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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment pronounced on: 23rd December, 2015

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CS(OS) No.3397/2014

M/S SAI NATH ENTERPRISES Plaintiff
Through Mr.A.S. Chandhiok, Sr. Adv. with
Mr.Rajesh Gupta, Ms.Harleen
Singh, Mr.Ranjeet Pandey &
Ms.Nimisha Jain, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION & ANOTHER
..... Defendants
Through Ms.Maninder Acharya, Sr.Adv. with
Mr.Mukesh Gupta & Mr.Abhishek
Kukkar, Advs.

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CS(OS) No.3460/2014

M/S SAI NATH ENTERPRISES & ORS Plaintiffs
Through Mr.A.S. Chandhiok, Sr. Adv. with
Mr.Rajesh Gupta, Ms.Harleen
Singh, Mr.Ranjeet Pandey &
Ms.Nimisha Jain, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION & ANOTHER
..... Defendants
Through Ms.Maninder Acharya, Sr.Adv. with
Mr.Mukesh Gupta & Mr.Abhishek
Kukkar, Advs.

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. By way of this common order, I propose to decide eight applications filed by the plaintiffs. The details of such applications are given below:-

In CS (OS) No.3397/2014

- (i) I.A. No.25380/2014 under Order VI Rule 17 read with Order 1 Rule 10 CPC,
- (ii) I.A. No.22656/2014 under Order XXXIX Rules 1 & 2 CPC,
- (iii) I.A. No.1468/2015 under Order VI Rule 17 CPC, and
- (iv) I.A. No.1469/2015 under Order XXXIX Rules 1 & 2 CPC.

In CS (OS) No.3640/2014

- (i) I.A. No.25382/2014 under Order VI Rule 17 CPC,
- (ii) I.A. No.22422/2014 under Order XXXIX Rules 1 & 2 CPC
- (iii) I.A. No.1466/2015 under Order VI Rule 17 CPC, and
- (iv) I.A. No.1467/2015 under Order XXXIX Rules 1 & 2 CPC.

2. The above two suits are filed by M/s Sai Nath Enterprises through its partners, namely, Harish Kumar Sharma and Anuradha Sharma. The amended memo of parties in the first suit was filed after filing of the suits. The issues involved in both the suits are common so as the parties. Therefore, the interim applications and the applications for amendment of plaints are being decided together by this common order.

Facts as per plaint of first suit being CS(OS) No.3397/2014:

3. The first suit for declaration and permanent injunction was filed on 12th November, 2014 along with the interim application. The same was listed before Court on 13th November, 2014 and the interim order

was passed on the same day to the effect that till the next date of hearing, the defendants would not take any coercive action by cancelling agreement dated 1st July, 2014 on the basis of show-cause notice dated 3rd March, 2014 and they might not consider the tender with regard to Gandhi Maidan without the leave of the Court.

4. On the date of filing of the suit, plaintiff-firm was unregistered. The application for registration was filed on 12th November, 2014 with Registrar of Firms, Delhi. Mr. Harish Kumar Sharma and Ms. Anuradha Sharma are the two partners of plaintiff-firm and their partnership was formed by Partnership Deed dated 22nd April, 2013.

5. The plaintiff-firm is registered with defendant No.1 (NDMC) as a Parking Contractor with registration No. NDMC/RP Cell/2013-2014/D-677 dated 24th December, 2013.

6. Defendant No.1 is the statutory body formed under Delhi Municipal Corporation Act, 1957, primarily, for the purpose of providing and maintaining civic amenities and inter alia, is competent as also responsible for maintaining various parking lots in the area within its jurisdiction in the National Capital Territory of Delhi. Defendant No.2 is a designated authority under defendant No.1.

7. After registration of plaintiff as registered contractor of MCD (North), defendant No.1 issued show-cause notice dated 3rd March, 2014 for de-registration of plaintiff firm on the grounds of violation of terms and condition of registration, in as much as, one of its partner (Harish Kumar Sharma) is a director in Ashima Infrastructures Pvt. Ltd (earlier known as Ashima Securities Pvt. Ltd.), which company is indebted to DMC (North).

8. In reply dated 10th March, 2014 by the plaintiff-firm to the show-cause notice, it was informed that Harish Kumar Sharma was merely a paid Director in the company and was not personally liable for outstanding dues and had resigned from the said company on 10th December, 2013 to start his own business.

9. On 12th March, 2014 defendant No.1 invited tenders for allotment of various parking sites in different zones of defendant No.1 on monthly licence fee basis for duration of 02 years, which also included the parking site at MLUG, Gandhi Maidan, (City Zone).

10. Plaintiff was one of the bidders in the said tender vis-a-vis parking site at MLUG, Gandhi Maidan, (City Zone), which parking is reflected at Sr. No.9 in the list of parking sites in Notice Inviting Tenders (NIT) (hereinafter called as "subject parking site"). The plaintiff submitted his tender-bid on 12th March, 2014 along with earnest money in the sum of Rs.42,84,333/- offering monthly licence fee of Rs.14,28,111/-.

11. Similarly, plaintiff was also one of the parking site at MLUG, bidders in the said tender vis-a-vis Asaf Ali Road, (City Zone), which parking is reflected at Sr. No.7 in the list of parking sites in Notice Inviting Tenders (NIT) (hereinafter called as "subject parking site"). Plaintiff submitted his tender-bid on 12th March, 2014 alongwith earnest money in the sum of Rs.43,33,333/- offering monthly licence fee of Rs.14,11,111/-.

12. Plaintiff emerged as a highest bidder, and his bid was duly accepted by defendant No.1 for parking sites. After acceptance of plaintiff's bid, defendant No.1 issued provisional offer letter dated 27th June, 2014 thereby allotting the subject parking site to plaintiff-firm

for two years and requiring plaintiff to comply with the condition of the tender. Pursuant where to, plaintiff accepted the offer in terms of its letter dated 28th June, 2014 and under the cover of letter dated 28th June, 2014 enclosed bank guarantee No.32/2014 dated 27th June, 2014 amounting to Rs.42,84,333/-, advance licence fee for three months cumulatively amounting to Rs.43,80,473/- and also enclosed an agreement duly executed and attested on a non-judicial stamp paper of Rs.50/-.

13. The defendants issued letter of possession dated 28th June, 2014 thereby giving paper possession of the parking site to the plaintiff. By another letter dated 28th June, 2014, defendant No.1 informed the Station House Officer, Police Station Darya Ganj, Delhi about allotment of subject parking to the plaintiff and sought its cooperation enabling the plaintiff to run the parking site. On 1st July, 2014 defendant No.1 formally executed the parking agreement in favour of the plaintiff in respect of the two parking sites, for two years on basis of monthly license fee, and all terms and conditions of the contract have been detailed in the parking Agreement.

14. By letter dated 15th July, 2014 plaintiff informed the defendants about hindrances in parking site plaguing the parking site and requested the defendants to remove the hindrances. Defendants were intimated of non-availability of electricity connection at the parking site due to non-payment of electricity bills by previous contractor, and that the electricity distributing company has refused to provide electricity connection to the plaintiff, which had compelled the plaintiff to use electricity generator, thereby escalating the cost of operating the parking. Defendants were also intimated of other hindrances plaguing the parking area, and raised the issue of water logging,

drainage problems in the basement, and unclaimed vehicles of MCD /Water Department at the parking site, are all these issues which were creating hindrance in the smooth parking operations, due to which plaintiff was incurring huge financial losses for inability to utilize large portion of the parking site. Plaintiff also reminded defendant No.1 that on the same issues previous contractor was granted remissions. Plaintiff requested the defendants to resolve the issues at the earliest to enable plaintiff to fully utilize the parking site. It is the case of the plaintiffs that despite plaintiff's personal visits to the office of defendant No.1, it failed and neglected to redress the grievances of the plaintiff. Inaction of the defendants compelled the plaintiff to send another letter dated 28th August, 2014 to the defendants reminding them of the problems faced by the plaintiff at the parking site due to water logging, drainage problem and about 150-200 unauthorized unclaimed vehicles obstructing the parking area. The defendants were requested to take immediate remedial steps. In or about September 2014, plaintiff personally visited the defendants' office also in this regard for the said purpose of removal of plaintiff's parking difficulties.

