

Opinion shared with one of the clients today. Imp Question for all the group members too.

SV

M/s.....

Lucknow.

Strictly Confidential.

SIR,

SUB: YOUR QUERY REGARDING DEATH OF A PARTNER – LEGAL CONSEQUENCES.

Sir,

The legal note sent to us does not specify how many partners were there in the partnership when one partner died. We were told the copy of partnership is confidential and cannot be shared this being a very old partnership but is registered as per law. The note also stated that one of the senior members has died and his legal heirs have approached the local court for dissolution of the partnership and the business is being hampered even though the Court has not passed any interim stay on the business affairs of the firm.

Our Opinion is based on two scenarios –

- i) Where there were only two partners
- ii) Where there are more than two partners.

LEGAL FRAME WORK

Section 42 of the Partnership Act 1932 deals with the above issues that govern relationship and rights and obligations of the partners interse.

- i) It is settled in law by virtue of Section 42 of the Partnership Act, 1932 that the partnership will stand dissolved inter alia on the death of the partner but this is applicable in cases where there are only two partners constituting the partnership firm.

The aforesaid principle would not apply where there are more than two partners in a partnership firm and the deed of partnership provides

otherwise that the firm will not stand automatically dissolved on the death of one of the partners.

- ii) If the partnership consisted of three partners and the deed of partnership, in unequivocal terms, provided that the death of a partner shall not cause discontinuance of partnership and the surviving partners may continue with the business the partnership cannot be dissolved nor any dissolution sought from any court of law. Because the partnership is a relation created by the Agreement between the Partners. Therefore, the principle laid down under Section 42 of the Partnership Act would not be applicable and the partnership would continue despite the death of one of the partners should the partnership deed have more than two partners and the partnership deed contains a clause as above. This is the *sine non quon* for the courts to not to interfere.
- 2. In *M/s Wazid Ali Abid Ali vs. Commissioner of Income Tax, Lucknow* 1988 (Supp) SCC 193, the Supreme Court observed that under the Partnership Act, on death or demise of a partner, the firm shall not be dissolved but shall be carried on with the remaining partners or by including the heirs and representative of the deceased partner on such terms and conditions mutually agreed upon. The aforesaid decision relied upon the decision of Calcutta High Court in *Sandersons & Morgans vs. ITO* (1973) 87 ITR 270 wherein it was reiterated that if one of the partners dies or retires, there is change in the constitution of the firm but there is no dissolution. A similar view was expressed by the Allahabad High Court in *Noor Mohammad and Co. vs. Commissioner of Income-Tax* (1991) 191 ITR 550 wherein it was held that the partnership would continue despite the death of one of the partners in terms of the Partnership Deed.

Way forward

If the partnership deed contains the clauses as above, Court cannot give any relief and notwithstanding it is the mutual conditions that may be decided between the rest of the partners and the legal heirs of the deceased partner – you may submit to the court accordingly.

Regarding our availability for Lucknow matter, the same shall be replied to when need arises.

Should you need any other clarification based on Partnership Deed that you may possess than subject to above principles you may seek more clarifications from the undersigned.

Prof Bill annexed.

SUSHIL K VERMA
ADVOCATE AND
LITIGATION STRATEGIST

