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

\+ **RSA 42/2017 & C.M.Nos.4429, 9905/2017**

SUNEEL KUMAR ..... Appellant

Through: Mr. Ranjan Kumar, Advocate.

Versus

AMIT KUMAR ..... Respondent

Through: Mr. Praveen Kumar Jain and Ms. Komal Pandey, Advocates.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 20.04.2018

In this second appeal, the impugned order dated 25.10.2016 has upheld the decree passed by the Trial Court on 19.08.2015 directing the appellant to pay a sum of Rs.1,82,175/- alongwith interest @ 15% per annum w.e.f. 12.10.2009 till the date of decree, alongwith future interest. The sole ground for impugning the said orders is that, while the claim was made against a partnership firm, all partners of the said firm were not impleaded as parties to suit, therefore, the suit should have been dismissed for mis-joinder of parties. The judgment and decree deals with this aspect as under:-

> *" On the contrary, it is submitted by Ld. Counsel for plaintiff that mere non impleadment of the firm as separate defendant is not fatal to the case of plaintiff. It is argued that defendant Sunil Kumar in his cross examination lias himself admitted that it was he who used to pass purchase orders and sign cheques on behalf of partnership firm M/s Sunny sons. It is pointed out that name of defendant Sunil*

Kumar has been impleaded alongwith the firm's name. It is thus argued that the suit is not hit by Order 30 CPC and is very much maintainable against the defendant."

This has been discussed by the Appellate Court as under:-

"4. It is submitted by Ld. Counsel for the appellant that suit was filed only against Sunil Kumar and not against the firm; there is no averment that appellant was partner of a firm; specific (Ejection was taken in the written statement in that respect that suit was bad for mis-joinder and non-joinder of necessary parties and thus suit was barred under Order XXX Rule 1 CPC. No issue was framed on the point of misjoinder or non-joinder of necessary parties, replication was not filed; Ld. Trial Court failed to appreciate the fact that even the invoices issued by the respondent against the goods supplied was in the name of M/s Sunny Sons, the partnership firm and not in individual name of the appellant; Ld. Trial Curt failed to appreciate the fact that although in the case title and memo of the parties of the suit, the name of M/s Sunny Sons had been mentioned by the plaintiff/respondent, however, respondent failed to aver even a single word against the firm. Ld. Trial Court failed to appreciate the fact that the appellant has not been made a party as a partner, rather he is a party in the suit in his individual capacity. In support of his contentions, Ld. Counsel for the appellant has placed reliance on the following judgments:

(1) ***Shri Pradeep Khanna vs. M/s Ashok Electric Company & Ors.*** *[RSA No.276/2007 decided by Hon'ble High Court of Delhi on 03.05.2011];*

(2) ***Haji A.Aboobacker vs. K.M.Sulaiman*** *[WP(C.) No.2921/2009 decided on 29.0 i .2009 by Hon'ble High Court of Kerala];*

(3) ***M/s Sai Nath Enterprises vs. North Delhi Municipal Corporation & Another*** *(CS(OS) No.3397/2014 decided by*

Hon'ble High Court of Delhi on 23.12.2015];

(4) ***Sohanlal Basant Kumar vs. Umraomal Chopra*** *1985 (1) WLN 791(RHC).*

5 On the other hand, Ld. Counsel for the respondent has submitted that it is not necessary to implead firm as a party under Order XXX Rule 1 CPC and suit can not be defeated on the ground of non-joinder of necessary parties.

6 This objection was also taken by the appellant before Ld. Trial Court and Ld. Trial Judge has specifically dealt with the same by observing that partnership firm is not a separate legal entity. The word 'firm' or 'firm's name' is merely a compendious description of all the partners collectively. In the memo of parties, name of the defendant is mentioned as

***"Sunil Kumar
Sunny Sons, Bungalow No.2,
I & II Floor Pandav Nagar,
Opp. Main Mother Dairy,
Delhi-92.......defendant."***

*Ld. Trial Court placed reliance on a judgment of Hon'ble Supreme Court of India in "**Purushottam Umedbhai & Co. vs. Manilal and Sons** AIR 1961 SC 325 wherein it has been observed that provisions of these rules under Order XXX CPC are enabling provisions and do not prevent partners of a firm from suing or being sued in their individual names and these rules do not prohibit the partners of a firm suing in India in their names individually. In **“Sahu Rajeshwar Rao vs. ITO" AIR 1969 SC 667**, it was ruled that liability of a partner of the firm is joint and several and it is open to a creditor of the firm to recover the debt of the firm from any one or more of the partners.*

7 From the memo of the parties, intent of the plaintiff

> *can be inferred that plaintiff sued Sunil Kumar as partner of Sunny Sons and not in individual capacity. Moreover in view of law laid down in* ***Purushottam Umedbhai & Co. vs. Manilal and Sons (supra) & Sahu Rajeshwar Rao vs. ITO(supra)****, I am of the view that it has been held that provisions of Order XXX CPC are enabling provisions and do not prevent partners of a firm from suing or being sued in then individual names and these rules do not prohibit the partners of a firm suing in India in their names individually and liability of a partner of the firm is joint and several and it is open to a creditor of the firm to recover the debt of the firm from any one or more of the partners.*
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> *8 The ground that certificate of Registration of the firm has not been filed and there is no averment that appellant was partner of a firm are not tenable as memo of parties speaks volume that plaintiff filed the suit against the defendant not in individual capacity', but as partner of the firm. Therefore, it can not be said that suit of the plaintiff was bad for misjoinder or non-joinder of the parties and thus it not necessary to frame issue on this point. The defendant on behalf of his firm had been dealing with the plaintiff, therefore, even if there is no averment in the plaint that appellant was partner of the firm does not affect the case of the plaintiff. Since, it is admitted case of the defendant himself that he was partner of the firm, it is not indisfiensable to file certificate of registration of the firm. Although there is no dispute regarding the ratios laid down in the judgements filed by the appellant but the same are not applicable to the facts and circumstances of this case."*

The Court would note that the appellant was accorded all opportunity to contest the case against him in his capacity as a partner of the partnership firm. He is stated to have been placing the orders upon the respondent, the monies which then became due from the appellant consequent to the liability having arisen on the partnership firm, would be recoverable from him as well, since there is an unlimited liability on a partner of a firm. The fact that he fully represented himself, as well as the partnership firm, has not in any way deprived him from contesting the interests of the firm and his own interests.

In view of the above, no substantial question of law arises in this appeal. It is without merits and dismissed accordingly. The pending applications also stand disposed off.

Consequently, the monies deposited by the appellant shall be released to the respondent. Should there be any outstanding amount, it will be open to the Decree Holder to move an application for payment of the same.

NAJMI WAZIRI, J.

APRIL 20, 2018

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