Joshi
v.
Shimpi

Subba Rao J.

The High Court sentenced the accused to undergo rigorous imprisonment for two months and also to pay a fine of Rs. 250/-. We agree with the High Court that the offence committed by the appellant is a serious one and that ordinarily the punishment should be deterrent. In most of the cases of this kind imprisonment would certainly be a suitable sentence. But in this case, there was a conflict of view even in the Bombay High Court as regards the question whether butter made from curd would be butter within the meaning of the rule. Indeed, it was brought to our notice that on April 16, 1960, the Central Government made another rule amending rule A-11.05 by inserting the word "curd" in the definition of butter and the amended definition reads, "butter means the product prepared exclusively from milk, cream or curd of cow or buffalo....." This must have been made to clarify the position in view of the conflicting decisions. In the circumstances, we think that a sentence of fine would meet the ends of justice in the present case. We, therefore, set aside the sentence of two months' rigorous imprisonment and a fine of Rs. 250/- and instead sentence the appellant to pay a fine of Rs. 500/-.

With this modification, the appeal is dismissed.

Appeal dismissed.

1961

February 27.

KARUMUTHU THIAGARAJAN CHETTIAR AND ANOTHER

v.

E. M. MUTHAPPA CHETTIAR.

(P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Partnership—Duration not expressly provided—When can be implied—Termination of partnership by notice—Partnership Act, 1932 (IX of 1932), ss. 7, 10, 13(g).

The appellant and the respondent entered into a written partnership with respect to the managing agency business of two mills, the terms of which were, *inter alia*, that the management shall be carried on in rotation once in four years, the appellant to manage for the first four years and thereafter the respondent to manage for the next four years and in the same way thereafter.

It further provided that the partners and their heirs and those getting their rights shall carry on the management in rotation. Soon after disputes arose between the partners and the appellant gave notice to the respondent terminating the partnership treating it as a partnership at will, and the directors of the mills in their turn terminated the managing agency on the ground that the quarrels between the partners were detrimental to the good management of the mills. Thereafter the respondent brought a suit against the appellant and the mills for dissolution of the partnership firm and damages alleging that dissolution of the partnership by the appellant by notice was fraudulent and connived at by the mills. The trial court held that the partnership was at will and the termination of the managing agency was legal and disallowed damages. On appeal by the respondent the High Court held that the partnership was not a partnership at will and could not be dissolved by notice by the appellant. The termination of the managing agency was also held to be illegal. On appeal by the appellant with a certificate of the High Court:

Held, that considering the provision that the management would be carried on in rotation between the partners in four yearly periods and that the heirs of the partners would also carry on the business in rotation the intention was obviously to have a partnership of some duration, though the duration was not expressly fixed in the agreement. The duration of a partnership may be expressly provided for in the contract but even when there is no express provision, courts have held that the partnership will not be at will if the duration can be implied.

Grawshay v. *Manle*, 1 Swans 495; 36 E.R. 479, followed.

The contract in this case disclosed a partnership the determination of which was implied, namely, the termination of the managing agency and, therefore, under s. 7 of the Partnership Act it was not a partnership at will and was not legally terminable by the notice given by the appellant.

In view of the strained atmosphere between the partners there was sufficient reason for the mill to terminate the managing agency and the resolution of the board of directors terminating the managing agency agreement confirmed by the general meeting of the shareholders, did terminate the managing agency. There was neither any fraud nor collusion by the mills with the appellant.

Morarji Gokuldas and Co. v. *Sholapur Spinning and Weaving Co. Ltd. and Others*, A.I.R. 1944 P.C. 17 and *Commissioners of Inland Revenue* v. *Sansom*, [1921] K.B. 492, referred to.

The partnership in the present case must be deemed to have determined on the date of the passing of the resolution by the board of directors terminating the managing agency.

Sections 10 and 13(f) of the Partnership Act have no application to the facts of the case.

