

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH : NAGPUR

Civil Revision Application No. 12 of 2015

**Applicant** : M/s Radiant Udyog

versus

**Respondent** : M/s ABL Engineering Company

Mr Amit Khare, Advocate for applicant

Mr S. N. Dandekar, Advocate for respondent

**Coram : A. P. Bhangale, J**

**Dated : 24<sup>th</sup> June 2015**

**P. C.**

1. By this civil revision application, applicant (original defendant has assailed common order dated 16.2.2015 passed by 8<sup>th</sup> Joint Civil Judge, Senior Division, Nagpur below exhibits 12 and 15. Exhibit 12 was an application filed by applicant/defendant filed under Order 7, rule 11 (d) of the Code of Civil Procedure for rejection of plaint which is rejected by the trial Court while exhibit 15 was an application filed by respondent/plaintiff under Order 23, rule 1 of the Code of Civil Procedure for withdrawal of suit with leave to file fresh one, which is allowed by

the trial Court.

2. Respondent filed suit against applicant for recovery of Rs. 9,15,563/- towards balance cost of the machine supplied by it to the applicant together with interest thereon.

3. On 22.7.2014, applicant filed application under Order VII, rule 11 (d) CPC for rejection of plaint on the ground that it is barred by law vide Section 69 of the Partnership act, 1932 since plaintiff-Firm is not registered with the Registrar of Partnership Firms. Respondent filed reply to the said application stating that the partner was under *bona fide* impression that the Firm is a registered one. However, it was realized that the Firm was unregistered. In view of this admission, respondent/plaintiff filed application on 30.9.20014 seeking permission to withdraw the suit with grant of leave to file fresh one after registration of the Firm. Applicant filed reply to the said application opposing grant of permission to the plaintiff to file fresh suit on the ground that it was not permissible in law.

4. Learned trial Court after hearing the parties, rejected application of defendant under Order VII, rule 11 (d) CPC and allowed application (exhibit 15) of plaintiff seeking permission to withdraw suit

with leave to file fresh suit after registration of plaintiff-Firm by common order dated 16.2.2015.

5. Learned counsel for applicant contended that suit was barred by Section 69 (2) of the Partnership Act and respondent will not be able to file and prosecute another suit even if registration of the Firm is subsequently granted. Learned counsel relied upon ruling of the Supreme Court in **Purushottam & anr v. Shivraj Fine Arts & ors** reported in **(2017) 15 SCC 58** in support of his contention.

6. I have perused the said ruling. Paragraph 8 of the said ruling which is relevant for the present purpose, reads thus :

“8. The question as to whether the subsequent registration of the firm would cure the initial defect in the filing of the suit arose for consideration in *DDA v. Kochhar Construction Work*. This Court held that in view of the clear provision of the Act it was not possible to subscribe to the view that subsequent registration of the firm may cure the initial defect, because the proceedings were ab initio defective as they could not have been instituted since the firm in whose name the proceedings were instituted was not a registered firm on the date of the institution of the proceedings. This Court also noticed the difference of opinion amongst the

High Courts and concluded thus : (SCC p. 562, para 4)

4. Counsel for the respondents, however, invited our attention to two decisions which take a view that subsequent registration of the firm can cure the initial defect provided the registration is before the period of limitation has run out. Our attention was drawn to *M. S. A. Subramania Mudaliar v. East Asiatic Co. Ltd.* And *Atmuri Mahalakshmi v. Jagadeesh Traders*. However, the High Court of Patna in *Laduram Sagarmal v. Jamuna Prasad Chaudhuri* and the High Court of Madras in *T. Savariraj Pillai v. R. S. S. Vastrad & Co.* take a contrary view and hold that the suit is incompetent ab initio. We have considered these decisions but in the light of the plain language of Section 69 of the Partnership Act read with Section 20 of the Arbitration Act and in view of the decision of this Court in *Shreeram Finance Corpn.* We are clearly of the opinion that proceedings under Section 20 of the Arbitration Act were ab initio defective since the firm was not registered and the subsequent registration of the firm cannot cure the defect.

The same view was also reiterated in *U. P. State Sugar Corpn. Ltd. v. Jain Construction Co.*”

7. Learned counsel for applicant further placed reliance on judgment of this Court in ***M. L. Chaturvedi v. M/s Sanjay Finance Corporation*** reported in **1998 (1) Bom. C. R. 782**. The Division Bench of this Court in that case held that non-registration of firm is not a formal defect but a defect affecting merits of the case and held that it was

erroneous to grant permission to plaintiff to withdraw suit with liberty to file a fresh one.

8. Learned counsel for respondent has placed reliance on judgment of this Court in *Vilas Shriram Mahalle & anr v. Rajdhaniprasad Tiwari & anr* reported in 2005 (1) Mh. L. J. 596. Based on the ruling of the Apex Court in **Haldiram Bhujjiyawala vs. Anandkumar Deepak Kumar** reported in **2000 (3) SCC 250**, this Court held that it is open to the plaintiff to seek withdrawal of the suit with leave to file a fresh suit after registration of the firm under the provisions of Order 23, rule 1 (3) (a) of the Code of Civil Procedure. In *Haldiram Bhujjiyawala's* case, the Supreme Court has expressly held that even if the suit was barred under Section 69 of the Indian Partnership Act, 1932, it would be open to the plaintiff to seek withdrawal of the plaint with leave to file a fresh suit after registration of the firm. In view of the ruling of the Apex Court in *Haldiram Bhujjiyawala's* case (supra), I also hold as is held in *Vilas Shriram Mahalle's* case (supra) that judgment of the Division Bench of this Court in **M. L. Chaturvedi vs. Sanjay Finance Corporation**, referred to above, stood impliedly overruled.

9. In view of the observations in paragraph 8 above, there is no reason to interfere with the impugned common order. Learned 8<sup>th</sup> Joint

Civil Judge, SD, Nagpur has rightly rejected application of present applicant under Order VII, rule 11 (d) CPC and allowed application of respondent filed under Order XXIII, rule 1 CPC. Civil Revision Application is accordingly dismissed with no order as to costs.

**A. P. BHANGALE, J**

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