her husband, and therefore, she is not entitled. There is no dispute that respondent no.3 is the legal heir of deceased Dinkarrao Gawande. It is also not disputed that he was a partner of the said partnership Firm. His name was deleted

after his death from the said licence. The late husband of respondent no.3 had agreed to the terms of the partnership which is not in dispute that in the case of retirement or death of any partner the right to the licence shall absolutely vest in the remaining partners. Hence it is not open to the appellant to have her name endorsed upon the said licence.

23. Thus, it is clear that the partnership Deed strictly prohibits the legal heirs from claiming any rights in respect of the licence in view of the partnership Deed. The said terms and conditions are agreed by deceased Dinkarrao Gawande. Clause no.9 specifically states that the duration of the Firm Shall be 'AT WIL'. Clause 10 clearly states that the Firm shall not Stand dissolved by retirement or death or insolvency of any of the partners but the remaining partners may continue the same business as a going concern and Clause 11 clearly prohibits the rights of legal heirs in respect of licence rights.

24. Learned Senior Counsel Shri Khapre placed reliance on the Government Circular dated 25.02.1994 and submitted that in view of the said Circular, the legal heirs are entitled to include their name in the licence. The relevant provision of Circular is reproduced here as under : -

“मूळ अनुज्ञापतीधारकांचा मृत्यू अपंगत्व आर्थिकदृष्ट्या व्यवसाय चालवणे शक्य होत नाही अथवा अन्य कोणत्याही कारणाने अनुज्ञापतीशी संबंध तुटला तर नवीन घेतल्या जाणा—या भागीदाराच्या नावे अनुज्ञापती करण्यात यावी. परंतू मूळ अनुज्ञापतीधारकांचे सर्व

वारसदारांची त्यांना संमती असली पाहिजे. जरी मूळ अनुज्ञापतीधारक जीवंत असला तरी त्याचा वारसदाराची संमती येणे आवश्यक आहे. तसेच भागीदार घेणे आणि मूळ भागीदाराचे अनुज्ञापतीमध्ये संमती नसल्यास भागीदाराच्या नावे अनुज्ञापती हस्तांतर करतांना प्रत्येक प्रकरणी शासनाची पूर्व परवानगी घेणे आवश्यक आहे. भागीदाराच्या नावे अनुज्ञापती चढवितांना व दर्शवितांना नियमाप्रमाणे आवश्यक ते शुल्क वसूल करण्यात यावे.”

25. Whereas it is submitted by the learned Counsel of the appellant that in view of the subsequent Circular dated 20.08.1996 the earlier Circular was modified and no objection certificate was not required. The relevant portion of Circular dated 20.08.1996 is reproduced as follows :

“अनुज्ञापतीधारकाला आपला हिस्सा प्रत्यार्पित करून अनुज्ञापती हस्तांतरीत करता येईल आणि या हस्तांतरणासाठी मूळ अनुज्ञापतीधारकाच्या वारसांची “ना हरकत” प्राप्त करण्याची गरज राहणार नाही.”

26. Learned Senior Counsel Shri Khapre vehemently submitted that in the catena of decisions of the Hon'ble Apex Court, the rights of legal heirs are considered. He relied upon the case of Khushal Khemgar Shah and ors. (supra) wherein it is held that in interpreting the deed of partnership, the Court will insist upon some indication that the right to a share in the assets is, by virtue of the agreement that the surviving partners are entitled to carry out the business on the death of the partner, to be extinguished. In the absence of a provision expressly made or clearly implied, the normal rule that the share of a partner in the assets devolves upon his legal representatives will apply to the good-will

as well as to other assets. In the cited case law, there was no specific clause whereas in the present case specific clause prohibiting the legal heirs to claim any right of licence which was accepted and agreed by the deceased. He further relied upon the decision of this Court in case of *The Collector of Bombay and ors. (supra)* wherein the question before the Court was whether the death of one of the partner out of two results into dissolution of the Firm and whether the surviving can carry on the business as sole proprietor without seeking transfer of licence. This Court held that the plain reading of the Section makes it clear that the State Government has exclusive right or privilege of selling the liquor and the fees charged are to be considered inclusive of rent or consideration for transfer or grant of such a right or privilege. It is further held that the Rules permit the Collector to allow the surviving partner to continue the business obviously with a view to prevent immediate closure of the business. The enabling provision is to minimise the hardship due to the death and the facility granted by the Collector cannot be construed as accepting the claim that on the death of one of the partner out of two, the licence is not required to be transferred. It is further held by this Court that it is always open for surviving partner to carry on business as a sole proprietor but the capacity as the sole proprietor is different and distinct from the capacity of a partner in dissolved firm.

