

Dissolution of partnership means coming to an end of the relation known as partnership, between various partners. when one or more partners cease to be partners but others continue the business in partnership, there is dissolution of partnership between the outgoing partners on the one hand and the remaining partners on the other. the remaining partners as between themselves still continue as partners. For example, when the firm consists of A, B and C and A retires, there is dissolution of partnership between A and others but partnership as between B and C is not dissolved. In such a case, there is dissolutuion of partnership between some of the partners only, but there is no dissolution of the firm.

According to s 39, when the dissolution of partnership between all the partners of the firm occurs, this is called dissolution of the firm. For example, when in a firm consisting of A,B and C all of them cease to be partners with one another, it amounts to dissolution of the firm.

A firm may be dissolved in the following ways:

- a. By agreement;
- b. Compulsory dissolution;
- c. On happening of certain contingencies;
- d. By notice;
- e. By the court.

a. **Dissolution by agreement (s 40)**

A firm may be dissolved either-

- i) with the consent of all the partners, or
- ii) in accordance with a contract between the partners.

As partners can create partnership by making a contract as between themselves, they are also similarly free to end this relationship and thereby dissolve the firm by their mutual consent. When all the partners so agree, they may dissolve the firm at any time they like.

Sometimes there may have been a contract between the partners indicating as to when and how a firm may be dissolved, a firm can be dissolved, in accordance with such a contract. For instance, if the contract between the partners provides that on a 6 month's notice by a partner the firm may be dissolved, then in accordance with this contract, a partner could give 6 month's notice and get the firm dissolved.

b. Compulsory dissolution (s 41)

S 41 mentions certain events on the happening of which there is compulsory dissolution of the firm. Such dissolution is compulsory and if the partners want to continue in partnership by agreeing to the contrary they cannot possibly do that. S 41 is as under:

41. Compulsory dissolution.- A firm is dissolved -

a) by the adjudication of all the partners or of all the partners but one as insolvent, or

b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership:

Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

According to s 41, therefore, compulsory dissolution occurs under the following circumstances:

i) when all the partners or all except one are adjudicated insolvent, the firm is compulsorily dissolved. we have already noted that when a partner is adjudicated insolvent, he ceases to be a partner. therefore, when all the partners or all except one adjudicated insolvent, there is no question of persons remaining partners with one another and therefore, there has to be dissolution of the firm.

ii) if the business of the though lawful when the firm came into existence, subsequently becomes unlawful, there has to be dissolution of the firm, this provision is based on the rules of the law of contract, for a valid contract the object and consideration have to be lawful as defined in section 23, Indian Contract Act further provides that when the contract to do an act becomes unlawful after making the contract, such a contract becomes void. for example, a number of persons join together as partners to sell liquor in a certain area.

subsequently, the government imposes prohibition in that area and the sale of liquor is banned. as soon as the sale of liquor in that area becomes unlawful, the firm is dissolved.

If the firm was carrying on more than one adventures or undertakings, the illegality of one or more of them shall not of itself result in the dissolution of the firm in respect of those adventures or undertaking which are still lawful.

There is also compulsory dissolution of the firm if some event happens because of which it becomes unlawful for the partners . to continue as partners with each other. For example, two partners reside and carry on trade in two different countries. If war breaks between these two countries and the further commercial intercourse between the two partners thereby becomes against public and thus unlawful, there is compulsory dissolution of the firm.

(3) DISSOLUTION ON HAPPENING OF CERTAIN CONTINGENCIES {42}

Section 42 mentions certain contingencies of which the firm is dissolved, unless there is a contract to the contrary. Unlike the dissolution under section 41, which is compulsory, the dissolution contemplated under section 42 is not compulsory, Even on the happening of the contingencies mentioned in section 42, partners may agree that the firm will not be dissolved, but the business of the firm will be continued as before. the contingencies mentioned in the section are :

- (I) Expiration of the partnership term,
- (II) Completion of the adventure,
- (III) Death of a partner, and
- (IV) Insolvency of a partner.

(I) EXPIRATION OF THE PARTNERSHIP TERM: When the partnership had been constituted for a fixed term, it continues obviously for the contemplated term and would be dissolved on the expiry of such term . if the partners so like they may agree to the contrary and continue the business even beyond that time. such an agreement may be express or implied if a will . Unless otherwise agreed, the same mutual rights and duties continue for the extended period as they were there before the expiry of the term.

(II) COMPLETION OF THE ADVENTURE: Partnership created for some specific adventures or undertakings come to an end on the completion of such adventures or undertakings. thus, when the partnership was created specifically for carrying out contract of construction of a road and the road was completed on 24 .7.63 and final bill prepared on 18. 2. 65, the partnership stood dissolved on 18. 2. 65. the suit for dissolution filed within 3 years of 18. 2. 65 was held to be within time.