15. During the discussion, the officers of the defendants intimated the plaintiff of the intended action to enhance the parking charges in all the parking sites under its jurisdiction which will have effect of increasing the license fee of the parking contractors. The plaintiff reminded the Officers of its financial loss due to defendants' inaction in removing parking difficulties, and persuaded the defendants to immediately redress the grievance if at all any license fee is being proposed.

16. It is stated by the plaintiff that the defendant No.2 acted dishonestly and arbitrarily issued hearing notice dated 1st October,

2014 to the plaintiff pursuant to previous show-cause notice dated 3rd March, 2014 vis-a-vis issue of de-registration of the plaintiff firm as defendants parking contractor. The show-cause notice dated 3rd March, 2014 stood finally decided and determined by defendants in view of the plaintiff's reply dated 10th March, 2014, and defendants acted upon their decision in accepting plaintiff as its parking contractor, and has since not only declared plaintiff as a successful bidder in their parking contract, but has also awarded subject parking site under Agreement dated 1st July, 2014. The defendants have no right to re-open a determined issue, which has attained finality. As such, the issuance of hearing-notice dated 1st October, 2014 is wholly illegal, arbitrary and unjustified. Alternatively, it is also pleaded that show-cause notice cannot stand for unlimited period, and such notices have short effective period, if no action is contemplated the show-cause notice lapses. In the present case, defendants' conduct of the defendants in awarding parking contract to the plaintiff itself resulted in determination of the show-cause notice in favour of plaintiff, as such the issue cannot be raise again by the defendants to the prejudice of the plaintiff.

17. It is alleged that the plaintiff replied to the show-cause notice dated 7th October, 2014 thereby bringing forth the correct facts and denying the allegations unjustifiably made by the defendants, and requested the defendants to withdraw their unsustainable and arbitrary action who again sent a letter dated 10th November, 2014 to the defendants reminding them of issues plaguing the parking site.

18. By letter dated 31st October, 2014 defendants officially circulated the revision of parking charges in its authorized parking lots under its

jurisdiction and as a consequence thereof proposed hike in the existing monthly license fee.

19. It is averred in the plaint that plaintiff firm learnt that on 5th November, 2014 the defendants have floated a parking tender in respect of some of the parking sites in the area under its jurisdiction, and the defendants have also included the two subject parking sites, even though the subject parking sites are governed by Agreement dated 1st July, 2014 where under the plaintiff-firm is entitled to running the parking site for two years. Thus, it is stated that the acts and actions of the defendants in issuing hearing notice dated 1st October, 2014 and including the subject parking sites in tender floated on 5th November, 2014 are wholly illegal, arbitrary and oppressive acts, which are in violation to the Agreement dated 1st July, 2014. Defendants have no right to threat the plaintiff-firm to de-register it as parking contract once the defendants had determined the issue and had proceeded to act upon their decision and award the parking site to the plaintiff by virtue of Agreement dated 1st July, 2014.

Additional facts of second suit being CS(OS) No.3460/2014:

20. The second suit was filed on 15th November, 2014 which was listed before Court on 17th November, 2014 and the interim order was passed on the same day to the effect that till the next date of hearing, the defendants shall not take any coercive action by cancelling Agreement dated 1st July, 2014 on the basis of show cause notice dated 3rd March, 2014 and also may not consider the tender (s) with regard to the parking site at MLUG, Asaf Ali Road (City Zone), Delhi, without the leave of the Court.

21. The cause of action in both the suits reads as under:

"29. The case of action to file the present suit arose in favour of the plaintiff firm and against the defendants in March, 2014 when consequent upon plaintiff's reply dated 10.03.2014 to show cause notice dated 03.03.2014 issue do plaintiff's de-registration was closed, and plaintiff firm was accepted as defendants' parking contractor. It further arose on 12.3.2014 when the plaintiff submitted his bid in terms of the said NIT, and plaintiff was permitted to participate in tender process. Cause of action further arose when plaintiff was declared as the highest bidder and was offered the subject parking contract. It further arose on 27.06.2014 when the defendants issued provisional offer letter to the plaintiff and on 28.06.2014 when possession letter of the parking site was issued. It further arose on 15.7.2014 and all other days/dates when the plaintiff informed the defendants of various hindrances in the parking site obstructing the parking. Cause of action further arose on 01.10.2014 when hearing-notice has unjustifiably been issued. Cause of action further arose on 05.11.2014 when clandestinely defendants have included the subject parking in fresh tenders (NIT). As neither parking hindrances have been removed, nor defendant has withdrawn its hearing notice dated 01.10.2014 and is threatening to cancel Agreement dated 01.07.2014 after de-registering the plaintiff, therefore, the cause of action is still subsists and continues till date."

Relief sought in both the suits:

22. The relief in both the suits sought by the plaintiffs is to pass a decree of declaration in favour of the plaintiff and against the defendants declaring that the show cause notice dated 3rd March, 2014 stood determined in favour of the plaintiff by acts, deeds and conduct of defendants; and the hearing-notice (letter No. DC(RP Cell)/2014/D-534) dated 1st October, 2014 to be infructuous, null and *void ab initio* and pass a decree of declaration in favour of the plaintiff and against the defendants declaring that acts/actions of the defendants to re-tender the subject parking site at MLUG, Gandhi Maidan, (City Zone), Delhi and MLUG, Asaf Ali Road, (City Zone), Delhi to be illegal, null

and void ab initio and Notice Inviting Tender (NIT) dated 5th November, 2014 limited to subject parking is illegal, null and void non-est ab initio for all purposes.

23. **Common Defence raised in the written statements:**

24. The defendants filed written statement in both the matters. The following are the main defences raised by the defendants:

- i) The plaintiff No.1, being an unregistered firm not registered with the Registrar of Firms, cannot maintain the present suit under the provisions of Indian Partnership Act and the present suit is barred/ is not maintainable in view of the Section 69 of the Indian Partnership Act, 1932. Both the suits are liable to be dismissed on this ground.
- ii) The requisite statutory notice under Sections 477/478 of Delhi Municipal Corporation Act has not been given before filing of the present suit by the plaintiffs, hence, the present suit is not maintainable and is liable to be dismissed on this ground.
- iii) It is submitted that the reliefs claimed by way of the present suit cannot be granted in favour of the plaintiffs, as the parking site in question was cancelled vide office order No.ADC(RPC)/2014/D-584 dated 11th November, 2014 and the plaintiff No.1 was also deregistered vide office order No.DC/RPCell/NDMC/2014 dated 11th November, 2014 and the said office orders of deregistration of the parking contractor/plaintiff No.1 and cancellation of the parking site was communicated to the contractor i.e. M/s Sai Nath Enterprises through E-mail as provided by the contractor in his

tender form on 13th November, 2014 at 9.59 a.m. and the contractor was also informed about the same by way of speed post on 11th November, 2014 at the address given in the tender form. Thus, even before the filing of the present suit, the said actions had been taken by the defendant No.1/ NDMC in respect of the parking sites in question which has been concealed by the plaintiffs while filing the present suit.

- iv) The plaintiff has not come to the Court with clean hands and is guilty of suppression of true and correct and material facts from the Court.
- v) The plaintiff gave an undertaking dated 28th June, 2014 to the effect that he accepts the provision offer letter given by the Corporation for parking site at MLUG Asaf Ali Road as per terms and conditions and also undertake to abide unconditionally by the outcome of any dispute/complaints/litigations/Court case etc. and accordingly settle the outstanding dues and matter and further undertake that the provision offer letter is issued with the condition that the allotment subject to the outcome of any litigations/Court case/dispute/complaint.