27. Here in the present case, admittedly, the partnership is dissolved after another partner Vijaykumar retired from the partnership. On the death of husband of respondent no.3, the partnership continued through the remaining two partners. Another judgment on which the learned Senior Counsel relied upon Hindustan Petroleum Corporation Ltd. (supra) is not relevant here as it is regarding to licence to trade in kerosene. The issue involved was whether the licence can be granted to a person before he is appointed as an agent. In the judgment of Babubhai Muljibhai Patel (supra) the discussion was regarding power of High Court to go into disputed questions of fact and it is held that on consideration of nature of the controversy the High Court decides that it should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles. There is no dispute regarding the ratio laid down by the Hon'ble Apex Court regarding the power of High Court to go into disputed question of facts. He further relied upon Puran Singh and ors. (supra) wherein also the powers of High Court under Articles 226 and 227 are discussed and held that the High Court under Articles 226 and 227 is to adopt its own procedure which is reasonable and expeditious. There is no dispute regarding the legal position. He further relied upon State of Punjab and ors. (supra) wherein the Hon'ble Apex Court held that a pure question of law centering around construction of statutory

rule without any disputed questions of fact arising for consideration can be considered. Preliminary objection on ground that such point was not raised before High Court in writ petition cannot be allowed before the Apex Court.

28. The judgment in *Maharaja Chintamani Saran Nath Shahdeo* (*supra*) is not relevant here. He further relied upon *M.C. Mehta* (*supra*) which is in respect of natural justice which says that order passed in breach of natural justice, the Court can still refused to strike down the order if such striking down results in restoration of another order passed earlier in favour of the petitioner in violation of principle of natural justice. Wherein Hon'ble Apex Court has held that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of principles of natural justice or is otherwise not in accordance with law. The judgment of the Hon'ble Madras High Court in the case of *Chennuru Sitharamamurthi Chetty and ors.* (*supra*) is in respect of renewal of lease of partnership property which is not relevant here.

29. He also relied upon Shamlal Jaglal Jaiswal (*supra*) which is in respect of licence of dissolved partnership issued with certain direction to Collector to delete name of second partner. Wherein it is held by this Court that the contention that Government cannot give directions to Collector when he exercises his powers under the Act. Held, not tenable. Higher authority while acting within its powers has power to give directions for effective implementation of provisions of law. Learned Senior Counsel also relied upon S.V Chandra Pandian and ors. (*supra*) wherein the issue involved was on dissolution of partnership distribution of residue among partners after settlement of accounts in terms of Section 48 of the Act is to be treated as distribution of movable property. Wherein Hon'ble Apex Court held that the reasons which weighed with the Division Bench of the High Court in concluding that the award required registration appear to be based on an erroneous reading of the award. The award read as a whole makes it clear that the Arbitrators had confined themselves to the properties belonging to the two firms. Thus, the issue involved was distribution of movable property on dissolution of partnership firm. Here it is not the case.

30. In the light of aforementioned facts, it is clear that initially there were three partners who constituted the partnership firm, in the year 1994 one of the partner i.e. Dinkar Gawande – husband of

respondent no.3 died and the partnership deed was reconstituted between two remaining partners i.e. appellant and one Vijaykumar Jaiswal. It is well settled that a partnership is a contract between the partners. Respondent no.3 is the legal representative of the deceased partner. She had claimed the right as a legal heir of the deceased partner. She specifically stated that her husband was a partner in the said partnership firm which was running the business under the name and style as M/s. Akot Wine Mart which was a partnership firm. She specifically stated that after the death of her husband she had no source of income and being legal heir her name is to be included in the said licence.

31. Learned Single Judge has observed that revisional authority has considered all the facts including right of respondent No.3 which was required to be decided on the basis of the relevant Government policy. He further observed that this very right of the legal representative has been recognized by the Government by issuing Circular dated 25.02.1994 and in terms of the said Circular respondent no.3 has a legal right to be substituted in place of her husband as a partner in the licence. Respondent no.3 can work out her rights on the basis of the Government Circular dated 25.02.1994 though the said Circular had not been taken into consideration by the Government since there was no dispute about

its existence. It is further observed by the learned Single Judge that the Clause 10 of the partnership agreement does not prohibit a legal representative from being brought in place of the deceased partner in strict sense. The fact that legal representative cannot be allowed to claim anything on account of good-will or rights of the firm does not mean that the legal representatives cannot come in place of the deceased partner in so far as licence is concerned. He further observed that at any rate, by making partnership agreement preventing the legal representative from being substituted in licence in place of deceased partner, State Government cannot be prohibited from doing so and therefore, such clause in the agreement of partnership will be contrary to the provisions of the Act, Rules and the circulars and the power of the Government. Therefore, such clause making any prohibition for the legal representatives of the deceased partner must yield to the authority and power of the Government. The learned Single Judge observed that there is no dispute that respondent no.3 is the widow of deceased Dinkar Gawande who wanted her name to be substituted in place of her husband. Government Circular dated 25.02.1994 shows that in respect of individual licences name of the legal representatives will have to be substituted in the licences. In case of partnership firm also the names of legal representatives of dead partner will have to be brought on licences by applying the same rule.

