

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

+ **RSA No.178/2008 & CM No.10951/2008**

Date of Decision: May 10, 2010

NORTH DELHI POWER LIMITED Appellant
Through: Ms.Saahila Lamba, Advocate.
Versus
JAGDAMBA GASKET (INDIA) Respondent
Through: None.

AND

+ **RSA No.180/2008 & CM No.10983/2008**

NORTH DELHI POWER LIMITED Appellant
Through: Ms.Saahila Lamba, Advocate.
Versus
JAGDAMBA GASKET (INDIA) Respondent
Through: None.

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**CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH**

- (3) Whether reporters of local paper 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

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Parties to both the appeals are same. Since similar substantial question of law has been formulated in both the appeals on 21st April 2010, therefore, vide this common order both the appeals are being decided.

2. Respondent (plaintiff in the suit) is a partnership firm carrying on its business of manufacturing gasket at B-101, Rishi Nagar, Shakur Basti, Delhi. It is electricity consumer of North Delhi Power Limited, the appellant (hereinafter referred to as 'NDPL') (defendant in the suit) through K. No.506-1737717 IP. Appellant has been raising regular bills for consumption of electricity which were being paid by the respondent.

3. Respondent filed a suit for permanent injunction against the appellant for restraining it from disconnecting supply of electricity in the said premises. Trial Court vide its order dated 14th August, 2002 allowed the application of the appellant filed under Order 7 Rule 11 of the Code of Civil Procedure (hereinafter referred to as 'CPC'), seeking rejection of the plaint on the grounds that suit was hit under Section 69(2) of the Indian Partnership Act (hereinafter referred to as 'the Act'), respondent being an unregistered partnership firm. It rejected the plaint holding that suit filed by an unregistered partnership firm i.e. respondent was hit by provisions of Section 69(2) of the Act.

4. Respondent challenged the order of the Trial Court in regular civil appeal. Appellate Court, while relying upon '*M/s. Raptakos Brett & Co. Ltd. Vs. Ganesh Property*', AIR 1998 SC 3085 held that even if the suit had been filed by an unregistered partnership firm against the third party and was treated as incompetent as per provisions of Section 69(2) of the

Act, but since during pendency of the said suit, the firm in order to put its house in order, got itself registered, which fact was brought on record by the firm by placing Form A before the Appellate Court showing registration of the firm w.e.f. 16th January 1997, the defect in filing the earlier plaint was cured and it no longer survived. Appellate Court further observed that suit in question would be deemed to be instituted from the date of registration i.e. 16th January, 1997. It allowed the appeal, set aside the Trial Court's order dated 14th August, 2002 and remanded back the case for trial.

5. In these appeals, appellant has challenged the order of the Appellate Court alleging that the Appellate Court did not properly interpret Section 69(2) of the Act, while allowing the appeals and subsequent registration of the firm could not have cured the inherent defect in filing the suit by an unregistered partnership firm.

6. After receipt of notice of the appeal, respondent put in appearance through Mr. Hari Narayan Takkar, Advocate on three occasions but none appeared on its behalf on 21st April 2010, therefore, in the absence of respondent, following substantial question of law was formulated:-

“Whether subsequent registration of partnership firm during pendency of the suit cures the inherent defect of suit having been filed by an unregistered firm?”

7. None has appeared on behalf of the respondent. Ms.Saahila Lamba on behalf of the appellant has argued that the Appellate Court

committed an error in law by holding that subsequent registration of an unregistered firm cures the inherent defect in filing the suit as the suit was filed by an unregistered firm, which is barred under Section 69(2) of the Act.

8. Section 69(2) of the Act, so far as is relevant for the purpose of just decision of these appeals read as follows;-

“69. Effect of non-registration (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.”

9. Thus, it is clear that this Section bars enforcement of a claim by an unregistered firm against a third party to enforce a right arising from a contract. Not only this, persons suing should have been shown in the Register of Firms as partners in the firm.

10. Eventually, under this Section, firms which did not choose to register under the provisions of the Act have been put in a disability as regards their right to sue. Section 69(2) of the Act is not retrospective in nature. Perception of Section 69 of the Act is against institution of the suit itself and its applicability has to be judged in the first instance at the earliest stage of the suit. Therefore, a suit by an unregistered firm cannot be valid by the subsequent registration of the firm as, subsequent registration

cannot cure the defect which existed at the time of institution of the suit. Registration of a firm is a pre-condition to its right to institute a suit of the nature mentioned in Section 69 (2) of the Act. Therefore, if a suit is filed by an unregistered firm, it is liable to be dismissed.

11. Provisions of Section 69 of the Act are mandatory in nature and there is no power with the High Court to grant the defaulting partnership firm any relief against the disability imposed by the Section. Registration of a firm after institution of the suit does not save it from bar of Section 69(2) of the Act. Intention of the legislature is clear from bare perusal of the Section that only a registered partnership firm can file a suit to enforce a contract with a third party. It would be incorrect to say that if partnership firm is subsequently registered, the suit may be considered to have been instituted on the date when the firm was registered if it was not otherwise barred on that date, as there is no provision of law which permits the court to treat the plaint as filed on a date which is other than the date on which it was actually filed. So if the partnership firm is not registered on the date of institution of the suit, subsequent registration cannot validate the suit and the court cannot allow the suit to proceed.