There can, however, be an agreement by which the partnership may not be

dissolved and the business may be continued for some other adventures or undertakings after the completion of the earlier ones. unless otherwise agreed, the same mutual rights and duties between the partners continue in respect of their relationship for the new adventures and undertakings also [S 17 (c)].

(III) DEATH OF A PARTNER: Death of a partner results in the dissolution of the firm unless the remaining partners agree to the contrary this provision is applicable when there are more than two partners in a firm, where on the death of them the others may agree to still continue the same old firm without its being dissolved. if there are only two partners and they agree that on the death of one of them , the firm would not be dissolved but will continue with the surviving partner and the heir of the deceased partner, the agreement is meaningless because on the death of one of them remains only one partner. There is no partnership to which somebody else could be introduced. if the heir of the deceased partner is to carry on the business in partnership with the surviving partner. it will be a new partnership for which an agreement between the two persons to create partnership has to be entered into . In *Mt. Sughra v. Babu* (AIR 1952 All 506), it was held that when a firm consisted of just two partners, a term in their contract not to dissolve the firm on the death of one of them was invalid. Agarwala J. observed :

" In the case of partnership consisting of only two partners, no partnership remains on the death of one of them and, therefore, it is contradiction in terms to say that there can be a contract between two partners to the effect that on the death of one of them, the partnership will not be dissolved but will continue."

The same view has also been adopted by the Madras High Court and considered to be the proper view, by the supreme court in *Commissioner of Income Tax v. Seth Govindram* (AIR 1966 S.C. 24). In that case A and B entered into a partnership in 1943 to work a sugar mill. it was agreed between them that on the death of either of them the firm should not be dissolved but the legal heir or nominee of the deceased should not be taken in his place. A died in 1945. it was held that on A's death, the original partnership between A and B has come to an end and the same partnership could not continue with A's widow taking A's place, or A's son claiming that he become a partner in pursuance to the agreement between A and B in 1943. it was observed that there is a possibility that in pursuance of the wishes or the directions of the deceased partner, the surviving partner may enter into a new partnership with the heir of deceased partner, but that would constitute a new partnership and not the continuance of the old one.

(IV) Insolvency of partner: When a partner is adjudicated insolvent, he ceases to be a partner. the firm is also dissolved unless there is an agreement between the remaining partners to the contrary. this provision has to be read alongwith Sec. 41(a) which states that when all or all except one partner become insolvent, there is compulsory dissolution of the firm . if , therefore, there are only two partners and one of them is adjudicated insolvent, there is compulsory dissolution under section 41 and there is no question of there being a contract to the contrary making the firm to continue.

Suit for dissolution of firm and rendition of accounts: The plaintiff along with 8 other had entered into a partnership. Deed of reconstitution of partnership showed him as partner of firm. His expulsion from firm not empowered if entered by the contract between partners was not valid. Plea that plaintiff was not a partner also failed, but since the firm stood dissolved on serving of the summons to defendants after filing of suit, plaintiff was only entitled to seek for rendition of accounts of firm for a period of 3 years prior to filing of suit (Shivraj Reddy and Brothers v S. Raghuraj Reddy, AIR 2002 N.O.C. 120 A.P.).

DISSOLUTION OF FIRM DUE TO DEATH OF PARTNER: Where the deed of partnership did not contain clause that remaining partner could carry on the business thereafter, held that on the death of partner the firm stood dissolved. As there was no proof of fresh agreement or business being done subsequently, the same would not tantamount to continue of earlier partnership (Shivraj Reddy and Brothers v S. Raghuraj Reddy, AIR 2002 N.O.C. 120 A.P.).

(4) Dissolution by notice in Partnership at will [section 43] When the partnership is at will as defined in section 7, the partners are not bound to remain as partners or continue the partnership for any fixed period. According to section 43, such a firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm. The notice must clearly and in unambiguous terms indicate the intention of the partner giving notice to dissolve the firm. Dissolution by a notice under this section will be valid even though one of the partner to whom the notice is given is insane. When the partnership was originally constituted for a fixed term, but the partners continue the business even after the expiry of the term, unless otherwise agreed, the partnership is now deemed to be a partnership at will and therefore, it can now be dissolved once giving cannot be withdrawn unless the other partner agree to the same.

The notice for dissolution is statutory requirement, and therefore the requirements of section 43 has to be satisfied. Therefore, if a partner writes a letter to his lawyer, who also happens to be his arbitrator, indicating that the dispute relating to the dissolution is to be referred to arbitration, that will not result in the dissolution of the firm, as in such a case there is no intention to dissolve the firm by notice to other partner.

