

R-117

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 06.12.2010*
Judgment Delivered on: 08.12.2010

+ **RSA No.182/2002 & CM No.497/2002 (for stay)**

M/S VESCO PRODUCT COMPANY Appellant
Through: Mr.O.P.Sharma, Advocate.

Versus

SH.RAJINDER NATH PATHAK Respondent
Through: Mr.Aditya Kala, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. The plaintiff M/s Vesco Products Company has filed the present suit through its partner Seva Nath Pathak. It was a suit for possession. The averment is that the plaintiff is partnership firm registered with the Registrar of Firm, Calcutta of whom Seva Nath Pathak was one of the partners. Plaintiff is the owner of the property bearing No.17-B/30, Desh Badhu Gupta Road, New Delhi. This property was purchased by the plaintiff vide sale deed dated 17.3.1969. Defendant Rajinder Nath Pathak is the son of Seva Nath Pathak and brother of Sarvshri Birendra Nath Pathak and Vasisth Yogendra Nath Pathak who are the other partners in the firm. The plaintiff firm consists of only three partners Sarvshri Seva Nath Pathak and his two sons Birendra Nath Pathak and Vasisth Yogenara Nath Pathak. The plaintiff because of his close

relation with the defendants allowed the defendant to remain in possession of three rooms, one bath, one latrine and entire terrace in the aforementioned property. Defendant is living there only as a licensee; he has no right or interest in the property. In spite of the requests to the defendant to vacate the suit property he has not done so. Present suit was accordingly filed.

2. The written statement filed by the defendant has contested the suit; it is stated that the parties are governed by a landlord-tenant relationship and not by a licensor-licensee relationship.

3. Trial Judge framed the following three issues:

1. Whether the present suit is barred under Delhi Rent Control Act. OPD
2. Whether the plaintiff is entitled to the relief claimed for? OPP
3. Relief.

4. On the basis of the oral and documentary evidence, the suit of the plaintiff was decreed; defendant was directed to hand over peaceful possession of the suit property to the plaintiff.

5. In appeal, the impugned judgment dated 03.9.2002 had reserved the finding of the Trial Judge. Suit of the plaintiff was dismissed being barred under the provisions of Section 69(2) of the Indian Partnership Act, 1932.

6. This is a second appeal. It was admitted on 12.7.2007 and the following substantial question of law was formulated. It inter alia reads as under:

Whether memorandum Ex.PW-1/2 produced before the Civil Court can be treated as registration of the firm, if so to what effect?

7. On behalf of the appellant, it has been urged that the plaintiff has been non-suited before the appellate Court only on the ground that the partnership was not registered under Section 69 (2) of the Indian Partnership Act 1932. It is submitted that the provisions of

the said Section were inapplicable. The present suit had been filed by the plaintiff against the defendant who was a licensee and trespasser in the suit property. Even presuming that the firm was unregistered (although not admitting) yet a suit of this nature was not barred as it was not a suit for the enforcement of a right arising out of a contract entered into by the unregistered firm with the defendant. This suit was not in any manner related to the firm business. For this proposition reliance has been upon AIR 2000 SC 1267 M/s Haldiram Bhujawala and Anr. Vs. M/sanand Kumar Deepak Kumar & Anr.

8. On merits, it is stated that the present partnership firm had been partnership had been constituted in the year 1964 ad it had been duly registered in 1973 which is evident from Ex.PW-1/2. Ex.PW-1/2 which is the memorandum reads as follows:

“The Registrar of Firms, West Bengal, hereby acknowledges receipt of the undermentioned document and intimates that it has been filed/recorded/registered pursuant to the Indian Partnership Act, 1932 (Act IX of 1932.)”

It is pointed out that this document clearly establishes that the firm stood registered. The partnership of the year 1993 was only a continuation of this first partnership of the year 1964. Retirement of a partner did not lead to any automatic dissolution of the firm and this had also clearly been stated in the document Ex. PW-1/5 which in fact had recited that this is a supplementary deed of partnership in continuation of earlier partnership of 09.12.1964. Ex.PW-1/2 had shown that the firm was registered. On this count also the suit of the plaintiff could not have been dismissed.

9. Arguments have been countered. It is pointed out that the first partnership which had been entered between the parties on 09.12.1964 was never a document which was proved on record. A

new partnership had been constituted vide Ex.PW-1/5 dated 7.4.1993 between two partners only. The present suit had been filed in the year 1992. The question of the registration firm which had been constituted in the year 1993 being registered at the time of the institution of the suit in the year 1992 did not arise.

10. The question of law as formulated has been noted hereinabove. Record shows that a partnership of three partners had been entered into in the year 1964 i.e. on 09.12.1964. This document was not proved. It was marked as mark A. This firm which had been constituted on 09.12.1964 had been registered vide Ex.PW-1/2 i.e. on 27.02.1973. Recitals in the document establish this. However, it is not in dispute that thereafter one partner had retired; a new partnership was constituted which is Ex. PW-1/5. This partnership deed is dated 07.4.1993. Page 3 of the document clearly states that one partner Seva Nath Pathak has voluntarily retired w.e.f 02.01.1993; partnership is dissolved; new partnership is constituted between the two partners i.e. the first and second partner. Ex.PW-1/5 categorically recites that this was a new deed which had been entered into between the two partners; terms and conditions were stipulated therein. This document runs into 18 pages. This document was not registered. It is also not the case of the appellant before this Court that Ex.PW-1/5 was registered.