12. In '*M/s. Shreeram Finance Corporation Vs. Yasin Khan & Ors.*', (1989) 3 SCC 476, in similar circumstances it was held:-

“6. In the present case the suit filed by the appellants is clearly hit by the provisions of Sub-section (2) of Section 69 of the said Partnership Act, as on the date when the suit was filed, two of the partners shown as partners as per the relevant entries in the Register of Firms were not, in fact, partners, one new partner had come in and two minors had been admitted to the benefit of the partnership firm regarding which no notice was given to the Registrar of Firms. Thus, the persons suing, namely, the current partners as on the date of the suit were not shown as partners in the Register of Firms. The result is that the suit was not maintainable in view of the provisions of sub-section (2) of Section 69 of the said Partnership Act and the view taken by the trial court and confirmed by the High Court in this connection is correct. Although the plaint was amended on a later date that cannot save the suit. Reference has been made to some decisions in the judgment of the trial court; however, we do not find it necessary to refer to any of them as the position in law, in our opinion, is clear on a plain reading of sub-section (2) of Section 69 of the said Partnership Act.”

13. Similarly, in *‘Delhi Development Authority Vs. Kochhar Construction Work & Anr.’*, (1998) 8 SCC 559, a suit was instituted by an unregistered partnership firm, it has been held that from bare reading of Section 69(2) of the Act, it is clear that institution of the suit by an unregistered partnership firm against any third party is not valid unless firm is registered and the persons suing are or have been shown in the Register

of Firms as partners of the firms. [Reliance was placed on *M/s. Shreeram Finance Corporation's* case (*supra*)].

14. Appellate Court while rejecting the application of the appellant relied upon *M/s. Raptakos Brett & Co. Ltd.'s* case (*supra*). In the said case while expressing its opinion to the fate of a case if partnership is registered during the pendency of the suit, it observed that if pending the suit before decree is obtained, the plaintiff put its house in order and got itself registered, the defect in the earlier filing, which even though might result in treating the original suit as still born, would no longer survive if the suit is treated to be deemed to be instituted on the date on which registration is obtained. However, the Court did not express any final opinion on this question and also did not feel the necessity of referring the said question to the Larger Bench for reconsideration. In the said case, the Court was dealing with two aspects of the matter, firstly, enforcement of a contract against a third person and secondly, enforcement of a statutory right or a common law right. The Court did hold that as regards enforcement of a contract by a third party, the suit was barred under Section 69(2) of the Act. However, so far as it related to enforcement of a statutory right or a common law right it was maintainable.

15. In the present case, respondent has sought enforcement of a contract against the appellant department and did not seek enforcement of any statutory right or common law right. This suit was admittedly filed by an unregistered partnership firm seeking a relief of injunction against the appellant department. There is no dispute that the suit was filed to enforce a right arising from the contract between the parties to the suit. Therefore, subsequent registration of the firm during pendency of the suit could not cure the inherent defect in filing the suit, filed by an unregistered firm in view of provisions of sub-section (2) of Section 69 of the Act. Trial Court committed an error in law by treating the suit having been filed on the date, when respondent firm got itself registered after filing of the suit.

16. In *'Haldiram Bhujiawala & Anr. Vs. Anand Kumar Deepak Kumar & Anr.'*, (2000) 3 SCC 250, *M/s. Raptakos Brett & Co. Ltd.*'s case (*supra*) was considered by the Supreme Court and it was held:-

“9. The question whether Section 69(2) is a bar to a suit filed by an unregistered firm even if a statutory right is being enforced or even if only a common law right is being enforced came up directly for consideration in this Court in *M/s. Raptokas Brett Co. Ltd. v. Ganesh Property*. In that case, Majmudar J. speaking for the Bench clearly expressed the view that Section 69(2) cannot bar the enforcement by way of a suit by an unregistered firm in respect of a statutory right or a common law right. On the facts of that case, it was held the right to evict a tenant upon expiry of the lease was

not a right 'arising from a contract' but was a common law right or a statutory right under the Transfer of Property Act. The fact that the plaintiff in that case referred to a lease and to its expiry, made no difference. Hence, the said suit was held not barred. It appears to us that in that case the reference to the lease in the plaintiff was obviously treated as a historical fact. That case is therefore directly in point. Following the said judgment, it must be held in the present case too that a suit is not barred by Section 69(2) if a statutory right or a common law right is being enforced."

17. It was further observed:-

"26. Further Section 69(2) is not attracted to any and every contract referred to in the plaintiff as the source of title to an asset owned by the firm. If the plaintiff referred to such a contract it could only be as a historical fact. For example, if the plaintiff filed by the unregistered firm refers to the source of the firm's title to a motor car and states that the plaintiff has purchased and received a Motor Car from a foreign buyer under a contract and that the defendant has unauthorisedly removed it from the plaintiff firm's possession, - it is clear that the relief for possession against defendant in the suit does not arise from any contract with defendant entered into in the course of plaintiff firms' business with defendants but is based on the alleged unauthorised removal of the vehicle from the plaintiff firm's custody by the defendant. In such a situation, the fact that the unregistered firm has purchased the vehicle from somebody else under a contract has absolutely no bearing on the right of the firm to sue the defendant for possession of the vehicle. Such a suit would be maintainable and Section 69(2) would not be a bar, even if the firm is unregistered on

the date of suit. The position in the present case is not different.”

18. In view of my observations and discussion as above, I hold that subsequent registration of a partnership firm during the pendency of the suit for enforcement of a contract against the appellant by an unregistered partnership firm was an inherent defect which could not be cured.

19. Appeal is allowed. Judgment and decree of the First Appellate Court dated 6th February, 2008 is accordingly set aside and that of the Trial Court dated 14th August, 2002 is upheld. Under these circumstances, there are no orders as to costs.

CM Nos.10951/2008 (for stay) in RSA 178/2008 & 10983/2008(for stay) in RSA 180/2008

20. With disposal of both the appeals, these applications have become infructuous. Hence, the same stand dismissed accordingly.

**(ARUNA SURESH)
JUDGE**

**MAY 10, 2010
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