If the partnership agreement stipulates the dissolution of partnership in a manner as may be mutually agreed between parties, it cannot be said to be partnership at will. Such a partnership not being a partnership at will cannot be dissolved unilaterally by one partner giving notice to other partner, under section 43 of the partnership Act.

Although a partnership at will can be dissolved by a notice, there is, however, nothing which prevents the dissolution of such partnership under the other provisions of the Act. Thus, a partnership at will could also be dissolved by mutual consent, insolvency or death of a partner.

DATE OF DOSSOLUTION

The partner giving a notice for the dissolution of a partnership at will may mention the date from which he wants the dissolution to be effective. if that is so, the firm will be dissolved from the date mentioned in the notice . if no such date has been mentioned, the dissolution will take effect from the date of the communication of the notice. A partner could give such a notice without going to the court, but if a partner so like, he may effect the dissolution by going to the court. In such a case partnership will be deemed to be dissolved when the summons accompanied by a copy of the plaint is served on the defendant, where there is only one defendant, and on all defendants, when there are several defendants.. since a partnership will be deemed to be dissolved only from one date, the date of dissolution would have to be regarded to be the one on which the last summons were served.

IN *harish kumar v Bachan Lal*, there was a partnership at will entered into though partnership deed date 30 . 3 . 1954 . on 18 . 7 . 1971 the partners decided not to transact any business thereafter, and the continuance of the business was stopped. it was held that the date of dissolution of the firm was 18 . 7 . 1971, when the continuance of further business was stopped, and the suit for rendition of accounts filed more than three years after the date of dissolution was barred by Article 5 of the Limitation Act.

DISSOLUTION OF PARTNERSHIP AT WILL BY OTHER MODES THAN NOTICE

It has been noted above that a partnership at will can be dissolved by a notice in writing by one partner to all others indicating his intention to dissolve the firm . in such a case, consent of other partner is not required. however, this provision does not preclude the partners to dissolve a partnership at will with the consent of all the partners.

A partnership at will may also be dissolved on the death of a partner. if a partner dies before the dissolution could become effective by a notice of a partnership at will ,the dissolution would take place from the date of the death of a partner and the rights of the partners will be the same as they would have been on the dissolution by the death of a partner (*McLeod v Dowling* 43 T.L.R. 655).

(5) Dissolution by the court [s 44]

S 44 mentions certain grounds on which a suit can be filed for the dissolution of a firm. the provision is as follows:

44. Dissolution by the Court.—At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely:—

- (a) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;**
- (b) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;**
- (c) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;**
- (d) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;**
- (e) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) or has allowed it to be sold in the recovery of arrears of land revenue or of any dues recoverable as arrears of land revenue due by the partner;**
- (f) that the business of the firm cannot be carried on save at a loss; or**
- (g) on any other ground which renders it just and equitable that the firm should be dissolved.**

The need for dissolution by the court arises when all the partners do not want the dissolution. the partner or partners who want dissolutin can file a suit and the other partners may contest the same . it may be noted that section 44, which permits a partner to invoke the jurisdiction of the court for the bdissolution of the firm,is not subject to contract between the partners permitted under section 11 . therefore,a partner can always file a suit the dissolution of the firm if his case is covered under section 44.

a suit for diissolution can be filed only when one or the other ground mentioned in section 44 is there . even when there is a valid ground for filing the suit for dissolution and a pertner accordingly files the suit, the court is not bound to decree dissolution as this section clearly provides that "At the suit of partner, the court may dissolve the firm."

the grounds which justify the filing of suit by a partner for the dissolution of the firm as mentioned in Section 44 are as under

- (a) Unsoundness of mind:** When a partner becomes of unsound mind, nither can he protect his

own interest nor can he perform his duties as a partner. therefore,when a partner becomes of unsound mind, a suit for the dissolution of the firm can be filed. such a suit may be filed either on behalf of the partner who has become of unsound mind, or by any other partner.

(b) Permanent incapacity to perform duties: When a partner becomes permanently incapable of performing his duties as a partner that is a good ground for applying to the court for the dissolution of the firm. when the incapacity is not permanent, the court would not grant relief. in *Whitwell v Arthur* (35 Beav. 340) ,one partner filed asuit for the dissolution of the firm when the other suffered from the paralytic attack and was thereby incapacitated from performing his duties as a partner. It was found from medical evdience that the incapacity was not likely to be permanent as thedefendant's health was improving. the court did not grant the dissolution of the firm.

When a partner becomes permanently incapable of performing his duties, the suit for dissolution can be files only by any other partner, and not by the partner who suffers from the incapacity.