1961

Karumuthu Thiagarajan Chettiar v. *Muthappa Chettiar*

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 375 of 1956.

Appeal from the judgment and decree dated July 27, 1953, of the Madras High Court, in A. S. No. 623 of 1949.

A. V. Viswanatha Sastri and *S. Venkata Krishnan*, for the appellants.

M. C. Setalvad, Attorney-General for India, R. Ganapathy Iyer and *G. Gopalakrishnan*, for the respondent.

1961. February 27. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO, J.—This is an appeal on a certificate granted by the Madras High Court. The brief facts necessary for present purposes are these: The present suit was brought by Muthappa Chettiar (hereinafter referred to as the respondent) against K. Thiagarajan Chettiar (hereinafter called the appellant) and the Saroja Mills Ltd. In 1939 these two persons thought of doing business jointly by securing managing agencies of some mills. In that connection they carried on negotiations with two mills, namely, Rajendra Mills Limited, Salem and the Saroja Mills Limited, Coimbatore (hereinafter called the Mills). The managing agency of the Mills was with the Cotton Corporation Limited. On October 4, 1939, the said Corporation transferred and assigned its rights to the appellant and the respondent under the name of Muthappa and Co. On November 15, 1939, the Mills at an extraordinary general meeting of the shareholders accepted Muthappa and Co. as the managing agents and made the necessary changes in the Articles of Association. Later the appellant and the respondent obtained the managing agency of the Rajendra Mills Limited, Salem. The managing agents of this mill were Salem Balasubramaniam and Co. Ltd. Muthappa and Co. purchased all the shares of the Salem Balasubramaniam and Co. and thereafter carried on the business of the managing agency of this mill in the name of Salem Balasubramaniam and Co. Ltd. In November 1940 the appellant and the respondent entered into a written partnership agreement with respect to

the managing agency business of the two mills. We shall consider the terms of this agreement later and all that we need say at this stage is that turns were fixed for the appellant and respondent to look after the actual management of the two mills and the appellant's turn was the first and he therefore came into actual control of the two mills. Soon after however disputes arose between the appellant and the respondent with respect to the managing agency of the Rajendra Mills Limited, which resulted in various suits being filed between the partners, to which we shall refer later. Eventually on March 4, 1943, the appellant gave notice to the respondent terminating the partnership, considering it as a partnership at will. This was followed by the directors of the Mills terminating the managing agency of Muthappa and Co. on the ground that that company had ceased to exist and also on the ground that quarrels between the partners of the firm were not conducive to good management of the Mills. This was notified to the respondent on March 22, 1943. This action of the directors was approved in a meeting of the shareholders of the Mills on September 29, 1943, and necessary modifications were again made in the Articles of Association. In between on April 17, 1943, the respondent had filed a suit for a declaration that Muthappa and Co. continued to be the managing agents of the Mills and for obtaining possession of the office of managing agents for himself or along with the appellant and also for a permanent injunction restraining the Mills from appointing any other managing agents. This suit was dismissed by the trial court on the ground that it was not maintainable under s. 69 of the Indian Partnership Act, No. IX of 1932 (hereinafter called the Act), though the trial court gave findings on other issues also. The respondent went up in appeal to the Madras High Court against the decree in that suit. This appeal was dismissed on July 8, 1948, as the High Court held that the finding of the subordinate judge that the suit was not maintainable under s. 69 of the Act was correct. The High Court however made it clear that it was

1961

Karumuthu Thiagarajan Chettiar v. Muthappa Chettiar

Wanchoo J.

expressing no opinion on the correctness or otherwise of the other findings recorded by the subordinate judge.