11. The question, however, which has to be answered is as whether to enforce a suit for possession by the plaintiff against the defendant who was stated to be a licensee, registration of the firm under Section 69(2) of the Indian Partnership Act was mandatory and if so its effect.

12. There is no dispute to the proposition that provisions of Section 69(2) are mandatory in character and a suit in respect of a right vested in the plaintiff under a contract which he has entered into as partner of the unregistered firm would be void. A suit by an unregistered firm also could not be validated by a subsequent registration of the firm. Section 69(2) prohibits the enforcement of a right in respect of an unregistered firm. Section 69(3) carves out three exceptions which admittedly are not applicable in the instant case.

13. Relevant would it be to extract the provision Section 69(2) of the Indian Partnership Act, 1932; it reads as follows;

“(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.”

14. It is clear that the provisions of Section 69(2) is not attracted to any and every contract between the parties. A contract by an unregistered firm referred to in Section 69(2) must only be entered into by the firm with the third party-defendant in the course of the business dealings of the plaintiff firm with such a third party-defendant. The word used in Section 69(2) “arising out of a contract” necessarily refers to a contract entered into in the course of a business transaction by the unregistered plaintiff firm with the defendant/its customer; the idea is to protect those who were in commerce who deal with such a partnership firm to know the names of the partners of the firm before they deal with them in business.

15. Plaintiff M/s Vesco Products Company has filed the present suit for possession against Rajinder Nath Pathak. Plaintiff is stated to be the owner of the said property bearing No.17-B/30, Desh

Bandhu Gupta Road, New Delhi which he had purchased vide sale deed dated 17.3.1969. Plaintiff firm at that time was comprised of three partners namely Seva Nath Pathak, Birendra Nath Pathak and Yogendra Nath Pathak. The defendant is another son of Seva Nath Pathak. Because of the close relations between the parties, the plaintiff firm had permitted the defendant to occupy a portion of the suit property; he was stated to be a licensee having no right or interest in the suit property; defendant had gone to the extent assaulting his father namely Seva Nath Pathak through whom this suit had been instituted; in spite of repeated requests defendant did not vacate the suit property.

16. Trial judge as noted hereinabove had decreed the suit of the plaintiff and defendant was directed to handover vacant possession of the suit property to the plaintiff.

17. In appeal the judgment was set aside. The merits of the case were not discussed. Reversal was only on the ground that the suit of the plaintiff was barred under Section 69(2) of the Indian Partnership Act.

18. This aforementioned statutory provisions makes it mandatory that every partnership filing a suit against a third party for enforcement of a right arising out of a contract against a third party would be barred.

19. The Supreme Court had analyzed this proposition in the case of M/s Haldiram (supra). While dealing with the ambiguity in Section 69(2) of the said Act, the Court had held as follows:

“There is considerable ambiguity in S.69(2) (unlike the English Statute of 1916 and 1985) as to what is meant by the words ‘arising out of a contract’ inasmuch as the provision does not say whether the contract in S.69(2) is one entered into by the firm with the defendant or with somebody else who is not a defendant, nor to whether it is a contract entered into with the

defendant in business or unconnected with business. Hence, it is permissible to look into the Report of Special Committee which preceded Partnership Act, 1932 even for purpose of construing S.69(2).

The contract by the unregistered firm referred to in S. 69(2) must not only be one entered into by the firm with the third party-defendant but must also be one entered into by the plaintiff firm in the course of the business dealings of the plaintiff's firm with such third party-defendant. Thus, the legislature when it used the words "arising out of a contract" in S.69(2), it is referring to a contract entered into in course of business transaction by the unregistered plaintiff firm with its customers-defendants and the idea is to protect those in commerce who deal with such a partnership firm in business. Such third parties who deal with the partners ought to be enabled to know what the names of the partners of the firm are before they deal with them in business.

Further S.69(2) is not attracted to any and every contract referred to in the plaint as the source of title to an asset owned by the firm. If the plaint referred to such a contract it could only be as a historical fact. In fact, the Act has not prescribed that the transactions or contracts entered into by a firm with a third party are bad in law if the firm is an unregistered firm."

20. In AIR1988 SC 3085 M/s Raptakos Brett & Co. Ltd. Vs. Ganesh Property, the Court had reiterated that Section 69(2) does not bar the enforcement by way of suit by a unregistered firm, the institution of a statutory right or a common law right. In the said case it was held that the right to vacate a tenant upon the expiry of the lease was not a right arising from a contract but it was a common law right under the Transfer of Property Act or a statutory right under the said Act. Suit was held not to be barred even in the absence of the registration of the partnership firm.

21. The ratio of this judgment is directly in issue in the instant case. Plaintiff had filed a suit against the defendant alleging that he was a licensee; in spite of request he had failed to vacate the suit property; he was an unauthorized occupant. Plaint as framed clearly depicts that what the plaintiff was seeking to enforce was

his statutory right under Section 60 of the Indian Easement Act, 1952; registration of the partnership firm was not necessary.

The defendant was a mere licensee not having any business dealing with the plaintiff firm. The object of this provision as is evident from the report of the Special Committee which had preceded this enactment i.e. the Indian Partnership Act 1932 was for protecting business interests of a third party while dealing with the such a partnership to know the names of the said persons with whom they are so dealing.

22. In view of aforementioned discussion, the appeal is allowed; impugned judgment is set aside. Suit of the plaintiff is decreed. Stay application is also disposed of.

INDERMEET KAUR, J.

DECEMBER 08, 2010
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