25. On merit, it is denied by the defendants that site was hindered and the defendants have failed to remove the hindrances. It is not denied that the letter dated 15th July, 2014 was received from the plaintiff's side. The alleged intimation(s), whatever has been submitted in writing, are matter of record. It is wrong and denied that there was any hindrances in smooth running of the parking site or the plaintiffs were incurring huge financial losses and there was any

inability to utilize large portion of the parking site. It is submitted that the parking site in question was allotted on "as is where is basis". It is submitted that as per the terms and conditions of the tender in clause 5 (a), it has been specifically mentioned that "the tenderer shall inspect the parking site which will be given on "as is where is" basis and may obtain necessary clarification, if any, regarding the same to his full satisfaction before offering bid of the same. The tenderer shall acquaint himself of all the local conditions and parking site conditions". It is submitted that in view of the said clause, the plaintiffs are estopped from raising such false, frivolous and baseless pleas/ issues at this stage and the same are being deliberately raised by the plaintiffs for making/creating false disputes. It is submitted that the plaintiffs are bound by the specific terms and conditions of the tender documents and the agreement entered into between the parties. It is submitted that as per clause 5(c), it has been mentioned in the tender that "the remission can be allowed by the competent authority in exceptional circumstances involving natural calamity beyond control of any person, keeping parking site closed as per approval of competent authority of NDMC/ Delhi Police/ Compensation/ repairs/ maintenance work by Govt. Agency, Competent Authority. NDMC would consider on case to case basis subject to verification/ confirmation by the concerned department". It is submitted that in view of the said clause, the plaintiffs cannot claim remission as a matter of right and the remission can be allowed only if the case falls within the four corners of this provision/clause.

26. It is denied that the defendants sent penalty notice dated 12th August, 2014 imposing the penalty of Rs.3,52,778/- on the plaintiff. It is submitted that the said penalty notice was raised in view of the

violation of the terms and conditions of the agreement executed between the parties in accordance with the said agreement and on the basis of inspection dated 5th August, 2014 by the Zonal Office of City Zone wherein the plaintiff was found violating the terms and conditions by committing lapses at the parking site and the penalty was approved for the same as per the following details/reasons:-

- (a) Manual parking slips being issued instead of slips through hand held device.
- (b) Overcharging-Rs.30/- were being charged for ½ hour car parking.
- (c) All the attendants were without uniforms.

Therefore, as per clause 25 of the terms and conditions of the contract for the parking site in question, a penalty of Rs.3,52,778/- (25% of the monthly license fee) being violation of second time was imposed upon the plaintiff. However, the plaintiff failed to deposit the said amount and committed breach of the contract of the agreement.

27. It is also denied that in or about September, 2014 the plaintiff personally visited the defendants' office to persuade its officers to expedite removal of plaintiff's parking difficulties.

28. It is denied by the defendants that show cause notice dated 3rd March, 2014 stood finally decided and determined by the defendants in view of plaintiff's reply dated 10th March, 2014 and the defendants acted upon their decision in accepting the plaintiff as a parking contractor and has since not only declared the plaintiff as a successful bidder in their parking contract but has also awarded subject parking site under agreement dated 1st July, 2014. It is denied that the defendant has determined the issue or the issue had attained finality

and the issuance of hearing notice dated 1st October, 2014 is illegal, arbitrary and unjustified. It is further wrong and denied that the show cause notice was for unlimited period or the same had lapsed or the defendants' conduct in awarding parking contract to the plaintiff itself resulted in determination of the show cause notice in favour of the plaintiff or as such the issue cannot be raised again by the defendants to the prejudice of the plaintiff. It is submitted that in the present case, after approval from the competent authority, provisional offer letter No.ADC/RPC/2014/D-251 dated 27th June, 2014 was issued to H-1 Parking Contractor i.e. Shri Sai Nath Enterprises and on 28th June, 2014, Shri Sai Nath Enterprises had accepted the said provisional offer letter by giving undertaking with the conditions that the allotment was subject to outcome of any litigation/ court case/ dispute/complaint.

29. It is submitted that the parking site in question was allotted on "as is where is basis". It is submitted that as per the terms and conditions of the tender in clause 5 (a), it has been specifically mentioned that "the tenderer shall inspect the parking site which will be given on "as is where is" basis and may obtain necessary clarification, if any, regarding the same to his full satisfaction before offering bid of the same. The tenderer shall acquaint himself of all the local conditions and parking site conditions".

It is submitted that the case of remission can be entertained/considered only if it falls within the four corners of clause 5 (c) of the agreement. It is submitted that in view of the said clause, the plaintiffs cannot claim remission as a matter of right.

30. It is submitted that parking rates were revised by the defendant No.1 Corporation for various authorized parking sites in the area of

NCT of Delhi under their jurisdiction. It is submitted that as per clause 27(a) "notwithstanding anything contained in this agreement, NDMC has a right to revise the rates of parking fee at any time. In case of revision of rates of parking fee for different category of vehicles during the currency of the present agreement, the monthly license fee will be payable by the licensee with proportionate increase/ decrease upon the percentage of increase/ decrease in the rates of parking fee, from the date of implementation of such revised rates of parking fee".

31. It is submitted that thus, in view of the said clause, the defendant No.1 Corporation was fully empowered to revise the rates of parking fee according to their policy decision(s). It is also submitted that as per clause 2 (c) of the agreement and the plaintiff was required to deposit three months license fee in the advance in the first year within 15 days from the date of issue of offer letter in the form of D.D. and payment thereafter for subsequent quarter were required to be deposited in the form of D.D. before one month of expiry of previous quarter and so on till the completion of first year of contract. The plaintiff however failed to deposit the payment of second quarter which became due on 26th August, 2014 and further, the plaintiff was required to deposit the monthly license fee + TCS w.e.f. 1st November, 2014 for the period from 1st November, 2014 and on the said account of default having committed by the plaintiff, huge amount of Rs.36,55,031/- has now become due and outstanding against the plaintiff till the date of termination of the contract/ agreement i.e. 11th November, 2014.

32. It is submitted that the plaintiff vide his letter dated 1st November, 2014 received in the office of the defendants on 3rd November, 2014 showed his inability to run the parking site on the

enhanced monthly rates as mentioned in letter No.D-572 dated 31st October, 2014. However, the plaintiff has concealed these facts from the Court. And in view of the contents of the said letter, the file was moved for surrender of the site by the contractor in view of the clause 28 of the agreement and the competent authority has decided to terminate the parking contract.

33. It is further submitted that in view of the above stated facts i.e. filing of false affidavit by M/s Shri Sai Nath Enterprises acting in breach of the policy/ guidelines of registration of contractor, action prescribed there-under for deregistration of the plaintiff was initiated in accordance with law, further in view of violation of the terms and conditions of the agreement between the parties, action prescribed under the said terms and conditions was initiated/taken in accordance with law and decision was taken to de-register the plaintiff and to cancel/terminate the agreement which was approved by the competent authority and orders dated 11th November, 2014 (as mentioned/ submitted above) were passed upon approval of the competent authority which was duly communicated to the plaintiffs.

Response to the defence:

34. On behalf of the plaintiffs, it is submitted that the plaintiffs filed the suit on 12th November, 2014. On 14th November, 2014 the plaintiffs received three letters from the defendants containing the following documents:

- (i) Show Cause Notice No.DC(RPC)/2014/D-581 dated 11.11.2014;
- (ii) Office Order No.DC/RP Cell/NDMC/2014/D-585 dated 11.11.2014;

(iii) Office Letter No.DC/RP Cell/NDMC/2014/D-586 dated 11.11.2014.