(c) CONDUCT INJURIOUS TO THE PARTNERSHIP BUSINESS: When a partner is guilty of conduct which is likely to effect prejudicially the carrying on the business of the firm, the court may dissolve thefirm on that ground . Misconduct need not be with regard to the partnership business, but the conduct should be such as should prejudicially affect the partnership business. the Act of adultery by a partner in a firm of bankers has been considered to be no ground for seeking dissolution by the other partners but that may be so if it is a firm of medical practitioners. conviction for a breach of trust, or the adultery by one partner, with another partner's wife are grounds for the dissolution of the firm.

The suit for dissolution cannot be brought by the guilty partner. it can only be brought by a partner other than the one who is guilty of conduct discussed above.

(d) PERSISTENT BREACH OF PARTNERSHIP AGREEMENT: When a partner wilfully and persistently commits breach of agreements relating to the management of the affairs of the firm, or so conducts himself in matters relating to the firm's business that it is not reasonably practicable for the other partners to carry on the business in partnership with him, a suit for the dissolution of the firm may be filed. In *Harrison v. Tenant*, one of the partners in a firm of solicitors ignored the ohter two partners and declined to settle their disputes by mutual consultation. It was held that the conduct of one of the partners being destructive of mutual confidence, which could not be restored, was a valid ground for the dissolution of the firm. similarly, when due to frequent quarrels, there is no hope of mutual coperation, or a partner prepares false accounts and enters in the accounts smaller sums of money than actually received from the customers. or when a partner refuses to render accounts and take away the books of accounts, or a partner misuses partnership funds for paying personal debts, the court may order

dissolution.

The suit for dissolution in this case also cannot be filed by the guilty partner. only a partner other than him may file a suit.

(e) TRANSFER OF THE WHOLE OF A PARTNER'S INTEREST: When a partner has transferred the whole of his interest in the firm to a third party, it can be a ground on which the court may dissolve the firm. similar would be the position when a partner has allowed his share to be charged under the provisions of the Civil Procedure Code, or has allowed it to be sold in the recovery of the arrears of the land revenue or any dues as arrears of land revenue. it is necessary that the transfer must be of the whole of the partner's interest rather than merely a part of it. for dissolution in this case also the suit can be filed only by a partner other than the one whose interest has been transferred.

(f) WHEN THE BUSINESS CAN BE CARRIED ON ONLY AT A LOSS: The object of every partnership is to make profits. if it appears that the business of the firm cannot be carried on except at a loss, any of the partners may apply to the court for the dissolution of the firm.

(g) WHEN DISSOLUTION IS JUST AND EQUITABLE: The court has been given very wide power of dissolution. Apart from ordering the dissolution of the firm on the ground stated above, the court has been vested with the power of dissolving the firms on any other ground which renders it just and equitable that the firm should be dissolved. In *Abbot v. Crump* (1870 5 Beng L.R. 109) , adultery by one partner with another partner's wife was held to be a good ground for the dissolution of the firm by the court.

When the partnership deed provides for appointment of arbitrator for referring disputes to him, such arbitrator has also the power to decide as to whether a firm may be dissolved or not.

ACCOUNTS OF THE DISSOLVED FIRM

On the dissolution of a firm, a partner can ask for the accounts of the dissolved firm. the right of a partner to ask for accounts of the dissolved firm from other partner is a substantive right, and it can be enforced by filing a suit

In *Budh Prakash v. Santosh Pal Dubish* (AIR 1998 All 84), it has been held that once a suit has been filed to enforce the right, the withdrawal of suit by the partner amounts to abandonment of that vested right. After that such right cannot be claimed by filing another suit. thus, a fresh suit cannot be maintained unless there is fresh cause of action .

COURT HAS JURISDICTION WHERE CAUSE OF ACTION ARISES

It may be noted that a suit for dissolution and accounts can be maintained in a court within whose jurisdiction cause of action has arisen in whole or in part, though that court has no jurisdiction over the assets of the firm which are immovable properties.

When a suit has been filed seeking dissolution of the firm and accounts and certain movable properties belonging to the partner suing for dissolution, the said suit would not be barred as without jurisdiction, on the ground that certain immovable properties belonging to the firm were situated beyond the territorial jurisdiction of the court in which the suit for dissolution was filed.

LIABILITY FOR ACT DONE AFTER DISSOLUTION [section 45]

It has been noted above that when a partner ceases to be a partner by retirement or expulsion, his liability for the Acts of the firm done after such retirement or the expulsion, towards the third parties can still arise until a public notice of the fact is given. S 45 incorporates a similar provision in case of dissolution. It states that notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any Act done by any of them which would have been an Act of the firm if done before the dissolution, until Public notice is given of the dissolution. the reason for such a liability is that the third party, who knew of their partnership and of mutual agency, can continue to presume that the mutual agency between such persons continues until public notice of the end of that mutual agency is given.