While this appeal was pending the respondent brought the present suit on February 28, 1946. In this suit he prayed for dissolving the firm Muthappa and Co., for accounts and for damages against the appellant and the Mills. The main contention of the respondent in the suit was that the alleged dissolution of partnership by the appellant and the removal of Muthappa and Co. from the managing agency of the Mills were part of a scheme of fraud conceived by the appellant which was actively connived at by the Mills in order to defeat and defraud the respondent of his legitimate dues and his right to continue and act as the managing agent of the Mills. The damages claimed were estimated at the figure of five lacs of rupees to be recovered from both the appellant and the Mills or from either of them. In the alternative the respondent claimed that even if Muthappa and Co. had been removed validly from the managing agency on September 29, 1943, he was entitled to an account from the appellant from November 15, 1939, to September 29, 1943. The suit was resisted by both the appellant and the Mills and their case was that the partnership was one at will and therefore was validly terminated by the appellant by notice. It was further contended that in any case the Mills were within their rights in terminating the managing agency of Muthappa and Co., as that firm had ceased to exist and there were interminable disputes between the partners. Fraud and collusion were denied and it was alleged that it was the respondent's conduct which compelled the appellant to give notice of termination of partnership and the Mills to terminate the managing agency. The Mills took a further plea, namely, that so far as they were concerned, the suit was barred under s. 69 of the Act.

The trial court held that the firm of Muthappa and Co. was a partnership at will and therefore was legally dissolved by the appellant by giving notice dated March 4, 1943. It further held that no case of fraud

had been proved and that the termination of the managing agency was legal. As to the Mills the trial court held that the suit against them was barred under s. 69 of the Act. In consequence the suit against the Mills was dismissed in toto and the prayer for damages was also rejected. The trial court however directed the appellant to account for the profits earned from the inception of the partnership business till March 4, 1943, when the partnership was terminated by the appellant by notice.

Thereupon the respondent went up in appeal to the High Court. The High Court held that the suit against the Mills was barred under s. 69 of the Act, though it was made clear that if there were assets of the partnership firm in possession of the Mills the respondent would be entitled to recover them. The High Court however ordered the Mills to bear their own costs in both the courts on the ground that the Mills were guilty of fraud. As to the case against the appellant, the High Court held that the partnership was not a partnership at will and therefore it could not be dissolved by notice by the appellant. It further held that the appellant fraudulently and in collusion with the Mills purported to dissolve the partnership by issuing an illegal notice and to have the managing agency terminated by the Mills, and in consequence the termination of the managing agency was illegal. On the view therefore that the partnership as well as the managing agency continued and on a review of the circumstances, the High Court held that this was a fit case for dissolving the partnership and fixed March 10, 1949, which was the date of the decree of the trial court as the date from which the partnership would be dissolved. Consequently it modified the decree of the trial court and passed a preliminary decree for accounts against the appellant in respect of the firm Mu happa and Co. from November 15, 1939, to March 10, 1949, and added that the respondent could also recover any amount found due to him on taking accounts against the partnership assets, if any, in the hands of the Mills. The appellant then applied for a certificate to

1961

Karumuthu Thiagarajan Chettiar v. Muthappa Chettiar

Wanchoo J.

appeal to this Court which was granted; and that is how the matter has come up before us.

The first question therefore that arises for our determination is whether the partnership in this case is a partnership at will and it is necessary to refer to the terms of the partnership agreement to determine this question. After reciting that the management of the Mills was being carried on in the name and style of Muthappa and Company and of the Rajendra Mills Limited in the name and style of Salem Balasubramaniam and Co. Limited, the partnership agreement goes on to say that the partners shall get in equal shares the salary, commission, profit, etc., that may be realised from the aforesaid managing agencies. It provides for carrying on the management in rotation once in four years, the appellant to manage for the first four years and thereafter the respondent to manage for the next four years and in the same way thereafter. It further provides that the partners and their heirs and those getting their rights shall carry on the management in rotation. The accounts were to be made once in every year after the closing of the yearly accounts of the two mills. There were then provisions as to borrowing with which we are not concerned. The agreement further provides that in case either partner thinks of relinquishing his right of management under the agreement it shall be surrendered to the other partner only but shall not be transferred or sold to any other person whatever. Finally it is provided that the two partners shall carry on the affairs of the firm by rotation once in four years and the income realised thereby shall be divided year after year and the partners and their heirs shall get the same in equal shares and thus carry on the partnership management.