35. The said documents were received by plaintiff No.2 by Speed Post addressed to him on 14th November, 2014 in the evening. Prior to receiving of the said post plaintiffs had no knowledge of the said documents nor had they received the documents. It is from the written statement that the plaintiffs have learnt that the defendants had also sent the said documents by e-mail on 12th November, 2014. However, the plaintiffs had no knowledge thereof nor had a hint of any e-mail sent by the defendants. On checking the e-mail, it is indeed a fact that an email was sent on 12th November, 2014 at ssnathenterprises@gmail.com which is a valid e-mail address of plaintiffs.

It is stated that the plaintiffs had no knowledge of the e-mail nor had received the e-mail though it had reached the mail-box. Non-receipt of the e-mail is largely attributable to the fact that plaintiff Nos. 2 and 3 are not computer savvy, but are simpleton people not used to regular computer handling and/or net-surfing. They take assistance for computer operations, assessing data and not active on e-mail. There was no reason for the plaintiffs to hide the receipt of the documents or to ignore receipt thereof. Had the plaintiffs received the e-mail and/or had got the knowledge thereof, it was far simpler and beneficial for the plaintiffs to make assertions relating thereto in its pleadings. All the three documents read together ex-facie reflect stronger malafide and arbitrariness on part of defendants and the plaintiffs could have conveniently made appropriate prayer vis-a-vis the documents. But as the plaintiffs have received the said documents only on 14th November, 2014, and the defendants are primarily

opposing the suit on the basis of the said documents, it becomes necessary for the plaintiffs to suitably amend the plaint, and which amendment the plaintiffs are seeking by filing separate application.

36. It is alleged by the plaintiffs that the said documents are self-contradictory and ex-facie fallacious. Plaintiffs assert that the documents have been pre-dated and could not have been executed at all. Assumingly that the competent authority had taken a decision on 7th November, 2014, there is nothing on record that the decision was communicated to the plaintiffs. If the decision had been taken on 7th November, 2014, why the defendants waited to issue Office Order only on 11th November, 2014. If the competent authority had taken a decision on 7th November, 2014, where was the need, justification in issuing show-cause notice was dated 11th November, 2014. A Reading of the show-cause dated 11th November, 2014 itself shows that as on 11th November, 2014 the defendants only intended to take action against the plaintiffs who failed to show-cause or deposit the amount within 7 days. The said 7 days granted under show-cause commenced from date of service of notice (i.e. 14th November, 2014) and would have expired only on 21st November, 2014. Therefore, no action was contemplated upto 21st November, 2014.

37. The allegation made by the defendants that plaintiff No.2 had furnished a false affidavit for and on behalf of the plaintiff No.1 for getting plaintiff no.1 registered as a parking contractor of the defendants. It is alleged by the plaintiffs that the allegation against plaintiff No.2 that even though he was a director in M/s. Ashima Infrastructure Pvt. Ltd., yet he made a representation in registration application dated 10th December, 2013 that he was not associated in any manner with any other company/agency. The allegation is that

plaintiff no.2 concealed the fact that he was the director of M/s Ashima Infrastructure against which there was an unpaid demand of Rs.18,00,000/-. On these allegations show-cause dated 3rd March, 2014 was issued which was replied in terms of letter dated 10th March, 2014 clarifying the issue.

It is submitted that the said allegations are not correct and the plaintiff had suitably explained its position to the defendants in March 2014 itself which resulted in final determination of the show cause and dropping of the show-case. However for clarification it is asserted that plaintiff No.2 was only a paid employee in Ashima Infrastructure Pvt. Ltd. and was drawing a salary of Rs.15,000/- from the said company, which fact is borne out from the income tax return filed by plaintiff No.2 for assessment year 2012-13. Under the heading computation of taxable income the first entry is reflected as under:

Income from salary
Employer name: Ashima Infrastructure Pvt. Ltd.
Annual Salary: Rs.18,000/-

It is submitted that plaintiff No.2 (Harish Kumar) was contemplating to start his own business, and as such left Ashima Infrastructure Pvt. Ltd. w.e.f 10th December, 2013 to set up his own business. On and from 10th December, 2013, plaintiff No.2 had no association at all with Ashima Infrastructure Pvt. Ltd. He had resigned as a director of Ashima Infrastructure Pvt. Ltd. w.e.f. 10th December, 2013 and at that time he had also transferred/surrendered the entire shareholding on 10th December, 2013 at the time of his resignation. Therefore, as on 10th December, 2013 plaintiff No.2 had no association at all with Ashima Infrastructure Pvt. Ltd.

38. The defendant has raised the allegation simply for the reason that the record of the company as on 10th December, 2013 continue to reflect plaintiff No.2 as the director. The reason for that is that the cessation/resignation of directorship is reflected in documents only at the end of financial year and not before that even though a person might have resigned or joined the company during the financial year. In view thereof the defendant has not been able to produce any document refuting the assertions of the plaintiffs.

39. In view of the above, it appears the allegations made by the defendants are wholly unsustainable and in fact had been duly addressed in March 2014 itself when show-cause dated 3rd March, 2014 stood dropped. Without prejudice to the fact that plaintiff No.2 as on date of application dated 10th December, 2013 had no connection with Ashima Infrastructure Pvt. Ltd., it is submitted that the allegation is too far-fetched and is an absurdity which cannot be permitted to be perpetuated. The alleged claim against Ashima Infrastructure Pvt. Ltd. is a disputed claim and plaintiff No.2 though has no concern with the validity of the claim, cannot be non-suited on that ground.

40. Learned Senior counsel appearing on behalf of the defendants argued and objected to the maintainability of the suit, inter alia on ground that the defendants have de-registered plaintiff No.1 as its parking contractor vide Office Order dated 11th November, 2014, and had cancelled the parking site vide Office Order dated 11th November, 2014. The objection is predicated on premise that the documents had been sent by email on 12th November, 2014 and plaintiffs had concealed the documents at time of filing the suit. The said objection of the defendants is legally untenable in view of the fact that the three

documents were received by the plaintiffs only on 14th November, 2014 and thereafter remained out of attention of the plaintiffs till the filing of the suit. As such the said documents constitute subsequent development post filing of the suit. Moreover, the said documents are self contradictory and are deliberately pre-dated to non-suit the plaintiffs; and above all the said documents, even if ex-facia accepted as correct, only exemplify arbitrariness and malafides on part of defendants, and do not diminish plaintiffs' right to maintain the suit on the pleaded cause of action in view of the pleadings in the plaint and the declaratory relief claimed therein.

41. It is submitted that in order to cover their malafide conduct, the plaintiffs in January, 2015 filed two applications under Order VI Rule 17 read with Section 151 CPC for amendment of plaint in both the matters along with fresh application for injunction.

42. The plaintiffs seek to amend the plaint in existing paragraphs 8 and after insertion of the proposed passage, the remaining existing paragraph 8 would continue to exist as it is, by insertion of new paragraph 17-A. They further seek to amend paragraphs 18 and 19 and also paragraphs 22, 23 and 27. Plaintiffs propose to amend the existing paragraph 27, which is relevant at this stage, by substituting it with the following paragraph:

"The defendants claim that by office orders No.DC/RPCell/NDMC/2014/ D 584 &586 both dated 11.11.2014 have de-registered the plaintiffs as authorized contractors and has terminated the agreement dated 01.07.2014."

It is stated in the application that the defendants with malafide intent hastily served the following documents on the plaintiffs on 14th November, 2014:

- (i) Show Cause Notice No.DC(RPC)/2014/D-582 dated 11.11.2014;
- (ii) Office Order No.DC/RP Cell/NDMC/2014/D-584 dated 11.11.2014;
- (iii) Office Letter No. DC/RP Cell/NDMC/2014/D-586 dated 11.11.2014.

Amendment by insertion of new paragraph after existing paragraph 27 is also sought. Amendment by insertion of new paragraph after existing paragraph 28 and consequential amendment to paragraph 29 and paragraph 31 and consequential amendments in the prayer clause are also prayed.

