

Mr. Surel S. Shah, for Appellant.
Mr. Prasad Dani, Senior Advocate I/by Mr. Vivek Vijay Salunke, for Respondent No.1.
Mr. Chetan G. Patil, for Respondent Nos.2 to 4.

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATE: 25th JULY, 2019

P.C.:

1. At the request of the learned Advocates for the parties, the First Appeal is taken up for final disposal at this stage.
2. This Appeal is directed against the order dated 20th January, 2016 passed by the learned Additional Judge, Small Causes Court, Pune below Application Exhibit 57 in Special Civil Suit No.607 of 2014.
3. Special Civil Suit was filed by the present Appellant. The Appellant is a partnership firm claiming to be registered having two partners. In the Suit, the Plaintiff had challenged the decree dated 31st August, 2013 passed by the learned Judge in Special Civil Suit No.554 of 2013 as being obtained through fraudulent means.
4. The Defendants appeared before the Civil Court. The Defendant No.1 filed

an Application at Exhibit 57 and urged the learned Judge to reject the Plaint in exercise of the powers under Order VII Rule 11 of the Code of Civil Procedure, 1908. His ground was that the said firm is no more in existence; the same stood dissolved on 31st October, 2013. The said Defendant further contended that the names of the two so called partners have not been mentioned in the Registrar of Firms. This in view of the said Defendant was in breach of Section 69 of the Indian Partnership Act and in view thereof, the Suit was not maintainable.

5. The Plaintiff opposed the said application on various grounds. It is not necessary to go into the details of the Plaintiff's resistance.

6. The learned Judge by the impugned order allowed the Application at Exhibit 57 and rejected the Plaint under Order VII Rule 11 of the CPC. The impugned judgment to put it politely does not give a clear expression to the reasons why the learned Judge was persuaded to reject the Plaint. It is not clear to us whether the learned Judge believed that the partnership firm was not the registered partnership; the certificate of registration was observed by the learned Judge not being on the record, or that the suit suffered from some other infirmity. The learned Judge did observe that Sangeeta Hanumant Nazirkar, daughter of erstwhile deceased partner Gulab Dina Dhavde, could not have been automatically admitted to the partnership which is unknown concept as per the Partnership Act.

7. Whatever be the reasons for the learned Judge to have accepted the

application of the Defendant No.1, the learned Counsel for Defendant No.1 also agreed that the learned Judge had not founded the judgment on his principle ground of objection in such application. In other words, his decision on the principle ground raised by the said Defendant in Application at Exhibit 57 remained undecided.

8. What is therefore, we have on record is that the decision of the learned Judge which by itself is not clear to us in the reasons adopted for rejecting the Plaint, at the same time, the Defendant No.1 also appears to be aggrieved by the fact that his principle ground for rejection of the Plaint taken in Application at Exhibit 57 was not considered.

9. In facts of the present case, therefore, we would request the learned Judge to pass a fresh order on Application at Exhibit 57 filed by the Original Defendant No.1. For such purpose, the impugned order is set aside. All contentions of both the sides are kept open. Fresh order may be passed preferably within a period of four months from the date of receipt of this order.

10. The First Appeal is accordingly disposed of. Civil Application also stands disposed of.

11. Till the said Application is decided, the order directing both the sides to maintain status quo shall continue.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)