VALIDITY OF ACKNOWLEDGMENT BY ONE PARTNER IN SUIT FOR RECOVERY BY BANK AGAINST PARTNERSHIP FIRM

Where the facts showed that one of the partners, Defendant No. 2 had categorically informed bank about disputes between partners. Held, that acknowledgment of balance consideration by other partner, Defendant No. 3 thereafter will not bind a partner, Defendant No. 2 (Union Bank of India v Sonywell Electronics, AIR 2001 Del. 386).

PUBLIC NOTICE

According to section 72, a public notice means a notice in the official Gazette, in at least one vernacular newspaper circulation in the district where the firm to which it relates has its place or principal place of business, and if the firm is registered, to the registrar of firms concerned. Therefore, merely publication of the notice in a local newspaper is not sufficient, and such a notice does not absolve the outgoing partner from liability towards a third person.

Such a notice may be given by any partner.

In the following cases, the liability of the partners does not arise after the date of dissolution even though no public notice of dissolution of the firm has been given.

(1) when a partner dies, his estate is not liable for the acts done after his death. No public notice is needed on the death of a partner because the fact of death of a partner is deemed to have come to the knowledge of the persons who knew him.

(2) the position of a partner who is adjudicated insolvent is similar to that of a deceased partner. In his case also, no public notice is needed and his estate is not liable for the acts done after the dissolution of the firm.

(3) No public notice is needed in case of a retired partner who was not known to be a partner to the third party dealing with the firm. This provision is similar to the one contained in proviso to s 32 (3).

In *Juggilal Kamlat v Sew Chand Bagree* (AIR 1960 Cal. 463), a firm consisting of three partners A, B and C was established in 1933 in the firm name, 'Messers Sew Chand Bagree', and it was got registered in the same firm name and with the same partners, i.e., A, B and C. In 1945, the firm name was dissolved and thereafter only A carried on the business. In 1948, while the business was being carried on by A alone, he made a contract in the name of the firm, i.e., Messers Sew Chand Bagree with the appellants, Messrs Juggilal Kamlat. The appellants, who obtained a decree against the firm, wanted to make A, B and C liable. It was contended that public notice of dissolution had not been given and, therefore, B and C were also liable along with A. It was established that when the appellants entered into the contract, B and C were not known to be partners to them. They came to know of the facts that B and C were also at one time partners only after the dispute in respect of the contract had arisen. It was held that B and C could not be made liable as they were not known to be partners to the appellants when the contract in question was made and, therefore, they were protected under the proviso to s 45.

Continuing authority of partners for the purposes of winding up (s 47)

By dissolution of the firm, the partners cease to be partners with one another and, therefore, the mutual agency which existed between them to act on behalf of each other to continue to carry on the business of the firm also comes to an end. But after dissolution, the winding up of the affairs of the firm has got to be done. For example, the contracts already entered into have to be performed, amount due to the creditors has got to be paid, amount due from the firm's debtors has got to be realised, joint property has got to be disposed of and converted into cash. Moreover, capital contributed by the partners has to be refunded. Sometimes for realising the debts, suit may have to be filed. Although mutual agency between the partners comes to an end for the purpose of making fresh transactions or continuing the business, but the authority of each partner to bind the firm, and other mutual rights and obligations of the partners, continue

notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution (s 47). Thus, although a partner cannot place fresh order for the goods, but he can take delivery of the goods ordered before dissolution and pay for them.

The following observations in *Motiram Chimanram v Sarup Chand Pirthi Raj*(AIR 1937 Bom. 81), explain the authority of a partner during winding up:

"It is, therefore, clear that though the dissolution of a firm causes a dissolution of the partnership between the partners, the partnership still subsists, but merely for the purpose of winding up its business and adjusting the rights of the partners inter se, and for this purpose the authority of the partners to bind the firm, and all their mutual rights and obligations, continue notwithstanding the dissolution. The power of each partner however extends only so far as it is necessary to wind up the affairs of the firm and complete transactions already begun. It has been held that if a debt is owing to the firm, payment by the debtor to anyone of the partners extinguishes the claim of all the partners and discharges the debtor, even though a particular partner or a third person is appointed to collect the debts owing to the firm, and whether the debtor is aware of such appointment or not. Any partner of a dissolved firm can therefore recover payment of a debt due to the firm. He can effectually release the debtor and also give a valid receipt for the debt. But neither the release nor the receipt will be binding on his co-partners if the receipt is given, or the releasing partner acts, in fraud of his co-partners and in collusion with the debtor."

