

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

RSA.No. 641 of 2008

A.S.NO.75/2005 OF PRINCIPAL SUB COURT, NORTH PARUR

O.S.NO.270/2002 OF MUNSIFF'S COURT, NORTH PARUR

APPELLANT(S)/RESPONDENT/DEFENDANT :

**THE FERTILISERS & CHEMICALS TRAVANCORE LTD.,
COCHIN DIVISION, AMBALAMEDU.**

**BY ADVS.SRI.E.K.NANDAKUMAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.ANIL D. NAIR**

RESPONDENT(S)/APPELLANT/PLAINTIFF :

**M/S.N.MUSTHAFA, SCRAP MERCHANT,
MARKET ROAD, ALUVA, REGISTERED PARTNERSHIP FIRM
REPRESENTED BY ITS MANAGING PARTNER, K.M.SHAMSUDDIN,
S/O.N.MUSTAPHA, KARUPALIL HOUSE, EDATHALA P.O., ALUVA.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 25-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

P.B.SURESH KUMAR, J.

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R.S.A.No.641 of 2008

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Dated this the 25th day of September, 2015.

J U D G M E N T

The defendant in a suit for realization of money is the appellant.

2. The case of the plaintiff is that a sum of Rs.56,896/- paid by the plaintiff to the defendant by way of security deposit in connection with a few sale orders is being withheld illegally by the defendant. The defendant contended that the firm of the plaintiff is not a registered one and that therefore the suit is barred by Section 69(2) of the Indian Partnership Act ('the Act' for short). They also contended that the amounts due to the plaintiff is withheld on valid and justifiable grounds. The trial court found that the plaintiff firm is a registered partnership firm and there is no bar under Section 69 (2) of the Act. Nevertheless, the suit was dismissed by the trial court holding that the plaintiff is not entitled to recover the amounts claimed in the suit from the defendant. The plaintiff

challenged the decision of the trial court in appeal. There was a cross objection by the defendant challenging the finding of the trial court that the suit is not barred by Section 69(2) of the Act. The appellate court allowed the appeal and dismissed the cross objection. The defendant is aggrieved by the decision of the appellate court.

3. The learned counsel for the appellant contended that Ext.A6 certificate of registration of the plaintiff firm does not indicate that K.M.Shamsuddin who instituted the suit on behalf of the firm is a partner of the firm and therefore the suit is barred by Section 69(2) of the Act. He relied on the decision of the Apex Court in **Shreeram Finance Corporation v. Yasin Khan** [(1989)3 SCC 476] in support of the said contention.

4. The short point arises for consideration in the second appeal is as to whether the suit is barred by Section 69(2) of the Act. True, Section 69(2) of the Act mandates that no suit shall be instituted by or on behalf of a firm to enforce rights arising from contracts 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 of the firm. The specific contention raised by the defendant in the suit as regards the maintainability of the suit is

that the plaintiff is not a registered partnership firm. Ext.A6 acknowledgement of registration of firm issued by the Registrar of Firms indicates that the plaintiff is a registered partnership firm. The contention now raised by the learned counsel for the appellant that the plaintiff has not established that Sri.K.M.Shamsuddin who instituted the suit on behalf of the firm is shown as a partner of the plaintiff firm in the register of firms is not a contention that is taken by the appellant either before the trial court or before the appellate court. As such, according to me, the appellant cannot take the said contention for the first time in this second appeal filed under Section 100 of the Code of Civil Procedure. That apart, Ext.A5 partnership deed of the plaintiff firm dated 1.4.1998 indicates that K.M.Shamsuddin is a partner of the plaintiff firm. In the absence of any specific contention for the defendant that the name of K.M.Shamsuddin is not shown as a partner in the register of firms, the plaintiff cannot be blamed for having summoned the records maintained by the Registrar of Firms concerning the plaintiff firm to establish that K.M.Shamsuddin is shown as a partner in the register of firms. In the aforesaid facts and circumstances, I do not find any merit in this Second Appeal and the same is, accordingly,

dismissed. All the interlocutory applications in the appeal are closed.

**Sd/-
P.B.SURESH KUMAR,
(JUDGE)**

kvs

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PA TO JUDGE.