

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.472 OF 2015**

Shri Bhagwanaram Lumbaji Bishnoi ..Applicant

Vs

1.Ranmal jugraj Virwadia .. Respondent

Ms.Yogita M. Deshmukh, Advocate for Applicant.

Mr. Ankit Lohia a/w Mayur Kadam i/b Arun Mehta of Akshar Laws,
Advocates for Respondent no.1.

CORAM : R.G.KETKAR,J.

DATE : 21/12/2015

PC:

1. Heard Ms. Yogita Deshmukh, learned counsel for the applicant and Mr. Ankit Lohia, learned counsel for respondent no.1 at length. Ms. Deshmukh orally applies for leave to delete respondent no.2 as no relief is claimed against them. On the motion made by Ms Deshmukh, leave to delete respondent no.2 is granted. Amendment shall be carried out forthwith.

2. Rule. Mr.Lohia waives service for respondent no.1. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

3. By this Application under Section 115 of the Code of Civil Procedure, 1908, (for short, 'C.P.C.'), original defendant No.1 has challenged the judgment and order dated 09.04.2015 passed by the learned Civil Judge, Senior Division, Palghar below Exhibit-66 in Special Civil Suit No.47 of 2013. By that order, the learned trial

Judge held that the Suit is not hit by Section 69(2) of the India Partnership Act, 1932 (for short 'Act'). 3.

4. In support of this Application, Ms. Deshmukh submitted that petitioner filed application Exhibit-66 under Section 9-A read with Order VII, Rule 11(d) C.P.C., inter alia, contending that the Suit is not maintainable and the provisions of Section 69(2) of the Act are not complied with. She submitted that in paragraph 4 of the application, defendant No.1 reproduced Section 69(1) of the Act. By order dated, 06.02.2015, the learned trial Judge framed the following preliminary issue:

i) Whether the present Suit is hit by Section 69(2) of the Act?

5. Ms Deshmukh submitted that however, the learned trial Judge has not considered Section 69(1) of the Act and in fact the application Exhibit-66 was made for framing this preliminary issue. In the impugned order, the learned trial Judge has not dealt with whether the partnership firm is registered or not as also whether it is hit by Section 69(1) of the Act.

6. Mr.Lohia submitted that the learned trial Judge has framed the issue as to whether the suit is hit by Section 69(2) of the Act. The learned trial Judge, however, has not considered sub-section (1) of Section 69. He further submitted that the impugned order may be set aside and the learned trial Judge may be directed to consider sub-sections (1) to (4) of Section 69 and pass

appropriate orders. He further submits that all contentions of the parties on merits may be expressly kept open as also interim order directing both parties to maintain status-quo passed by the trial Court may also be continued.

7. In view thereof, by consent of the parties, the impugned order is set aside.

(i) Learned trial Judge is directed to consider application Exh.66 filed by defendant no.1 in the light of provisions of Section 69 sub-sections (1) to (4) and pass appropriate orders. All contentions of the parties on merits including the contentions raised herein are expressly kept open.

(ii) Both the parties are directed to maintain status-quo, as ordered by the trial Court. Parties agree that they will appear before the trial Court on 11.1.2016. Learned trial Judge is requested to decide Application Exh.66 without notice to the parties, within eight weeks from the date of appearance of the parties

(iii) Rule is made absolute in the above terms with no order as to costs.

(R.G.KETKAR, J.)