In *Butchart v Dresser* (102 R.R. 269), A and B, the two partners agreed to buy certain shares. The payment for those shares had not been made and the firm was dissolved. A pledged those shares to borrow money from the firm's bankers to pay for those shares. B contended that the pledging of shares was not valid as the firm had been dissolved and the bankers knew about the dissolution.

It was held that the pledging of the shares was necessary to raise funds for completing the contract previously made by the firm. It was not beyond the authority of the partner doing so and as such the other partner was bound by the transaction.

In *Kedar Nath v Firm Rekh Chand Dasu Ram* (AIR 1983 All 270), the question before the Allahabad High Court was: Whether a decree obtained in favour of the firm, could be executed by only one of the partners after the dissolution of the firm? It was held that the execution of the decree was not a new transaction. "It was a decree in favour of the firm and being an asset of the firm, it was the duty of the partners to collect it... and one of the partners of the dissolved firm could surely perform that duty and had the necessary authority to do so under s 47 of the Indian Partnership Act. His actions were binding on the firm."

Proviso to s 47 states that the rule of the existence of mutual agency between the partners for the purpose of winding up does not apply in the case of an insolvent partner, and the firm is in no case bound by the acts of a partner who has been adjudicated insolvent. However, any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner with the insolvent, can be made liable as a partner, under the doctrine of holding out.

Right to have business wound up (s 46)

By dissolution, the relation of partnership between various partners comes to an end. Thereafter, there has to be winding up of the affairs of the firm. That includes realisation of the assets of the firm and also paying off all the liabilities, and then to distribute the surplus, if any, amongst the partners. On the dissolution of a firm, every partner or his representative has a right to see that the affairs of the firm are properly wound up. He has a right to have a property of the firm applied in the payment of the debts and liabilities of the firm. If, on the dissolution of the firm, the debts and liabilities of the firm remain unsatisfied, each partner continues to be exposed to the risk of being made jointly and severally liable for the same towards third parties. To avoid any such situation, every partner or his representative has been made 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 then there is distribution of the surplus amongst the partners or their representatives according to their rights. The right contained in this section is also known as the partner's general lien over the surplus assets of the firm. The lien is not on any specific property but is only in the form of a claim against the surplus assets on realisation.

Mode of settlement of accounts (s 48)

S 48 mentions the mode of the settlement of accounts between the partners on the dissolution of the firm. The rules as stated in this section are applicable when the partners have not made an agreement on these points. The rules which emerge from this section are as under:

1. Losses are to be shared equally. The deficiency in capital is also to be treated like an ordinary loss and the partners are to bear that loss in the same proportion in which they were sharing profits and losses. For example, A, B and C contributed a capital of Rs. 25,000/-, Rs. 20,000/- and Rs. 5,000/- respectively, but they share the profits and losses equally. The total capital is Rs. 50,000/-. If the assets realise Rs. 20,000/- only, there is deficiency of capital to the extent of Rs. 30,000/- Each partner is bound to contribute Rs. 10,000/- for the loss. After the partners make good this deficiency, total amount of Rs. 50,000/- will be available and that will be utilised for the return of capital contributed by the partners.

In *Nowell v Nowell* (1869 L.R. 7 Equity Cases 538), A and B have contributed unequal amount of 1929 pounds and 29 pounds towards the capital. They had agreed to share the profits and losses equally. A deficiency of 500 pounds in capital having arisen, it was held that the same was to be shared equally between A and B.

2. On the dissolution of the firm, if the amount available is sufficient to meet all the claims of the partners and the third parties, there is no problem. If, on the other hand, the amount available is insufficient, the payments are to be made in a certain order. S 48 (2) provides that the amount available is to be utilised for making payments in the following order:

- i) Making payments for the debts of the firm to the third parties;
- ii) If some partners have given advance over and above the capital, then the amount is to be utilised in making payment to each one of them rateably;
- iii) Making payment to each partner rateably what is due to him on account of capital;
- iv) The residue, if any, is deemed to be profit and the same is to be divided among the partners in the proportions in which they were entitled to share profits.

In *K.A. Gundu Rao v Shri Ramnarayana* (AIR 1994 Kant. 217), it has been held that the term 'capital' cannot be equated with the term 'assets'. It cannot be said that the benefit of the assets should accrue only to those who had contributed capital. Assets are acquired not merely by utilising capital, but also by credibility and skill of all the partners.

In *Deoki Prasad v Anar Dai Poddar* (AIR 1999 Pat. 122), it has been held that a suit for accounts of the dissolved firm under s 48 has to be filed within prescribed limitation period. In this case, the firm was dissolved in 1964 on the completion of the job of construction of a particular work. The suit for the accounts of the dissolved firm instituted in 1980 was held to be time barred, as it was filed much after the lapse of period of three years prescribed for such an action.

