

and, therefore, by virtue of Section 69(2) read with Section 69(3) of the Partnership Act, 1963 the present Company Petition was not maintainable. In support of this submission, the learned advocate for the Respondent Company relied upon a decision of a single Judge of this Court in the case of **Dabholkar Enterprises (Partnership Firm) Vs Padma Alloy Castings Pvt. Ltd.**¹.

3 On the other hand, the learned counsel appearing on behalf of the Petitioner correctly submitted that even though several other High Courts have taken a different view to the one taken by a Single Judge of this Court, this Judgment would be binding upon me and the Petition would have to be dismissed. He however submitted that since this Company Petition was being dismissed due to a formal defect, the Petitioner be granted the benefit of Section 14 of the Limitation Act, 1963 and the time taken for prosecuting the present Company Petition be excluded. He submitted that in fact the Supreme Court in the case of **Haldiram Bhujiawala and Anr Vs. Anand Kumar Deepak Kumar & Anr.**² have also taken the same course of action. He submitted that the Supreme Court has taken a view that if a suit fails by virtue of Section 69(2) of the Partnership Act, the same is a formal defect and would fall within the words

1 1994 Mh. L.J. 1715

2 (2002) 3 SCC, 250

“other cause of like nature” in Section 14 of the Limitation Act.

4 I have heard the parties at length and perused the papers and proceedings in winding up Petition. It is not in dispute before me that the Petitioner at the time of filing the present Petition was an unregistered partnership firm. I am informed that now the Petitioner firm is registered. Be that as it may, in view of the judgment of this Court in the case of **Dabholkar Enterprises** (supra) and which is binding upon me, I have no choice but to dismiss this Company Petition.

5 The Company Petition is, accordingly, dismissed. There shall be no order as to costs. However, it is clarified that dismissal of this Petition will not bar a fresh Petition being filed in view of the fact that now the firm is already registered but subject to the Law of Limitation. Needless to clarify that Section 14 of the Limitation Act will be available to the Petitioner to contend that the time taken to prosecute the present Company Petition be excluded as more particularly set out in paragraph 26 of the judgment of **Haldiram Bhujiawala** (supra).

(B. P. COLABAWALLA J.)