32. With this observation learned Single Judge has dismissed the writ petition filed by the present appellant. Thus, it is apparent that the learned Single Judge relied upon the Government Circular dated 25.02.1994. The relevant provisions of the said Circular show that if the original licence holder dies or is unable to participate in the business due to the disability then while transferring the said licence the consent of legal heirs is to be obtained. It appears that this clause of said Circular relates to an individual licence. Annexure-C of the said Circular deals with the licence which is obtained in the name of firm. As per the said Circular if the licence is in the name of firm then partners of the said firm can apply for the deletion of the names of the some of the partners by obtaining the licence. It is further stated that while deleting the name or transferring the licence to the rest of the partners the consent of his/her legal representatives is to be obtained. Admittedly, from the order of the learned Single Judge it is clear that the subsequent Circular dated 20.08.1996 was not brought to the notice. In view of subsequent Circular dated 20.08.1996, some changes are brought by the Government. The Home Ministry of State of Maharashtra issued the said Circular in respect of granting of licence, deletion of the names of the partners from the licence and transfer of the licence. Said subsequent Circular also refers to earlier Circulars dated 06.07.1989, 25.02.1994

and 28.10.1994. As per the said Circular some provisions are amended. As per the amended provisions it is specifically mentioned in Clause 3 that licence holder shall establish his share and then get it transferred and no objection of the legal representatives of original licence holder is not required. It further states regarding the partnership firm in Clause 6 that the names of newly added partners or their family members would not be included in the licence in the individual capacity or in the capacity of partners. Thus, earlier Circular dated 25.02.1994 is substantially modified by the subsequent Circular.

33. It is not in dispute that the licence was obtained in the name of partnership firm. The partnership firm was reconstituted in the year 1978 and the names of three partners were included. The name of husband of respondent no.3 Dinkar Gawande was included on the said licence in view of the said partnership firm. It is an admitted position that due to the death of said Dinkar Gawande on 21.11.1994 by approaching to the Collector by paying requisite fee the name of said Dinkar Gawande was deleted. It is not in dispute that partnership is a contractual relationship between persons who had agreed to share the profits of a business carried on by all or any of them acting for all. In view of Section 46 of the Act the partners have right in the property of the partnership after its dissolution. Section 46 of the Act deals with the

said situation. Section 46 of the Partnership Act is reproduced hereunder for reference :

“46. Right of partners to have business wound up after dissolution. - On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.”

34. Thus, it is clear that on the dissolution of firm every partner or his representative is entitled to have the property of the firm applied in payment the debts and liabilities of the firm and to have the surplus distributed among the partners or their representatives according to their rights. Thus, there is no dispute that respondent no.3 has right to claim the settlement of the accounts in respect of the partnership firm. Here in the present case, respondent no.3 had claimed the right of inclusion of her name in the licence. Whether she is entitled for such right is the question. It is well settled that a partnership is a contract between the partners. Said partnership agreement is accepted and agreed by all the partners and there cannot be any contract unilaterally without the acceptance by the other partners. It is well settled that every contract/agreement is to be considered with reference to its object and the whole of its terms. The contents of the agreement must be

considered in endeavouring to see the intention of the parties. The intention can be gathered from expressions expressed in the agreement.

35. It is held by the Hon'ble Apex Court in the case of *Mohd. Laiquiddin and anr. Vs. Kamala Devi Misra (Dead) by Lrs. And ors. 2010(2) ALL MR 490* that partnership is not a matter of heritable status but purely one of contract which is also clear from the definition of partnership under Section 4 of the Act.