43. It is stated that the aforesaid amendments are material and necessary for due, proper and meaningful adjudication of the suit and for finally determining the rights of the parties. The proposed amendments do not change the basic nature of the suit nor affects the rights of the defendants. The amendments are formal and to assist the Court to consider the existing prayers, in as much as, the proposed prayer to be inserted on amendment is actually founded within the declaratory prayers in the suit, and is essential to spell out the relief more elaborately. The amendment is also necessitated to prevent and obviate technical objection that may be raised by defendants in absence of specific prayers vis-a-vis the three documents dated 11th November, 2014.

44. The prayer made in the applications for amendment of plaints is strongly opposed by the counsel for the defendants who stated that

such applications can only be considered once the original application under Order 39 Rules 1 and 2 CPC are decided as the plaintiffs have obtained the interim orders by misrepresentation. On the date of filing of the suits they were aware about the termination of contract. They have hidden the said information from the Court. As per their admissions, at least on the date of filing of the second suit i.e. on 15th November, 2014, the termination notice was received by plaintiffs on 14th November, 2014. It was their duty to disclose the same. Had the same would have been disclosed, the interim order would not have been passed. As after termination of contract, the only remedy which lies with the plaintiffs is to claim the damages or compensation, the injunction could not have been passed. By virtue of amendment, the plaintiffs are trying to justify their misconduct, thus, the amendment at this stage may not be considered or allowed.

Submissions of both the parties and discussion of points raised by them:

45. Mr. A.S.Chandhiok, learned Senior counsel for the plaintiffs and Ms.Maninder Acharya, learned Senior counsel for the defendants have made their submissions from time to time. As a matter of fact, Ms.Maninder Acharya has raised the preliminary objection in the first submission that the suit itself is barred under Section 69(2) of the Partnership Act and even otherwise the plaintiffs are guilty of suppression of material facts, thus the suit itself is not maintainable. In any event, the plaintiffs are entitled to injunction in view of concealment of material facts from the Court.

46. The main objections raised by Ms. Acharya are mentioned below :

- i) Plaintiff No.1 was not a registered partnership firm on the date of filing of both suits. The suit was barred under Section 69(2) of the Indian Partnership Act, 1932. Thus, the suit is liable to be dismissed.
- ii) The plaintiffs have suppressed documents namely letters No.DC (RPC)/2014/D-581; dated 11th November, 2014 Office order dated 11th November, 2014 bearing No.584 indicating that the allotted site at Gandhi Maidan allotted to the plaintiff stood cancelled and the parking site would be treated as free parking sites; Letter No.586 dated 11th November, 2014 informing the plaintiffs that the plaintiffs had been de-registered as parking contractors their security deposit has been forfeited and the allotted parking sites at Asaf Ali Road and Gandhi Maidan stand cancelled besides the undertaking dated 28th June, 2014.

47. Ms. Acharya, learned Senior counsel appearing on behalf of the defendants submits that since the plaintiffs have not approached before this Court with clean hands. The interim orders were obtained by the plaintiffs by making misrepresentation who had failed to disclose the real fact that the contracts between the parties were already terminated. The plaintiffs were aware about the terminations on the respective dates of filing of both suits. Thus, the applications filed by the plaintiffs for amendment of the plaint and fresh injunction on the basis of additional facts and clarifications cannot be considered. The present suit and interim applications must be decided on the basis of original plaint and pleadings filed by the parties.

It is also argued that had the plaintiffs disclosed the true facts, this Court would not have passed the interim order as the plaintiffs have been de-registered and the agreement dated 1st July, 2014 have been cancelled/terminated, no injunction could have been granted under Sections 14 (c) and 41 of the Specific Relief Act, 1963.

48. As far as the submissions of defendants that the plaintiffs were defaulter in paying the monthly license fee to the defendants and have been unauthorisedly occupying the parking site in question after termination of the contracts and the defendants are suffering huge losses are concerned, the learned Senior counsel appearing on behalf of the plaintiffs have informed that the entire due amount has been paid as per contract and nothing is due.

49. I shall first take point No.2 whereby the objection was raised by the defendants that the plaintiffs have suppressed the material documents from the Court. The said documents are termination letters dated 11th November, 2014 of de-registration of plaintiffs as parking contracts dated 1st July, 2014 between the parties for 2 year period.

Admittedly, the first suit was filed before this Court on 12th November, 2014. The same was listed on 13th November, 2014. The details of letters of termination of contract are not mentioned in the plaint. The interim order was passed against the defendants not to take any coercive action of cancellation of agreement dated 1st July, 2014 on the basis of show cause notice dated 3rd March, 2014.

50. The second suit was filed on 15th November, 2014. The same was listed before Court on 17th November, 2014. Similar interim order was passed. Again the factum of termination of both contracts was not mentioned. The plaintiffs have not denied the fact at least they

have received the termination letter dated 11th November, 2014 on 14th November, 2014 but still the plaintiffs have not disclosed the fact about the termination of contract. The suit was filed on the basis of show cause notice and the interim order was obtained.

51. Learned counsel for the plaintiffs has tried to explain that the plaintiffs have not deliberately concluded the said letters of termination in the second suit which was filed on 15th November, 2014, as the plaintiffs had no knowledge about it, otherwise it would have been disclosed. It is argued by Mr.Chandhiok that on merit, the defendants have very weak case; even if the termination of contracts would have been challenged in the suits, the injunction would have been passed.

52. It is argued that the plaintiffs were seriously engrossed in the preparation of the suit and due to the insurmountable difficulties and atrocities of the defendants, the plaintiffs were greatly disturbed and were running from one corner to the other in pursuit of the legal remedies and were largely spending time with their advocates for preparation of the court cases and in the said process the aforesaid three documents received by the plaintiffs on evening of 14th November, 2014 skipped the attention of the plaintiff and they bonafidely skipped to either send response to the said documents and/or to bring the said documents to the notice of their advocate at the time of preparation of the suit. It was only on 19th November, 2014 that the documents struck the attention of the plaintiffs and where after the plaintiff diligently sent its reply thereto on 20th November, 2014.

53. With regard to objection of concealment of material facts, it is argued on behalf of the defendants that upon service of the said office orders dated 11th November, 2014, the plaintiffs were required to state the said material/relevant facts in the suit/plaint and seek for appropriate relief with regard to the orders of termination of the contract and de-registration of the plaintiff firm having been passed by the defendants. However, with an intention to mislead the Court and in order to obtain *ex-parte* order, the plaintiffs have chosen to withhold the said material facts from this Court at the time of consideration of application for *ex parte* injunction passed on 13th November, 2014 and 17th November, 2014.

54. There is a force in the submissions of Ms.Maninder Acharya, learned Senior counsel appearing on behalf of the defendants that the said act of the plaintiffs would establish from the fact that on the next date of hearing i.e. 24th November, 2014, when appearance was made on behalf of the defendants and it was informed to the Court about the said fact that the contract between the parties had already been terminated vide office order dated 11th November, 2014 and the communications are already been issued which was denied on behalf of the plaintiffs which is recorded in the order dated 24th November, 2014.

55. But in the replication filed by the plaintiffs, it was admitted therein that the said letters had been sent through e-mail by the defendants on 12th November, 2014 and the same was duly received by the plaintiff in their mail box in the e-mail address given by them in the tender form/documents etc. It has been also admitted in the replication by the plaintiffs' side that the said office orders were also received on 14th November, 2014 by speed post. Subsequently, in

order to explain their stand as to why they have not disclosed the said fact in the second suit which was filed on 15th November, 2014, the plaintiffs filed an application under Order 6 Rule 17 CPC seeking for amendment of the plaint.

