

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Revision No.14 of 2014**

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1. Umesh Ravidas S/O Chhotan Ravidas Resident Of Village Maksudpur, P.O. Parthu, P.S. Ekangarsarai, District - Nalanda

.... .... Petitioner/s

Versus

1. Basudeo Prasad S/O Late Bhattu Mahto Resident Of Village Dhangawan , P.S. Ekangarsarai, District Nalanda At Present Residing At Meer Gulabi Bag, Sadar Gali, P.O. & P.S. Khajekalan, District - Patna.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. RAJ KISHORE PRASAD SINGH, Adv  
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 09-11-2016**

Heard Mr. R.K.P. Singh, learned counsel for the petitioner and learned counsel appearing for the Opposite Party.

This revision application has been filed assailing the order dated 07.11.2013, whereby the learned court below has rejected the petition filed by the defendant-petitioner under Order 7 Rule 11 C.P.C praying for rejection of the plaint. The plaint of the title suit No. 116 of 2011 has been brought on record as Annexure-1 and from perusal of the averments made in the same as well as the relief prayed therein it prima facie transpires that the plaintiff has claimed to be partner of the firm and has filed the suit for



declaration of his share in the partnership business as well as for accounting and other related purposes. The defendant appeared and filed the petition (Annexure-2) pointed out the materials which would entail the rejection of the plaint under the provisions of Order 7 Rule 11 C.P.C. The plaintiff-Opposite Party also filed rejoinder to the said petition filed on behalf of the defendant. After considering the pleadings and submissions on behalf of the parties, the court below has turned down the prayer as made on behalf of the petitioner.

Mr. Singh, learned counsel appearing for the defendant-petitioner has submitted that the court below has not considered the bar to the suit as envisaged under Section 69 of the Partnership Act and there was also no averment or materials brought on record by the plaintiff to show that the firm was a registered firm in accordance with the provisions of Partnership Act. It has been further submitted that the suit was also not maintainable in view of the provisions under C.P.C as the plaintiff has not made the firm as party to the suit. It has also been next contended that the court below has failed to consider the provision as contained in Order 7 Rule 11 (e) C.P.C which has not been complied by the plaintiff and therefore, the plaint was fit to be rejected on that score.

Learned counsel for the opposite party during the



course of his submission could not produce any averment or material before this Court to show that the firm which the plaintiff has claimed to have been constituted with the defendants was a registered firm as required under the provisions of the Partnership Act. No cogent explanation has also been made on behalf of the Opposite Party for not making the firm a party to the suit.

Considering the submissions and the facts and circumstances of the case, this Court comes to the conclusion that the court below has committed error of jurisdiction and material irregularity in passing the impugned judgment dismissing the petition (Annexure-3) filed by the defendant-petitioner.

This revision application is, accordingly, allowed and the impugned order is set aside and the matter is remanded back to the court below for fresh consideration on the petition (Annexure-2) filed by the defendant petitioner and pass appropriate order in accordance with law expeditiously without being prejudiced by observations in this order.

(V. Nath, J)

Ranjan/-

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