Payment of the firm debts and separate debts (s 49)

Sometimes there may be joint debts due from the firm and separate debts due from a partner and the property of the firm may not be enough to satisfy them all. The question arises as to which debts are to be satisfied out of the firm's property. A similar question also arises when there is a claim against the separate property of a partner of the joint debts and the separate debts. S 49 incorporates the following rules in this connection:

Personal profits earned after dissolution (s 50)

We have already noted s 16 (a), according to which no partner can make a personal gain out of any transaction of the firm or the use of the name, property or business connection of the firm. If he makes any such gain, he shall account for that to the firm. A similar duty is contained in s 50 on the dissolution of a firm by the death of a partner. Therefore, a partner making personal profits after dissolution and before winding up has to account for those profits. The reason is that until there is winding up, all the partners continue to be the owners of the firm and also the joint property and, therefore, no partner can gain any personal advantage by the use thereof for his personal gain. S 53 of the Act empowers the partners or their representatives to restrain any other partner or his representatives from carrying on the similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up.

If, after the dissolution of the firm, any partner or his representative buys the goodwill of the firm, he can make use of the firm name and he shall not be subject to the liability subject above.

Return of premium on pre-mature dissolution (s 51)

When a person is admitted as a partner to an already established business, he has generally to pay some consideration, known as premium to secure the right of becoming and remaining a partner in the firm. The premium goes to the pockets of those persons who were already carrying on the business.

If a person pays premium to become a partner for a certain specified period, but the partnership ends before the expiry of that term, he is entitled to refund of premium. How much premium is to be refunded will depend on the term on which he became a partner and the length of time during which he was a partner (s 51). Regarding these things, whatever is reasonable will be returned.

It may be noted that the return of the premium or part thereof is allowed when a person became a partner for a fixed term, and there is dissolution of partnership before the expiry of that term. Therefore, there is no question of return of premium if the partnership was at will.

In the following exceptional cases, even though the partnership is for a fixed term, there will be no refund of premium on its premature dissolution:

1. When the dissolution of partnership occurs by the death of a partner, there is to be no refund of premium unless there is an express stipulation in a contract between the partners. But if a

person knowing himself to be in a dangerous state of health and suffering from a fatal disease conceals this fact and receives the premium, it is a case of fraud and the premium will have to be refunded if there is premature dissolution due to the death of such partner.

2. When the dissolution of the firm is mainly due to the misconduct of the partner who paid the premium, he is not entitled to any refund. The reason is that a guilty person should not take advantage of his own wrong. But if the person receiving the premium is guilty, or both the partners, i.e., the one receiving and the one paying the premium are guilty, or where none of them is guilty, the court will order the refund of premium.

3. When the dissolution is by an agreement but the agreement does not contain any provision for the return of premium or any part thereof, nothing is to be refunded. In such a case, the inference is that if the partners while agreeing to the dissolution are silent about the return of the premium, they do not intend any return.

Rights on rescission of partnership contract (s 52)

When a person becomes a partner, he invests capital. He may sometimes give advance over and above the capital, or he may have paid premium for becoming a partner. During partnership he may make payments on behalf of the firm. Apart from that, for all acts of the firm done while he is a partner, he incurs joint and several liability towards third parties. When a partner rescinds the contract of partnership and leaves the firm on the ground of fraud or misrepresentation of the other partners, all his interests have got to be protected. S 52 grants necessary protection to the partner thus rescinding the contract. Apart from the right of avoiding the contract on the ground of fraud or misrepresentation which is available to him according to s 19 of the Indian Contract Act, and also a right to claim damages for fraud under the law of torts, he is entitled to the following rights:

1. He has a right of lien on, or a right of retention of, the surplus assets so far as it may be necessary to return the capital contributed by him and also for any other sum which he may have paid for the purchase of share in the firm, i.e., payment of premium made by him.

2. He is to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm. Being treated as a creditor means priority in the payment of that amount, as is stated in s 48(2)(i).

3. He has also a right to claim indemnity from the partners guilty of fraud or misrepresentation against all the debts of the firm.

Right to restrain from use of firm name or firm property (s 53)

Not only during the continuance of the firm but even after dissolution, a partner cannot use the firm's property or firm's name for personal benefit, until the affairs of the firm have been completely wound up. S 53 empowers a partner or his representative to restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up. This rule is subject to a contract between the partners to the contrary. However, where a partner or his representative has bought the goodwill of the firm, he can use the firm's name.