56. Ms.Maninder Acharya, learned Senior counsel for defendants has placed reliance upon the judgment of ***Rajveer Food Marketing (I) Pvt. Ltd. v. Amrit Banaspati Company Ltd.*** 2010 (114) DRJ 296, ***Oswal Fats and Oils Ltd. v. Additional Commissioner Bareilly Division*** (2010) 4 SCC 728, ***Satpal Singh v. Chunni Lal*** JT 2009 (2) SCC 332, ***Fast Trax Food Pvt. Ltd. v. Elena Norman & Ors.***, 2010(IV) AD (Delhi) 630.

In ***Rajveer Food Marketing*** (supra)(para 11) it has been held that:

“but at the same time, we find merit in the plea of the Ld. Counsel for the appellant that it was incumbent upon the Ld. Single Judge to first dispose off the application filed under Order XXXIX Rule 4 CPC before considering the respondent's application under Order VI Rule 17 CPC. We say so as the ex parte ad interim order dated 12th January, 2009 was secured on the basis of the pleadings prior to the amendment sought by the respondent. We are of the view that when an ex parte ad interim injunction is secured on the basis of certain averments made in the plaint the vacation or confirmation of the said order must necessarily be adjudged on the basis of the very same pleadings. Thus, the touch stone for vacation of an ex parte order must be the pleadings of the parties prior to the filing of the amendment application. The result of our holding otherwise would be to enable a party to rush to this Court post haste without making a full disclosure of all the facts within its knowledge and to subsequently seek incorporation of the said facts in the plaint by way of amendment while in the meantime continuing to enjoy the ex parte order obtained by it

fraudulently and dishonestly.” It is thus a well settled principle of law that an order obtained by the concealing the fact from the Court cannot be sustained and ought to be vacated.

57. In view of the settled principles of law, a presumption under Section 16 and 114 of the Evidence Act is liable to be drawn against the plaintiffs regarding the issue of knowledge of the said emails as they themselves had given the said email address of plaintiff No.1 in the tender form, thus the plaintiffs had concealed the factum of receipt of the said emails from this Court on 17th November, 2014. At least on that date the plaintiff admittedly received the termination letter, still they have chosen not to disclose the same in the second suit. It is also pertinent to mention that the plaintiffs had the knowledge about the termination on 14th November, 2015 still they kept quite not to amend the plaint for couple of months. They sought the amendment after raising the defence by the defendants.

58. *Prima-facie*, it appears to the Court that the plaintiffs had received the office orders intimating about the termination of the contract and deregistration of the plaintiff firm vide emails on 12th November, 2014 and vide speed post on 14th November, 2014 (the date as admitted by the plaintiffs in the replication) but the plaintiffs had failed to disclose the letter of termination in the second suit as well. The justification given on behalf of the plaintiffs is an after-thought. The said decisions referred by her are directly applicable to the facts and circumstances of the present case. With regard to fresh four applications filed by the plaintiffs two under Order 6 Rule 17 CPC and two fresh applications filed under Order 39 Rule 1 and 2 CPC, as to whether the same are to be considered at this stage or not, the fate of the same depend upon the main objection raised by Ms. Acharya

about the maintainability of the suits. If the suits filed by the plaintiffs are maintainable in view of the main objection raised by the defendants, then the issue of fresh applications for injunction and the applications for amendment of the plaints would be considered.

59. Now, I shall deal with the submissions of the main objections raised by Ms.Maninder Acharya, learned Senior counsel for the defendants that plaintiff No.1 was not registered with the Registrar of Firms at the time of filing of the suit; the suit has been filed by plaintiff No.1 against defendants for enforcing the alleged claims arising out of contract between the parties; the contract which is the basis of the claims of the plaintiffs is not between the partners of the partnership firm but between the third party; thus, the suit is not maintainable and is clearly barred under Section 69(2) of Indian Partnership Act, 1932 and is liable to be rejected/dismissed under the provisions of Order VII Rule 11 CPC.

60. Reliance is placed upon the judgements reported in **Raptakos Brett & Co. Ltd. v. Ganesh Property** 1998 (7) SCC 184, **Purushottam and Anr. v. Shivraj Fine Art Litho Works & Ors.**, (2007) 15 SCC 58, **Seth Loonkaran Sethiya and Ors. v. Ivan E. John** 1977 (1) SCC 379, **Shreeram Finance Corporation v. Yasin Khan & Ors.**, (1989) 3 SCC 476 and **Virendra Dresses v. Varindra Garments**, 21 (1982) DLT 472.

61. It is argued on behalf of the plaintiffs that defendants all along knew who were the partners and also entered into an agreement with them when they were not registered. There was condition imposed by the defendants that a firm must be registered Partnership Firm either for getting it registered as a parking contractor or entering into an

agreement. Thus, if an unregistered partnership like the plaintiffs have entered into an agreement then the suit filed by all of them would not come within the bar of Section 69(2) of the Indian Partnership Act. It is submitted that the plaintiffs in any event in their plaint in para 1 had made a averment that they have applied for their registration on 12th November, 2014 which is supported by the documents filed by the plaintiffs at pages 2 and 3 of list of documents dated 19th March, 2015 in CS(OS) No.3397/2014.

62. Mr. Chandhiok, learned Senior counsel has contended that in view of provision of Order XXX Rule 1 CPC, the suits are maintainable inasmuch as the two partners of the plaintiff No.1 firm have also filed the suit jointly as plaintiffs along with the plaintiff firm and that in any case, during the pendency of the suit, the partnership firm stands registered with the Registrar of Firms. During the course of arguments, the plaintiffs' side the interpretation of provisions of Order XXX Rule 1 CPC and Section 69(2) of the Partnership Act has relied upon the judgment of this Court in the case of ***Shanker Housing Corporation v. Mohan Devi*** AIR 1978 Delhi 255.

63. In support of his submissions, on behalf of the plaintiffs, the arguments are addressed before the Court that:-

- i) Section 4 of the Indian Partnership Act, 1932 provides under Chapter II and defines partnership as the relation between persons who have agreed to share the profits of a business carried on by all or any one of them. Individually they are called partners and collectively a firm and the name under which their business is carried on is called the firm name.

- ii) The Supreme Court in the case of **Comptroller & Auditor-General v. Kamlesh Vadilal Mehta** 2003 (2) SCC 349 held that partnership firm is not a legal entity like a Company. It is mere collective name of group of individual partners.
- iii) Supreme Court in the case of **N.Khadervali Saheb v. N.Gudu Sahib** 2003(3) SCC 229 held that firm name is only a compendious name given to the partnership and partners are the real owners of the assets and Partnership Firm is not a legal entity.

64. It is submitted on behalf of the plaintiffs that it is not a case where suit has been filed by plaintiff No.1 firm for and on behalf of all parties. All plaintiffs are here before this Court and have jointly filed the suit and are seeking common law reliefs. Section 69(2) of the Partnership Act is not a bar to such a suit, for the cause is not arising out of the agreement. Registration as Parking contractors by the defendant No.1 Corporation is under its statutory power. The action being arbitrary and unreasonable, the plaintiffs are entitled to maintain a suit for the reliefs sought against the defendants. Counsel has referred the decision of the Supreme Court in **Haldiram Bhujawala & Anr. v. Anand Kumar Deepak Kumar & Anr.** 2000(3) SCC 250 (para 27) held as under :-

“For all the reasons given above, it is clear that the suit is based on infringement of statutory rights under the Trade Marks Act. It is also based upon the common law principles of tort applicable to passing-off actions. The suit is not for enforcement of any right arising out of a contract entered into by or on behalf of the unregistered firm with third parties in the course of the firm’s business transactions. The suit is therefore not barred by Section 69(2).”

