

1941

Present : Moseley S.P.J. and Keuneman J.

SUBRAMANIAMPILLAI v. WICKREMASEKERE et al.

130—D. C. Chilaw, 11,447.

*Business Names Registration Ordinance (Cap. 120), ss. 4 (1) (d) and 9 (1)—
Registration of business by firm—Failure to register names of individuals
—Default fatal to action.*

Where a firm in registering its business under the Business Names Registration Ordinance failed to furnish the names of each of its individual partners,—

Held, that there had been such a substantial failure to comply with the requirements of the Ordinance as to amount to a default within the meaning of section 9 (1) of the Ordinance.

Murugappah Chettiar et al. v. Ramanathan Chettiar (39 N. L. R. 231) referred to.

APPEAL from a judgment of the District Judge of Chilaw.

N. Nadarajah, for plaintiff, appellant.

N. E. Weerasooria, K.C. (with him *Cyril E. S. Perera*), for defendant, respondent.

Cur. adv. vult.

September 16, 1941. KEUNEMAN J.—

This is an action on mortgage bond No. 6,830 of November 25, 1927. Action was brought on a copy of the bond, the original bond being filed in D. C. Chilaw, No. 11,202, in which case the present third defendant sued upon the same bond. That action was dismissed on the ground that, the name of the third defendant (A. S. A. N. Narayanan Chettiar) did not appear in the Registration of Business Names as a partner of the firm of A. S. A. N. (*vide* I. D. 2).

Under the bond any one of the three obligees mentioned was entitled to sue on it.

In the present case the same defence under the Business Names Registration Ordinance (Chapter 120) has been raised against the present plaintiff, A. S. A. N. Caruppen Chettiar. Caruppen Chettiar was no party to the action in D. C. Chilaw, No. 11,202. After trial, the District Judge dismissed the present action with costs.

Several points have been raised in this appeal. First, it was argued that Narayanan Chettiar was not a partner of the firm of A. S. A. N. The District Judge has carefully considered the evidence led. A Kanakapulle of the firm of A. S. A. N. gave evidence and produced the book P 3, which showed at page 40 an account under the name of the third defendant under the heading "Veyan Muthal" in Tamil. There was another account at page 39 under the name of Sabapathy, an acknowledged partner of A. S. A. N., which also bore the heading "Veyan Muthal". The Kanakapulle at first admitted that the account at page 40 was the capital account of Narayanan Chettiar, and that in each of the capital accounts appearing in the book including that of Narayanan Chettiar, interest was paid at 7 and $\frac{1}{2}$ per cent. and that each of these was "the capital account showing money put into the business by the partners". The Kanakapulle further said Narayanan Chettiar was paid a share of the profits for the work he did. Later in re-examination the Kanakapulle said that Narayanan Chettiar was the agent of A. S. A. N. and that he did not know how Narayanan's money came into the books of A. S. A. N.

It is true that Narayanan Chettiar received a power of attorney P 11 in 1930 from the present plaintiff but this was for the special purpose of taking action in a partition action already instituted and of recovering moneys on the decrees and mortgage bonds mentioned in the power. It was not a power of attorney to carry on the business of the firm of A. S. A. N. Moreover the accounts I have referred to, relate to a period prior to 1930.

It is further relevant to take into consideration the conduct of Narayanan Chettiar in consenting to his action D. C. Chilaw, No. 11,202 (I. D. 1) being dismissed, on the ground that his name was not registered as a partner of the firm of A. S. A. N.

The finding of the District Judge that Narayanan Chettiar was a partner of A. S. A. N. is justified. It is strange that the plaintiff himself gave no evidence, explaining the true position of Narayanan in the firm, and that no other evidence was led to show this.

The next point urged for the appellant is that the plaintiff was entitled to relief under section 9 (1) (a). The application in this respect was made

at a very late stage, but the District Judge took the affidavit filed by the appellant's attorney into consideration. The only substantial allegation in the affidavit was the vague assertion that the failure to register the name of Narayanan "was due to ignorance, and not with a view to evade the provisions of law". I am unable to understand the exact purport of this allegation. As the District Judge points out, the present plaintiff was actively in charge of the business, and could not fail to know whether Narayanan was a partner or not. Further the plaintiff must have been aware of the provisions of the Business Names Ordinance, for the firm of A. S. A. N. was registered earlier, and plaintiff must have known that Narayanan's action was dismissed for failure to comply with the provisions of the Ordinance. I agree with the District Judge that no case has been made out for relief under section 9 (1) (a).

The last point argued for the appellant is that section 9 has no application to the circumstances of this case. Counsel relied on the *dictum* of Darling J. in *O'Connor and Ould v. Ralston*¹, with reference to section 8 (1) of the English Act of 1916. "I incline to think that the word 'default' in the sub-section means not furnishing any particulars at all, and does not mean furnishing insufficient particulars". This, however, was *obiter*, and Darling J. refrained from deciding the point.

The words of section 9 (1) are as follows:—

"Where any firm or person required by this Ordinance to furnish a statement of particulars or of any change in particulars in respect of any business shall have made default in so doing,".

Counsel argued that all that was needed was the furnishing of the statement, and that it did not matter whether there was any omission or inaccuracy in the particulars contained in the statement.

I cannot take this view. Under section 4 (1) the statement required to be furnished is one "containing the following particulars" and clauses (a) to (g) set out the particulars required. Under section 4 (1) (d) where the registration is that of a firm the names in full of each of the individuals who are partners, as well as several other matters are required to be shown. I think the furnishing of the names of each partner is a fundamental requirement, especially in view of the fact that under section 2 (a) registration is made compulsory in the case of every firm carrying on business under a business name which does not consist of the true full names of all the partners. The purpose of the Ordinance will be defeated, where a firm fails to disclose the true full names of each of the partners.

Has there been "default" in this case, in consequence of the omission to give the name of Narayanan Chettiar as one of the partners? The word "default" is not easy to interpret. As Eyre C.J. said in *Doe d. Dacre v. Dacre*². "I do not know a larger or looser word than 'default' In its largest and most general sense it seems to mean, 'failing'". Bowen L.J. also said in another connection in *Re Young and Harston*³. "Default, is a purely relative term, just like negligence. It means nothing more, nothing less, than not doing what is reasonable under the circumstances; "not doing something which you ought to do, having regard to the relations which you occupy towards the other persons interested in the transaction".

¹ (1920) 3 K. B. 451.

² 1 B. and P. 258.

³ 31 Ch. D. 174.

In his connection, we have been referred to the case of *Murugappai Chettiar et al. v. Ramanathan Chettiar*¹, where Hearne J. held that a misstatement in regard to the one particular of "usual residence" did not fall within the category of default under section 9, but he added: "It is possible to conceive of a statement of particulars being so erroneous and misleading as to amount to a 'default'".

In the present case there has been an omission to give particulars, in regard to a material, and I think, fundamental matter. In my opinion there has been such a substantial failure to comply with the requirements of the Ordinance as to amount to a default within the meaning of section 9 (1).

The appeal is dismissed with costs.

MOSELEY J.—I agree.

Appeal dismissed.