In *Rajendra Kumar Sharma v B.K. Sharma* (AIR 1994 All 62), it has been held that in the absence of a contract between the partners, after the dissolution of the firm and before its winding up, no partner can use the property of the firm for his own benefit without the consent of the other partners.

Agreement in restraint of trade on dissolution (s 54)

On the dissolution of the firm, one of the partners sometimes may purchase the business, or sometimes the business may be sold to a third party. The partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within specified period or within specified local limits. Notwithstanding the rule contained in s 27 of the Indian Contract Act that an agreement in restraint of trade is void, such an agreement has been declared to be valid by s 54, if the restrictions imposed are reasonable.

Sale of goodwill after dissolution (s 55)

Goodwill being an asset of the firm, on the dissolution of a partnership firm, the same may be sold either separately or alongwith other property of the firm [s 55(1)]. According to s 55 (2), after the sale of goodwill, a partner is entitled to carry on a business competing with that of the buyer of goodwill and he may also advertise such business. The carrying on such business by a partner is, however, subject to the following restrictions:

1. He cannot use the name of the firm. On the sale of goodwill, it is only the buyer of the goodwill who can use the name of the firm.
2. He cannot represent himself to be carrying on the business of the firm. In *Hookham v Pottage* (1872 8 Ch. 9), on the dissolution of the firm, 'Hookham and Pottage', by a decree of the court, it was decided that the goodwill should belong to Hookham. Hookham now continued the business under the name 'Hookham & Co.' The other partner, Pottage, also started a business in the same area and named his shop as, "Pottage from Hookham and Pottage." It was held that use of the firm name like that would create an impression that he was connected with the old firm and,

therefore, Hookham was entitled to obtain injunction restrain Pottage too use the firm name like that.

3. He cannot solicit the custom of persons who had been dealing with the firm before dissolution. It means that he cannot canvass for the customers being diverted from the old business towards him. If they themselves come to him, he may attend to them, but it will be wrong if he approaches them with an idea to persuade them from being diverted towards himself. In *Trego v Hunt* (1896 A.C. 7), Trego, who was a varnish and japan manufacturer took Hunt into partnership on the condition that the goodwill of the business will be the sole property of Trego. Trego died and then Hunt made an agreement with Mrs. Trego, who succeeded Mr. Trego, that he would continue as partner for 7 years and the goodwill will remain the sole property of Mrs. Trego. When approximately one year of partnership was left, it was discovered by Mrs. Trego that Hunt had employed a clerk of the firm to prepare a list of the firm's customers, after the office hours. His object obviously was to approach them after retirement to canvass them for becoming his customers. It was held that Mrs. Trego was entitled to obtain an injunction to restrain Hunt from making such copies of the lists of the firm's customers.

Agreement restraining similar business

If the buyer of the goodwill wants further protection of his interest, he may make an agreement with the seller of the goodwill, i.e., the partners of the firm, stipulating that any such partner shall not carry on any business similar to that of the firm within a specified period or within specified local limits. Notwithstanding the rule contained in s 27, Indian Contract Act, that an agreement in restraint of trade is void, such an agreement will be valid if the restrictions imposed are reasonable [s 55 (3)].

In *Hukmi Chand v Jaipur Ice & Oil Mills* (AIR 1980 Raj. 155), at the time of dissolution of the firm under the dissolution deed, the retiring partner sold his share of goodwill in favour of other partners and agreed with them that he would not carry on the same kind of business carried on by the firm within the area of land in his possession and adjoining the factory of the firm. Subsequently, the retiring partner sold his land to his father, and the father entered into a partnership for carrying on the same kind of business on that very land. The other partners filed a suit for injunction against the retiring partner, his father and the father's partners restraining them from carrying on the said business on the said land. It was held that the condition in the agreement of not carrying on similar business by the retiring partner, only on the adjoining premises was reasonable and binding on the transferees of the retiring partner, and therefore an injunction restraining the carrying on of similar business was issued,

"Goodwill" is an asset of the partnership firm

It was clear that the goodwill was an asset of the firm and may be taken into account when there was general dissolution of the firm. Every partner had a right, in the absence of agreement to the contrary, to have the goodwill of the business sold for the common benefit of all the partners. This, however, did not mean that the goodwill was to be taken into account only when there was a general dissolution. Even the legal representatives of deceased partners will be entitled to a share in the goodwill of a partnership which is continued. By virtue of s 55(1) the goodwill had to be disposed of as provided by the agreement. Where the partners had made no provision for it by their agreement the goodwill has to be included in the asset. And in consequence of such conclusion it may either be allotted to any of the partners or may be sold, if it was to be sold, either separately or along with other property of the firm (*Sujan Suresh Sawant v Kamlakant Shantaram Desa* AIR 2004 Bom. 446).