65. It is submitted that when all partners and firm have filed the suits in terms of Order 30 Rule 1 CPC, the same are maintainable. Under Order 30 CPC, a firm name is merely a combined name of all partners. In other words, if the firm is registered then plaintiff No.1 alone could file a suit and it would be deemed in law, as if plaintiffs Nos. 2 and 3 are also parties to the present suit. Counsel for the plaintiffs has also referred another decision of Supreme Court in **Purushottam Umedbhai & Co. v. Manilal & Sons**, AIR 1961 SC 325 by Three Judges Bench which dealt with the question as to what is the effect of when all partners of the firm file the suit. In fact it was a case where the suit was filed by a firm alone and an amendment was sought to strike out the name of the plaintiff Firm and instead names of the five partners may be entered as plaintiffs.

It was also observed as under:

“When a suit is filed in the name of a firm it is in reality a suit by all the partners of the firm. If O. XXX had not been introduced in the name of a firm it would not be a case of a suit filed by a non-existent person. It would still be a suit by the partners of a firm, the defect being that they were described as a firm. In order to clarify matters a court would permit an amendment by striking out the name of the firm and replacing it with the name of the persons forming the partnership.”

And again while dealing with Order 30 CPC observed as under:

“The provisions of these rules of O. XXX being enabling provisions, do not prevent the partners of a firm from suing or being sued in their individual names.”

66. Learned Senior counsel for the plaintiffs has also referred the judgment delivered by the Division Bench of this Court in **Tara Chand vs. Hulkar Mal & Ors.**, AIR 1979 Delhi 160 wherein while dealing with the maintainability of the suit, namely, issue No.5 in para 6

referring to Order 30 Rule 1 CPC, the Court observed in para 14 that all the partners can bring a suit as plaintiffs and in para 15 observed that where a sum of money is due to a Partnership Firm such a sum can be recovered either by a suit brought by all partners of the firm or in a suit filed in accordance with Order 30 Rule 1 CPC in the name of the firm. Suit by one partner alone in his name was not maintainable. In para 17 Their Lordships observed that "the correct way of bringing a suit is to bring it in the name of the plaintiffs or in the name of all the partners of the firm." (Emphasis supplied).

67. Ms.Acharya submitted that a mere reading of the judgments referred to by the plaintiffs would reveal that the same rather supports the contentions of the defendants. It is submitted by her that the situation in the present cases is different, as the same are covered under the provision of Section 69(2) of the Partnership Act. The plaintiffs have come before this Court to enforce the right arising from a contract unless the firm is registered on the date of filing of suit, the same is not maintainable. In the second category of cases where the party is not enforcing a right arising from a contract, the firm or partner(s) can institute the suit in any Court under Order XXX CPC whereas the registration of the firm is not compulsory. She submits that the judgments referred by the plaintiffs do not have similar circumstances available in the present case, thus, the said decisions do not help the case of the plaintiffs, as in the present cases, the plaintiffs are enforcing their right arising from a contract.

68. Counsel for the plaintiffs has admitted that the plaintiff No.1 was an unregistered partnership firm on 24th December, 2013 when plaintiffs were registered with the defendant No.1 Corporation. Again on 1st July, 2014 when agreements were executed, plaintiff No.1 was

an unregistered partnership firm of plaintiff Nos.2 and 3. Therefore, for all intents it was an agreement with plaintiffs Nos.2 and 3 and in their collective name plaintiff No.1. In such case too, Section 69 of the Act would have no application.

69. The main question before this Court is whether the suit filed by the plaintiffs was barred under Section 69 sub-section (2) of the Partnership Act?

- i) If the suit was so barred, whether subsequent registration of the plaintiff's firm under the Partnership Act could revive the suit or make it competent at least from the date on which such registration pending the suit was obtained by the respondent-firm.

70. The relevant provision of the Partnership Act. Section 69 sub-section (2) reads as under:

*"69. Effect of non-registration.—(1)****

(2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm 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 in the firm."

71. The above mentioned provision states that the suit filed by an unregistered firm against a third party for enforcement of any right arising from a contract with such a third party would be barred if the plaintiff-partnership firm on the date of the suit is not registered under the provisions of the Partnership Act and the persons suing are not shown in the Register of Firms as partners of the firm, on the date of the suit. The unregistered firm or the partners mentioned in the sub-section must be suing the defendant-third party.

72. It is settled law that when the language of any provision is plain and clear, then the literal rule of interpretation has to be applied and there is ordinarily no scope for considering the equity, public interest or seeking the intention of the legislature. When there is a conflict between the law in hand and equity, it is the law which must prevail.

73. Although the firm is not a legal entity, yet the provisions of Order 30 Rules 1 and 2 CPC enable several persons doing business as partners to sue or be sued in the name of the firm. The effect of a suit instituted in the name of the firm in the manner prescribed by Order XXX Rule 1 CPC. is as if the suit is filed by all the partners collectively. Whether the suit is filed by all the partners collectively or by only some of the partners impleading the rest as parties to the suit or whether it is filed in the name of the firm by one or more partners in the manner indicated by Order XXX Rule 1 CPC., the conditions prescribed by Section 69(2) must be fulfilled. They are:—

(1) that the firm must be registered; and

(2) that the persons suing are or have been shown in the Register of Firm? as partners in the Firm. The second condition requires that the names of the persons suing are presently shown or have been previously shown in the Register of Firms as partners in the firm. That appears to follow plainly from the provisions of Sec. 69(2).

74. Only filing an application in the prescribed manner under Section 58(1) of the Act in the office of the Registrar of Firms in the prescribed form, giving the particulars of the partnership firm and its partners, together with the prescribed fee would not be enough for the fulfilment of the aforesaid conditions. The Registration Certificate in the prescribed form should be made available to the partners of the firm and an entry of the statement filed under Section 58(1) should be

recorded by the Registrar in the Register of Firms before the institution of the suit.

The sub-section (2) of Section 69 cannot be fulfilled merely by sending to the Registrar of Firms the statement required by Section 58 if the right is arising from a contract. The said fact is not denied by the plaintiffs. Therefore, the plaintiffs have to establish that an entry of the statement is made by the Registrar in the Register of Firms before the date of the institution of the suit if the second mandatory condition under Section 69(2) of the Partnership Act is not fulfilled in the present case.

75. It is also settled law that the provision in Order XXX Rule 1 CPC requires that the "*persons suing in the name of the firm*" should be partners at the time of the accruing of the cause of action, and, therefore, the same meaning should be given to the words "persons suing" in Section 69 (2) of the Partnership Act, 1932, and the "persons suing" in requirement (b) therein means the person who were partners at the time of the accruing of the cause of action and not on the date of the institution of the suit and it is sufficient for the purposes of requirement (b) if they have been shown in the Register of Firms as partners in the firm.

76. The provisions of Sub-sections (1) and (2) of Section 69 are substantive provisions intended to discourage the non-registration of firms. The provision in Section 69 (2) is mandatory. The Partnership Act is a special Act which makes the registration of a firm a condition precedent to the institution of a suit of the nature mentioned in it by or on behalf of a firm against a third party. It deals with the question as to when a firm can sue, or be sued by, a third party in respect of a

right arising from a contract, and provides certain requirements as conditions precedent for the institution of the suit, viz. (a) that the firm is a registered firm, and (b) the persons suing are or have been shown in the Register of Firms as partners in the firm.

77. It is evident that a suit by an unregistered firm is not maintainable and the bar under Section 69 of the Act hits at the very root or the very institution of the suit. If a firm is not registered or if the conditions specified in Section 69(2) are not complied with, the partners of the firm may file a suit, but then all of such partners will have to be joined as plaintiffs. When the conditions specified in Section 69(2) are satisfied, i.e. the firm must be registered and the persons suing must be or have been shown in the Register of Firms as partners of the firm, then a suit can be instituted by or on behalf of the partnership firm in the name of the firm.

78. Order XXX Rules 1 and 2 CPC merely provide the mode or form and the procedure for suits by or against a firm. The requirements in Section 69 (2) has to be satisfied first and then the provisions of Order XXX Rule 1 and 2 CPC are attracted as regards the mode or form in which the suit may be instituted as well as the procedure applicable to the said suit. In providing the mode, Rule 1 prescribes a certain requirement, viz., that the persons mentioned therein must have been partners at the time of the accruing of the cause of action.