The contention on behalf of the appellant is that as this partnership does not fall under s. 8 of the Act and is not within the two exceptions under s. 7, it is a partnership at will. Section 7 provides that where no provision is made by contract between the partners for the duration of the partnership, or for the determination of the partnership, the partnership is partnership at will. Section 8 provides that a person may

become a partner with another person in particular adventures or undertakings. Section 43 provides that where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm. On the other hand if the partnership is not at will, s. 42 applies and is in these terms:—

"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."

Section 44 provides for dissolution by the court. The High Court was of the view that looking to the terms of the partnership it could not be held to be a partnership at will and that under s. 7 it will be a case of a partnership the duration of which as well as the determination of which were fixed. The High Court was further of the view that s. 8 of the Act would also apply to the partnership in question as the evidence showed that the partners had entered into partnership in order to carry on the business of managing agency of the two mills and such business was an undertaking. As we read the terms of the agreement it seems to us clear that the intention could not be to create a partnership at will. The partners contemplated that the management would be carried on in rotation between them in four yearly periods. It was also contemplated that the heirs of the partners would also carry on the management in rotation. Considering this provision as well as the nature of the business of partnership it could not be contemplated that the partnership could be brought to an end by notice by either partner. The intention obviously was to have a partnership of some duration, though the duration was not expressly fixed in the agreement. Now s. 7 contemplates two exceptions to a partnership at will.

1961

Karumuthu Thiagarajan Chettiar v. Muthappa Chettiar

Wanchoo J.

The first exception is where there is a provision in the contract for the duration of partnership; the second exception is where there is provision for the determination of the partnership. In either of these cases the partnership is not at will. The duration of a partnership may be expressly provided for in the contract; but even where there is no express provision, courts have held that the partnership will not be at will if the duration can be implied. See Halsbury's Laws of England, Third Edition, Vol. 28, p. 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* (1) the same principle was laid down in these words at p. 483:—

> "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 in our opinion applies to a case of determination. The contract may expressly contain 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 found in the contract. What we have therefore to see is whether in the present case it is possible to infer from the contract of partnership whether there was an implied term as to its duration or at any rate an implied term as to when it will determine. It is clear from the terms of the contract of partnership that it was entered into for the purpose of carrying on managing agency business. Further the term relating to turns of the two partners in the actual management and the further term that these turns will go on even in the case of their heirs in our opinion clearly suggest that the duration of the partnership would be the same as the duration of the managing agency. We cannot agree that this means that the partnership

(1) [1818] 36 E.R. 479, 483.

would become permanent. In any case even if there is some doubt as to whether the terms of this contract implied any duration of the partnership, there can in our opinion be no doubt that the terms do imply a determination of the partnership when the managing agency agreement comes to an end. It is clear that the partnership was for the sole business of carrying on the managing agency and therefore by necessary implication it must follow that the partnership would determine when the managing agency determines. Therefore on the terms of the contract in this case, even if there is some doubt whether any duration is implied, there can be no doubt that this contract implies that the partnership will determine when the managing agency terminates. In this view the partnership will not be a partnership at will as s. 7 of the Act makes it clear that a partnership in which there is a term as to its determination is not a partnership at will. Our attention was drawn in this connection to a term in the contract which lays down that either partner may withdraw from the partnership by relinquishing his right of management to the other partner. That however does not make the partnership a partnership at will, for 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, which is provided in this contract, is a very different matter. It is true that in this particular case there were only two partners and the partnership will come to an end as soon as one partner relinquishes his right in favour of the other. That however is a fortuitous circumstance; for, if (for example) there had been four partners in this case and one of them relinquished his right in favour of the other partners, the partnership would not come to an end. That clearly shows that a term as to relinquishment of a partner's interest in favour of another would not make the partnership one at will. We may in this connection refer to *Abbott* v. *Abbott* (1). That was a case where there were more than two partners and it was

(1) [1936] 3 All E.R. 823.

