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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.R.P. 129/2016

PROMILA JAIN

..... Petitioner

Through Mr. Prakash Khandelwal, Advocate.

versus

SHIV TRADERS & ORS

..... Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% 22.08.2016

CM No. 30284/2016 (exemption)

Exemption is allowed subject to all just exceptions

C.R.P. 129/2016

1. By the present petition, the petitioner seeks to impugn the judgment dated 14.05.2016 by which order the trial court permitted the respondent to withdraw the counter claim relying upon the judgment of the Supreme Court in the case of *Haldi Ram Bhujji Wala vs. Anant Kumar Deepak Kumar, (2000) 3 SCC 250* as the respondent firm was not registered.

2. Learned counsel for the petitioner contends that once a suit is filed by unregistered firm, the said firm cannot be permitted to withdraw the suit and the suit is liable to be dismissed. He relies upon the judgment of the Supreme Court in the case of *Seth Loonkaran Sethiya & Ors. vs. Mr. Ivan E. John & Ors.*, AIR 1977 SC 336 to support his submission.

3. In my opinion, there is no merit in the contention of the petitioner. The Supreme Court in the case of ***Haldi Ram Bhuji Wala vs. Anant Kumar Deepak Kumar (supra)*** held as follows:-

“In fact, the Act has not prescribed that the transaction or contracts entered into by a firm with the third party are bad in law if the firm is an unregistered firm. On the other hand, if the firm is not registered on date of suit and the suit is to enforce a right arising out of a contract with the third party-defendant in the course of its business, then it will be open to the plaintiff to seek withdrawal of the plaint with leave and file a fresh suit after registration of the firm subject of course to the law of limitation and subject to the provisions of the Limitation Act. This is so even if the suit is dismissed for a formal defect. Section 14 of the Limitation Act will be available inasmuch as the suit has failed because the defect of non-registration falls within the words "other cause of like nature" in Section 14 of the Limitation Act, 1963. See *Surajmal Dagduramji Shop v. Srikishan Ram Kishan*, AIR1973 Bom 313.”

4. Hence, the Supreme Court held that a transaction or a contract entered into by a firm with a third party is not bad in law if the firm is an unregistered firm. Hence, such a firm can withdraw the suit and file afresh suit after registration of the firm subject to the law of limitation.

5. The Supreme Court in the case of ***Seth Loonkaran Sethiya & Ors. vs. Mr.Ivan E. John & Ors.(supra)*** held as follows:

“20. A bare glance at the section is enough to show that it mandatory in character and its effect is to render a suit by a plaintiff in respect of a right vested in him or acquired by him under a contract which he entered into as a partner of an unregistered firm whether existing or dissolved, void. In other words, a partner of a erstwhile unregistered partnership firm cannot bring a suit to enforce a right arising out of a contract falling within the ambit of Section 69 of the Partnership Act....”

6. The above judgment does not help the petitioner in any manner whatsoever. There is no dispute that a suit by a registered partnership firm based on a right arising from a contract would not lie under Section 69(1) of the Partnership Act. However, as the contract itself is not illegal, the unregistered firm can always withdraw the suit and after registration, file afresh suit subject to law of limitation.

7. There is no merit in the present petition. The petition is accordingly dismissed.

JAYANT NATH, J

AUGUST 22, 2016

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