79. Therefore, the provisions in Section 69 (2) of the Partnership Act and those in Order XXX Rule 1 CPC would operate separately. The former deals with the question as to when a firm can sue or be sued by a third party in respect of a right arising from a contract and prescribes certain requirements for the same, while the latter deals

with the mode or form and the procedure for suits by or against firms, and prescribes a certain requirement for the same.

Therefore, it is correctly laid down in many cases that the words “persons suing” in Section 69 (2) and the point of time at which the requirements in Section 69 (2) are to be fulfilled, by referring to the provision in Order XXX Rule 1 CPC.

80. Under Section 69(2), a suit to enforce a right arising from a contract can be instituted by or on behalf of a firm against any third party only if (a) the firm is registered and (b) the persons suing, i.e., all the partners of the firm at the time of the institution of the suit, are or have been shown in the Register of Firms as partners in the firm, while under Order XXX Rule 1 CPC two or more persons who claim as partners may sue, or who are liable as partners may be sued, in the name of the firm (if any), provided such persons were partners at the time of the accruing of the cause of action. If the facts in a given case are such as to attract the applicability of the provisions in both Section 69 (2) and Order XXX Rule 1 CPC, the requirements in both the provisions should be fulfilled. In such a case, if a suit to enforce a right arising from a contract is to be instituted by or on behalf of a firm against any third party, the firm has to be a registered firm, and the partners of the firm as on the date of the institution of the suit must have been shown in the Register of Firms as partners in the firm, and further they must have been partners of the firm at the time of the accruing of the cause of action.

81. In view of the aforesaid reasons, the submission made by the learned counsel appearing on behalf of the plaintiffs that by virtue of provisions of Order 30 CPC such a suit could be proceeded further also

cannot be accepted. Order 30 CPC prescribes the procedure for the purpose of filing a suit in the name of the firm.

82. In **Raptakos Brett & Co. Ltd.**, (supra) after noticing Section 69 of the Act, it was observed as under: (para 9)

"A mere look at the aforesaid provision shows that the suit filed by an unregistered firm against a third party for enforcement of any right arising from a contract with such a third party would be barred at its very inception. To attract the aforesaid bar to the suit, the following conditions must be satisfied:

(i) That the plaintiff partnership firm on the date of the suit must not be registered under the provisions of the Partnership Act and consequently or even otherwise, the persons suing are not shown in the Register of Firms as partners of the firm, on the date of the suit.

(ii) Such unregistered firm or the partners mentioned in the sub-section must be suing the defendant third party.

(iii) Such a suit must be for enforcement of a right arising from a contract of the firm with such a third party."

83. In the case of **Purushottam and Another** (supra), the Supreme Court has dealt with the case of **Haldiram Bhujawala** as well as **Raptakos Brett & Co. Ltd.** (supra) referred by the learned counsel for the parties. Para 20 and 24 of the judgment are read as under :

"20. In *Haldiram Bhujawala* this Court noticed the recommendations made by the Special Committee in its report which was considered by the legislature while enacting the Partnership Act, 1932. The Committee recommended that registration of firms be made optional as it considered making registration compulsory too drastic for a beginning in India. It was proposed that registration should lie entirely with the discretion of the firm or partner

concerned, but any firm which was not registered will be unable to enforce its claim against third parties in the civil court; and any partner who is not registered will be unable to enforce his claims either against third parties or against fellow partners. Paragraphs 18 and 19 of the report reads as follows : (SCC pp. 259-60, para 18)

“18. Once registration has been effected the statement recorded in the register regarding the constitution of the firm will be conclusive proof of the facts therein contained against the partners making them and no partner whose name is on the register will be permitted to deny that he is a partner with certain natural and proper exceptions which will be indicated later. This should afford a strong protection to persons dealing with firms against false denials of partnership and the evasion of liability by the substantial members of a firm.

19.On the other hand, a third party who deals with a firm and knows that a new partner has been introduced can either make registration of the new partner a condition for further dealings, or content himself with the certain security of the other partners and the chance of proving by other evidence, the partnership of the new but unregistered partner. A third party who deals with a firm without knowing of the addition of a new partner counts on the credit of the old partners only and will not be prejudiced by the failure of the new partner to register.”

21. It would thus appear that registration of a firm was conceived as a protection to third parties dealing with a partnership firm. Registration ensured the certainty of existence of the firm and its membership, so that later an unsuspecting third party contracting with the firm may not run the risk of being defeated on discovery that neither the partnership firm nor its partners existed in fact. On the other hand, an unregistered firm could not bring a suit for enforcing its right arising from a contract.

22. In *Raptakos Brett & Co. Ltd.* this court after noticing Section 69 of the Act observed : (SCC p. 191, para 9)

"A mere look at the aforesaid provision shows that the suit filed by an unregistered firm against a third party for enforcement of any right arising from a contract with such a third party would be barred at its very inception. To attract the aforesaid bar to the suit, the following conditions must be satisfied:

(i) That the plaintiff-partnership firm on the date of the suit must not be registered under the provisions of the Partnership Act and consequently or even otherwise, the persons suing are not shown in the Register of Firms as partners of the firm, on the date of the suit.

(ii) Such unregistered firm or the partners mentioned in the sub-section must be suing the defendant-third party.

(iii) Such a suit must be for enforcement of a right arising from a contract of the firm with such a third party."

23. Relying upon the aforesaid analysis this Court in *Haldiram Bhujiawala* held that the contract contemplated by Section 69 of the Act is the contract entered into by the firm with the third party defendant. The contract by the unregistered firm referred to in Section 69(2) must not only be one entered into by the firm with a third party defendant, but must also be one entered into by the plaintiff firm in the course of the business dealings of the plaintiff firm with such third party defendant.

24. With respect, we find ourselves in complete agreement with the principles enunciated in *Haldiram Bhujiawala*. Having regard to the purpose Section 69(2) seeks to achieve and the interest sought to be protected, the bar must apply to a suit for enforcement of right arising from a contract entered into by the unregistered firm with a third party in the course of business dealings with such third party. If the right sought to be enforced does not arise from a contract to which the unregistered firm is a party, or is not entered into in connection with the business of the

unregistered firm with a third party, the bar of Section 69(2) will not apply.”

84. In the present case, the contract was entered into by the plaintiffs with the defendants; the said fact has not been denied. The plaintiffs themselves have admitted that they want to enforce the right arising from the contract between the parties. Therefore, the decision of **Haldiram** (supra) does not help the case of the plaintiffs.

85. In view of the settled law and the facts and circumstances of the present cases, it is held that Order XXX Rule 1 CPC is only a procedural law governing the procedure and the provisions of Section 69(2) of Partnership Act are substantive law and it is a well settled law that the procedural law cannot override the substantive law. Furthermore, in view of the above said judgments, the subsequent registration of the partnership firm cannot cure the initial lacuna of the suit being filed by an unregistered firm and hence being not maintainable under the provisions of Section 69(2) of Partnership Act. The judgments referred by the learned counsel for the plaintiffs are not applicable to the facts and circumstances of the present cases.

86. The suits of the plaintiffs are barred for non-compliance of the provisions of Section 69(2) of the Partnership Act. Once the suits are barred by law and are not maintainable, the plaints are liable to be rejected under Order 7 Rule 11(d) CPC. Accordingly, the plaints of both the suits are rejected. All pending applications also stand disposed of, as the same have become infructuous.

87. This order shall become operative with effect from 7th January, 2016, as the interim order has been continuing in favour of the plaintiffs for the last more than 13 months. No costs.

88. Copies of this order be given *dasti* to the learned counsel for the parties under the signatures of the Private Secretary.

(MANMOHAN SINGH)
JUDGE

DECEMBER 23, 2015