1961

Karumuthu Thiagarajan Chettiar v. Muthappa Chettiar

Wanchoo J.

provided that the retirement of a partner would not terminate the partnership and there was an option for the purchase of the retiring partner's share by other partners. It was held that in the circumstances the partnership was not at will and it was pointed out that only when all the partners except one retired that the partnership would come to an end because there could not be a partnership with only one partner. We are, therefore, in agreement with the High Court that the contract in this case disclosed a partnership the determination of which is implied, namely, the termination of the managing agency and, therefore, under s. 7 of the Act it is not a partnership at will. In the circumstances it is unnecessary to consider whether the case will also come under s. 8 of the Act.

The next question that arises is whether the managing agency has been terminated legally; for if that is so the partnership would also be determined. This takes us to the history of the relations between the partners after the partnership came into existence. It seems that disputes arose between the partners some time in 1941 in connection with the Rajendra Mills Limited which was one of the mills included in the managing agency business. The respondent filed a suit on March 4, 1942, against the appellant and Salem Balasubramaniam and Co. Limited with respect to the allotment of shares in the managing agency company. On March 11, 1942, the respondent filed another suit, this time on the basis of debentures which he held against the Mills, praying for a decree against the Mills with respect to the debenture amount. On June 17, 1942, the respondent filed a third suit with respect to the Rajendra Mills Limited for a declaration that the respondent was a partner owning half share in the managing agency of the Rajendra Mills Limited. On the same day the respondent filed a fourth suit against the appellant, his son and Salem Balasubramaniam and Co. Limited with respect to certain actions taken by the managing agency company. On July 15, 1942, the appellant filed a counter-suit against the respondent and the managing agency company relating to the Rajendra Mills Limited for a

declaration that the respondent had no interest in the managing agency company and for further reliefs. There is no doubt, therefore, that the relations between the partners were very strained in 1942. The respondent admitted in his statement that from the end of 1941 there was enmity between him and the appellant and there were vital differences between them and litigation was going on, though he said that in spite of the enmity he was willing to co-operate with the appellant if the amount of which he had been defrauded were paid to him on accounting. So far as the litigation with respect to the Rajendra Mills Limited was concerned the respondent lost and it was held that he had withdrawn from the partnership of the managing agency company with respect to that mill. As to the suit on debentures, the money was deposited in court and the dispute was only about costs. That matter also went up to the High Court and finally the High Court refused to allow costs to the respondent.

It was in this strained atmosphere between the partners that the appellant gave notice dated March 4, 1943, terminating the partnership with respect to the Mills considering it as a partnership at will. We have however held that the partnership was not a partnership at will and the notice given by the appellant could not, therefore, terminate it legally. But the question still remains whether the managing agency of the Mills was terminated legally; for if that was so the partnership would also come to an end on the date the managing agency was terminated in view of what we have held above. The High Court has examined the circumstances in this connection and has come to the conclusion that the appellant fraudulently and collusively with the Mills got the managing agency terminated and, therefore, the termination of the managing agency was illegal. We are unable to agree with this view of the High Court. It is, therefore, necessary to examine the circumstances in which the termination came about. The appellant sent a copy of his notice dated March 4, 1943, terminating the partnership to the Mills also. The respondent sent a reply to this notice in which he claimed that the partnership was

1961

Karumuthu Thiagarajan Chettiar v. Muthappa Chettiar

Wanchoo J.