36. In the light of above circumstances, admittedly the terms and conditions of the partnership Deed especially Clause 11 clearly prohibits any legal right or any right of the legal heirs of a partner on his retirement or death in respect of licence. Thus, under the Partnership Act, 1932, the partnership deed was executed between the partners. It is a contract between the partners. All terms and conditions are agreed and accepted by the partners. Deceased Dinkar Gawande was fully aware that his legal heirs have no right after his retirement or on his death in respect of the licence but he agreed the said terms and conditions. Thus, the deceased husband of respondent no.3 had agreed as a term of partnership and which is not in dispute. In view of the said partnership deed or the contract between the partners admittedly respondent no.3 is not entitled for inclusion of her name. It is well

settled that the partnership agreements like any other agreement has to be construed according to the normal canon of construction, so that a Court will construe a partnership agreement in the light of object of the partnership and terms may be implied by the Court to give the agreement business efficacy. In Halsbury's laws of England which is referred by the Hon'ble Apex Court in the above judgment it has been stated that a partnership deed like any other agreement will be construed according to normal canon of construction, so that a Court will construe a partnership agreement in the light of partners objective and terms may be implied by the Court to give the agreement business efficacy. Thus, here in the present case, no right was reserved for the legal heirs to claim in the licence and therefore, respondent no.3 is not entitled for such a right. Though respondent no.3 has relied upon the Circular dated 25.02.1994 but as observed above it has been modified by the subsequent Circular dated 20.08.1996. Moreover, the legal position is clear that partnership is not a matter of heritable status but purely depends on contract. Hence even though there are Government Circulars but the legal proposition that the partnership is not a matter of heritable status but it depends on the contract would prevail over the Government Circulars. Therefore, the order passed by the learned Single Judge on the basis of the Circular dated 25.02.1994 deserves to be set aside.

37. While admitting the present appeal, this Court has passed the following order on 16.12.2009 :-

“1. Heard.

2. Rule. Rule is made returnable forthwith and heard by consent.

3. By impugned order, the learned Single Judge of this Court has dismissed the writ petition and confirmed the order, which was challenged. Hon’ble Minister had directed enforcement of partnership of 10% in favour of respondent No.3.

4. It prima facie appears that the original document of partnership was cancelled being partnership at will. Status of partnership may not be capable of being enforced at the hands of Executive.

5. Moreover, it is prima facie seen that the business as initially run by the partnership firm has been continued by appellants in exclusion to the respondent. Accounts have not been rendered and sharing of profit with respondent has not been done.

6. In this background, interest of justice would be met, if in view of admission of appeal, the appellant is directed to pay to the respondent No.3, directly, every month unconditionally, an amount of Rs.15,000/- by Demand Draft locally payable and deposit in this Court every month an amount of Rs.10,000/- on or before 10th day of every month untill disposal of appeal.

7. In order to avoid inconvenience, the appellant would be free to make lumpsum deposit in advance for future six months’ at a time. The payment to respondent No.3 would, however, be made month to month before 10th day of every month.

8. Civil Application is disposed of.”

38. In view of the said order interim arrangement was made by directing the appellant to pay respondent no.3 an amount of Rs.15,000/- (Rs. Fifteen thousand) by Demand Draft locally payable and deposit in this Court every month an amount of Rs.10,000/- (Rs. Ten thousand) on or before 10th day of every month until disposal of the said appeal. Said interim arrangement was unconditional and it continued to operate till disposal of the appeal. Such payment was thus by way of an interim arrangement but unconditional and not dependent on the outcome of the appeal. Thus, respondent No.3 would be entitled to retain the amounts received by her while the amounts lying in deposit are liable to be returned to the appellant. As observed above that respondent no.3 had no such right of inclusion of her name in the licence as there was no right determined in the contract agreed by the partners. However, she is at liberty to claim her right in the property of the firm. She can claim settlement of the accounts as the partnership firm is already dissolved and the appellant is the sole proprietor of the firm now. Section 46 of the Act specifically states that on dissolution of firm every partner or his representative is entitled, as against all the other partners or their representatives to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights. Thus, in view of Section 46 of the Act respondent No.3 can claim her

right in the property of the firm and get the account settled considering the 10% share of her husband.

39. In the light of above discussion, we are of the considered view that the order passed by the learned Single Judge based on the Circular dated 25.02.1994 does not take into consideration the agreed terms of the partnership deed and thus results in miscarriage of justice. The impugned judgment is liable to be set aside by allowing this appeal. In the result, we proceed to pass the following order :

(a) The Letters Patent Appeal is allowed.

(b) The order passed by the learned Single Judge in Writ Petition No.2122/2002 dated 08.10.2009 directing inclusion of the name of respondent no.3 as partner in the CL-III licence standing in the name of the appellant is quashed and set aside.

(c) Respondent No.3 is at liberty to claim her right before the appropriate authority by claiming the settlement of the accounts of the firm. The respondent No.3 is entitled to retain the amounts received by her in terms of the interim order dated 16.12.2009 and the said amounts shall be taken into consideration when the accounts of the firm are settled.

The amounts, if any, deposited by the appellant in the Court pursuant to the order dated 16.12.2009 shall be returned to the appellant.

40. The Letters Patent Appeal is allowed in the aforesaid terms. There will be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

**Divya*