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

+ **RFA(OS) No.4/2017**

% *Date of Judgment: 18th May, 2017*

PINKY JAIN & ANR Appellant
Through Mr.Pravir K. Jain, Adv. with
appellant Pinky Jain in person.

versus

AMEYA UNIVERSAL PROJECT PRIVATE
LIMITED Respondent
Through Mr.Vikas Dhawan, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE REKHA PALLI

SANJIV KHANNA, J (ORAL)

1. This intra court first appeal impugns the order-cum-judgment dated 1st December, 2016 in CS (OS) No.624/2013 and connected applications.
2. The impugned order refers and quotes Section 69 of the Partnership Act, 1932 which reads as under:-

“69. Effect of non-registration.—

(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(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.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect,—

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920) to realise the property of an insolvent partner.

(4) This section shall not apply,—

(a) to firms or to partners in firms which have no place of business in 8 [the territories to which this Act extends], or whose places of business in 9 [the said territories], are situated in areas to which, by notification under 10 [section 56], this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidencytowns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882 (5 of 1882), or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.”

3. Thereafter, the impugned order records as under:-

“13. This provision prohibits the institution of any suit in any court by a person who is suing as a partner in a firm against the firm or any person alleged to be or have been a partner in the said firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm. However, if the firm is dissolved then non registration of firm does not come into way and suit can be filed by the partner of a dissolved firm. In this case, it is not the plaintiffs’ case that the firm was dissolved rather in prayer “b” they claim dissolution of firm.

14. In view of the above discussion, it is apparent that the suit of the plaintiffs is barred under Section 69 of the Act. The suit is, therefore, not maintainable and is dismissed along with the pending applications.”

4. The appellant was the plaintiff in the civil suit and submits that the suit proceeds on the assumption that the partnership firm stood dissolved by legal notice dated 12th July, 2012 and, therefore, clause ‘(a)’ to Sub-Section (3) of Section 69 of the Partnership Act, 1932, could be applicable. The argument is that this issue and question was missed in the impugned order.

5. Counsel for the respondent who is the defendant in the said suit, submits that the partnership firm was never dissolved in law. This statement is without prejudice to the contention of the respondent that there was no partnership firm which ever came into existence.

6. In view of the statement made by the counsel for the respondent, we do not think that the impugned order can be sustained. There is a difference between a suit filed on the basis and foundation that the partnership firm has been dissolved and consequently a claim for rendition of account is made; and a suit by a partner to enforce rights where the partnership has not been dissolved. Latter a suit can be dismissed, if the partnership firm was not registered. However, the former suit could not be dismissed on the ground that the suit is not maintainable being barred by Sub-Section (1) of Section (2) of Section 69 of the Partnership Act. It can be dismissed for the reason that the partnership firm was never dissolved and no prayer for dissolution has been made.

7. Learned counsel for the respondent submits that the respondent would raise the objections raised and noted above before the Single Judge and ask for a preliminary issue to be framed. It is open to the respondent to make the said prayer before the Single Judge, in respect of which we express no opinion.

8. Learned counsel for the appellant states that they would examine as to whether they have to amend the plaint or have to file a fresh suit after withdrawing the present suit. We do not make any comment on this aspect also.

9. We, accordingly, allow the present appeal in the aforesaid terms clearly recording that we have not expressed any opinion on merits. We have recorded that as per the appellant, the partnership stood dissolved and whether the statement is legally or factually correct or not, has to be examined. This aspect has to be decided. The appeal is disposed of in the above terms. There shall be no orders as to costs.

10. In order to cut short the delay, the parties are directed to appear before the Single Judge on 5th July, 2017.

(SANJIV KHANNA)
JUDGE

(REKHA PALLI)
JUDGE

MAY 18, 2017
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