not at will and the appellant was not entitled to terminate it, and a copy of this reply was also sent to the Mills on March 16, 1943. On March 22, 1943, the directors of the Mills held a meeting. In that meeting the directors decided that as the partners of Muthappa and Company were unable to get on in harmony with each other and were involved in litigation and several suits were going on between them and on account of their differences the work of the Mills was suffering and was likely to suffer and also because Muthappa and Company had ceased to exist and had lost its right of management and was no longer in a position to manage the Mills, it became necessary to appoint other managing agents. Thus by this resolution the managing agency of Muthappa and Company was terminated for two reasons: (1) that there were differences between the partners of the managing agency company and the work of the Mills was suffering and was likely to suffer, and (2) that Muthappa and Company had come to an end and, therefore, had lost its right of management. It appears that before this resolution was passed the appellant had been purchasing shares of the Mills in the market and had acquired a controlling interest therein. The High Court, therefore, thought that the hidden hand of the appellant was visible behind this resolution of the directors of the Mills, the more so as the appellant's son was nominated by the same resolution to administer the whole affairs of the Mills subject to the control and direction of the board of directors till such time as suitable managing agents were appointed. This action of the board of directors was confirmed at a general meeting of the shareholders on September 29, 1943.

The High Court thought that as the appellant had acquired a controlling interest in the Mills he was behind the resolution of the directors of March 22, 1943, and the resolution of the general meeting of the shareholders of September 29, 1943. It may be that the appellant having acquired a controlling interest in the Mills had a good deal to do with the resolutions; but that in our opinion would not necessarily make his

conduct fraudulent and the termination of the managing agency agreement illegal. It is not in dispute that there was no agreement between the partners that either of them would not purchase shares of the Mills in open market. We do not therefore see anything improper in the conduct of the appellant when he purchased the shares of the Mills in open market and managed to acquire the controlling interest therein. The appellant obviously had two capacities: in one capacity he was a partner of the respondent in the managing agency business, in the other capacity he was a large shareholder of the Mills and as such shareholder it was certainly his interest to see that the interest of the Mills did not suffer. The crucial question therefore is whether the action taken by the Mills by the two resolutions is such as would be taken by any prudent company when faced with the situation with which the Mills was faced in the present case. There can in our opinion be no doubt that any company when faced with a situation in which the Mills was in this case, and finding that the two partners of its managing agency firm were fighting tooth and nail and there was no love lost between them and also finding that the interest of the Mills was suffering and was likely to suffer because of the bad blood between the two partners of the managing agency, was bound to take steps to protect its own interests. The fact that the major shareholder in the Mills also happened to be a partner in the managing agency would not disentitle him from acting in the interest of the Mills as a major shareholder. We may in this connection refer to *Morarji Goculdas and Co.* v. *Sholapur Spinning and Weaving Co. Ltd. and Others*(1). In that case a question arose whether the termination of the managing agency agreement was illegal on the ground of misconduct. It was found in that case that there were quarrels between the partners of the managing agency firm of such a nature and duration as to impair seriously their capacity to discharge their duty to the company as managing agents and to affect prejudicially the interests of the company. It was held that:—

(1) A.I.R. 1944 P.C. 17.

1961

Karumuthu Thiagarajan Chettiar v. Muthappa Chettiar

Wanchoo J.

"In each case the question must be whether the misconduct proved, or reasonably apprehended, has such a direct bearing on the employer's business or on the discharge by the employee of that part of the employer's business in which he is employed, as to seriously affect or to threaten to seriously affect the employer's business or the employee's efficient discharge of his duty to his employer."

If on the facts and circumstances of the case it was so, the termination of the managing agency would be justified. In the present case there can be no doubt that the quarrels between the two partners of the managing agency firm were so serious and of such duration as to impair their capacity to discharge their duty to the Mills as managing agents and to affect the interests of the Mills prejudicially. Therefore, if the directors of the Mills came to that conclusion it is in our opinion not correct to say that that conclusion was arrived at fraudulently, simply because a major shareholder happened to be the appellant. We may in this connection refer to the observations of Younger L.J. in *Commissioners of Inland Revenue* v. *Sansom* (1):—

"No doubt there are amongst such companies, as amongst any other kind of association, blacksheep; but in my judgment such terms of reproach as I have alluded to should be strictly reserved for those of them and of their directors who are shown to deserve condemnation, and I am quite satisfied that the indiscriminate use of such terms has, not infrequently, led to results which were unfortunate and unjust, and in my judgment this is no case for their use."

