

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 1225 OF 2014**

Akash Arun Gite

..Applicant

Vs.

Shankar Gajanan Bhoir & Ors.

..Respondents

Mr. Sandesh Patil for the Applicant

**CORAM : R. M. SAVANT, J.
DATE : 19th JANUARY, 2015**

P.C.

1 The Revisionary Jurisdiction of this Court is invoked against the order dated 17-10-2014, passed by the Learned Joint Civil Judge Senior Division, Kalyan, by the said order, the application Exhibit 27 filed by the Defendant Nos.3 and 4, came to be rejected.

2 The Suit in question being Special Civil Suit NO.344 of 2012, has been filed for specific performance of the agreement dated 24-11-1995. The said agreement was entered into by the Defendant Nos.1 and 2 with the Respondent No.1 herein for development of the plot of land bearing Survey No.8, Hissa No.1(part) area admeasuring about 1259 sq.yd. = 1052.64. sq.mtrs. The said agreement was entered into with one M/s. Nilesh Constructions which at the relevant time i.e. in the year 1992 was a partnership firm comprising of the Respondent No.1 and his brother Balkrishna Bhoir. It appears that the said Balkrishna Bhoir expired prior to the filing of the

Suit on 4-8-2011 and it is the case of the Respondent No.1 as stated in the plaint that he is carrying on business in the name of M/s. Nilesh Construction as the sole proprietor after the death of his brother. The maintainability of the Suit was questioned on the touchstone of Section 69 of the Partnership Act. It is the case of the Defendant No.3 i.e. the Petitioner herein that the Suit being filed in the name of an unregistered firm is not maintainable in view of the bar as contained in Section 69 of the said Act. The said application Exhibit 27 filed by the Defendant Nos.3 and 4 replied to on behalf of the Plaintiffs by contending that he has filed the Suit in his personal capacity as a proprietor of M/s.Nilesh Construction and not as partner of the partnership firm or on behalf of the partnership firm. It has further been averred that his brother Balkrishna Bhoir has expired on 4-8-2011 and hence the partnership has come to an end on the said day.

3 The Trial Court considered the said application and in view of the fact situation as stated hereinabove held that since the Suit has been filed by the Respondent No.1 i.e. the original Plaintiff in his personal capacity as proprietor, the question of application of Section 69 does not arise. The Trial Court relied upon Section 69(3)(a) to hold that the said provision carves out an exception and therefore the Suit as filed is maintainable.

4 In my view, having regard to the fact situation which prevails in

the present proceeding namely that the partner had expired prior to the filing of the Suit and that on his death the firm is dissolved and the Plaintiff claims to have carried on business as a sole proprietor, the order passed by the Trial Court rejecting the application Exhibit 27 filed by the Defendant Nos.3 and 4 cannot be found fault with. The Trial Court whilst considering the said issue of maintainability has referred to the judgment cited on either side. In my view, there is no error of jurisdiction or any illegality or infirmity for this Court to exercise its Revisionary Jurisdiction, the above Civil Revision Application is accordingly dismissed.

5 Since the ground of limitation was not made a ground under Section 9A, it would be open for the Petitioner to apply for framing of the issue of limitation in the Suit at the appropriate stage.

[R.M.SAVANT, J]