

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****SUIT NO. 1417 OF 2012
WITH
NOTICE OF MOTION NO. 1480 OF 2012**

Skicon Infrastructure

...Plaintiff

vs.

Hitendra Shankar Gawand & Ors.

...Defendants

Mr.Gaurav Joshi, Senior Advocate, Mrs.Neeta Jain, Mr.Hemang Raythattha,
Mr.Jayesh Mestry i/b. M/s.RMG Law Associates for Plaintiff.

Mr.D.D. Madon, Senior Advocate with Sheelang Shah i/b. For Defendant Nos.1 to 3.

Mr.Aditya Shiralkar i/b. M/s.L.D. Shah & Co. for Defendant No.4.

CORAM : S.C. GUPTE, J.**23 JANUARY 2015****P.C. :**

The Plaintiff applies for withdrawal of the suit with liberty to file a fresh suit. The ground for the withdrawal is that the Plaintiff was not a registered partnership firm as on the date of the suit and was registered with the Registrar of Firms only during the pendency of the suit. It is submitted that non-registration of the Plaintiff's firm as on the date of the suit is a formal defect and that the Plaintiff, in the premises, may be permitted to withdraw the present suit and file the same after the defect is cured. It is submitted that the firm has now been registered on 20 June 2014.

2 Learned Counsel for the Plaintiff relies on a judgment of the Supreme Court in the case of **Haldiram Bhujawala vs. Anand Kumar Deepak Kumar**¹.

3 The application is opposed by Mr.Madon, learned Senior Advocate appearing for Defendant Nos.1 to 3 and Mr.Shiralkar for Defendant No.4. It is submitted by learned Counsel that in the first place, despite the firm not being registered, the Plaintiff has made an averment in the plaint that it was so

1 (2000) 3 SCC 250

registered. Secondly, it is submitted that it is found by the Defendants upon an inquiry under the Right to Information Act with the Registrar of Firms that the Plaintiff's application for registration was destroyed by the office of the Registrar of Firms originally, since the Plaintiff had not complied with the objections raised by the office of the Registrar of Firms in response to its original application. It is submitted that, in the premises, the plea raised by the Plaintiff is not only erroneous but also not bona fide. Learned Counsel in this behalf relies upon certain observations of a learned Single Judge of our Court in the case of **Vilas Shriram Mahale vs. Rajdhaniprasad Rahinprasad Tiwari**².

4 It is not disputed that on 7 March 2008, the Plaintiff had applied for registration under the Indian Partnership Act, 1932. Though it is true that the office of the Registrar had raised certain objections, it is the case of the Plaintiff in its affidavit in rejoinder that the Plaintiff was not aware of these objections and was under a bona fide belief that the firm had already been registered. It is the case of the Plaintiff that on that belief, the Plaintiff proceeded to file at first a suit in the City Civil Court and later after withdrawing the same, filed the present suit in this Court. It is submitted that subsequently it was realized that there was no registration as a matter of fact. Since the papers in connection with the Plaintiff's application for registration were found to have been destroyed by the Registrar of Firms, a fresh application for registration was made by the Plaintiff on 31 March 2014 during the pendency of the present suit. It is an admitted position that the firm is now registered as on 20 June 2014. It is seen from the intimation of the Registrar's office dated 1 March 2014 that the Plaintiff was informed about the destruction of the application and was called upon to file a new application for the first time on 1 March 2014. In response to this communication, the Plaintiff proceeded to file a fresh application and got the firm registered as on 20 June 2014.

5 Leaving aside the question of bona fides of the Plaintiff, which really would be a matter for the consideration of the Court for the purposes of the plea of limitation when the Plaintiff files its fresh suit, it is an admitted position that as

2 2005 (1) Mh.L.J. 596

of the date of the Plaintiff's original suit, the Plaintiff's firm was not registered. This is a formal defect, for which the Plaintiff is within its rights to apply for leave to withdraw the suit with liberty to file a fresh suit after curing the defect. The defect has since been cured by the Plaintiff by obtaining a registration on 20 June 2014. As held by the Supreme Court in the case of **Haldiram Bhujiawala** (supra), if the firm is not registered on the date of the suit and the suit is to enforce a right arising out of a contract with a third party defendant in course of its business, it will be open to the plaintiff to seek withdrawal of the plaint with leave and file a fresh suit after registration of the firm subject of course to the law of limitation. The observations of the learned Single Judge of our Court in the case of **Vilas Shriram Mahale** (supra) are in the context of the plea of limitation in the fresh suit filed after withdrawal of the first suit, which is an aspect which falls for consideration when the plaintiff pleads avoidance of the bar of limitation in filing a fresh suit. Accordingly, there cannot be any serious objection to the grant of leave to the Plaintiff, whilst withdrawing its suit. It is made clear that the question of bona fides of the Plaintiff in making its plea in the first place in the present suit that it was a registered firm, is not considered by me whilst granting this leave.

6 Accordingly, the Plaintiff is permitted to withdraw the present suit with liberty to file a fresh suit after incorporating the fact of its registration on 20 June 2014.

7 It will be open to the Defendants to raise a plea of limitation when the new suit is filed by the Plaintiff. The plea will be decided by the Court on its own merits. The Plaintiff has already submitted in its affidavit in rejoinder dated 21 January 2015 that the Plaintiff undertakes that it will not make any application for ad-interim reliefs in the new suit. The undertaking is accepted.

8 Refund of Court fees in accordance with the applicable Rules.

9 In view of the disposal of the suit, the Notice of Motion does not survive and the same is disposed of.

(S.C. Gupte, J.)