These remarks are in our opinion apposite in the present context. It is true that the appellant had a hand as a major shareholder in the two resolutions and this was never hidden; but it is equally true that in the circumstances then existing any prudent board of directors and any body of shareholders interested in a company would act in the manner in which the board of directors and the shareholders of the Mills

(1) [1921] 2 K.B. 492, 514.

acted in the present case. We cannot therefore agree with the High Court that this is a case where the board of directors and the shareholders acted fraudulently in collusion with the appellant, for we cannot forget that the appellant as a major shareholder of the Mills could legitimately act to protect them and the action taken was such as any board of directors and any body of shareholders would *bona fide* take. In the circumstances we are of opinion that the resolution of the board of directors terminating the managing agency agreement, confirmed by the general meeting of the shareholders, did legally terminate the managing agency between the Mills and Muthappa and Company. It is true that in these resoultions a second reason was given for the termination, viz., that Muthappa and Co. had come to an end because of the notice of March 4. That legal position is in our view incorrect; but that apart there were otherwise sufficient reasons for the Mills to terminate the managing agency in the circumstances with which it was faced.

The next question that arises is as to when the managing agency can be said to have been terminated, i.e., whether on March 22, 1943, or on September 29, 1943. Now under s. 87-B (f) of the Indian Companies Act, No. VII of 1913, which was then in force, the appointment of a managing agent, the removal of a managing agent and any variation of a managing agent's contract of management shall not be valid unless approved by the company by a resolution at a general meeting of the company. This provision clearly shows that a managing agent may be appointed and removed by the board of directors, though such appointment and removal is subject to the approval by the company by a resolution at a general meeting of the company. We agree with the High Court that when the company at its general meeting approves of an appointment or of a removal, the approval takes effect from the date of the appointment or removal by the board of directors. On this view therefore, when the general meeting in this case approved the action of the board of directors, the removal became valid and came into effect from March 22, 1943.

1961

Karumuthu Thiagarajan Chettiar v. Muthappa Chettiar

Wanchoo J.

Therefore, the managing agency agreement in this case was validly terminated on March 22, 1943. As we have already held that there was an implied term in the contract of partnership that it will determine when the managing agency agreement with the Mills terminates, the partnership in the present case must under the contract be deemed to have determined on March 22, 1943. Therefore, the respondent will be entitled to an account only from November 15, 1939, to March 22, 1943.

The learned Attorney-General however referred us to ss. 9, 10 and 13(f) of the Act and his contention was that the appellant must account for all the profits made by him out of the managing agency business, even after March 22, 1943. Under s. 10 every partner has to indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm and under s. 13(f) a partner has to indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm. In the first place, such a case was not made out in the plaint by the respondent; in the second place we are of opinion that ss. 10 and 13(f) have no application to the facts of the present case. We therefore reject this contention.

That leaves the question of costs. So far as Saroja Mills Limited are concerned, we are of opinion that they are entitled to their costs throughout from the respondent as their action in terminating the managing agency has been held by us to be legal and valid. As to Thiagarajan Chettiar we are of opinion that in the circumstances of this case, the order of the subordinate judge that Muthappa Chettiar (respondent) and Thiagarajan Chettiar (appellant) should bear their own costs is just and we order them to bear their own costs throughout.

We therefore allow the appeal in part and order that accounts will be taken from November 15, 1939, to March 22, 1943, as between Thiagarajan Chettiar and Muthappa Chettiar. The respondent will pay the costs of Saroja Mills Limited throughout; but Muthappa Chettiar and Thiagarajan Chettiar will bear their own costs throughout.

Appeal allowed in part.