

RSA No.112 of 1998 (O&M)
Date of decision: 23.09.2019

Versus

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Mr. Suman Jain, Advocate and
Mr. Man Mohan, Advocate for respondent No.1.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against judgment and decree dated 15.11.1997 passed by the District Judge, Amritsar whereby appeal against the judgment and decree dated 01.02.1991 passed by the trial Court was accepted and suit filed by the appellants for recovery was dismissed.

Counsel for the parties are *ad idem* that entire controversy in the present appeal revolves around maintainability of the suit by the firm Vidulesh Kumar Arun Kumar for want of Anil Kumar, the second partner being not the registered partner of the firm on the date of institution of suit in September, 1984.

The trial Court framed issues No.1 and 6, reads thus:-

1. Whether the plaintiff is a registered firm and Arun Kumar

is a partner thereof?OPP

6. Whether the suit is not maintainable against defendant No.1?OPD

The trial Court answered both the aforesaid issues in favour of the appellants/plaintiffs and partly decreed the suit qua recovery of Rs.1,30,000/- with proportionate costs and interest @ 6% per annum from the date of filing of the suit till realization of the amount against defendant No.1 namely National Insurance Company Ltd.

The appeal filed by the aforesaid insurance company was allowed by the first appellate Court. The first appellate Court by taking into consideration the documentary evidence, referred to in paras 8 to 10 of the judgment and contention of the respondent (appellant therein) in para 11 thereof, recorded its observations in paras 12 and 13 to hold that finding of the trial Court on issue No.6 is reversed and the suit could not be maintained.

A relevant extract from paras 12 and 13 of the judgment is quoted thus:-

12. Form 'C' Ex.A2 shows the registration of the firm on 21.08.1984. Copy of form 'A' Ex.A1 reads that Vidulesh Kumar had joined the firm on 01.09.1980 and had ceased to be partner of the firm on 11.08.1981. Arun Kumar Puri was the partner of the firm since 01.09.1980. Anil Kumar has been shown as partner from 12.08.1981. The learned counsel for the respondents has submitted that when Anil Kumar has been shown as partner of the firm since 12.08.1981, it cannot be stated that the suit was not maintainable. But the learned

counsel going astray has not been able to meet the contention raised by the learned counsel for the appellant. This copy of form 'C' reads that the application for registration of the firm was moved on 21.08.1984 and notice of change in the constitution of the firm under the Transfer of Property Act was given on 29.09.1987. Thus, evidently the notice in the change of constitution of the firm has been given more than three years after the institution of the suit. The legal position on the point in controversy is quite explicit. Our own High Court has observed in **Dr. V.S. Bahal Vs. S.L. Kapur and Co., AIR 1956 Punjab 24** that at the time of institution of the suit all the partners must have been shown as partners in the registers of firms and a defect in this respect cannot be removed pendente lite. The decision has been followed in **Firm Buta Mal Dev Raj Vs. Chanan Mal and others, AIR 1964 Punjab 270**. In this respect, reference may also be made to a decision of the Apex Court reported as **M/s Shreeram Finance Corporation Vs. Yasin Khan and others, AIR 1989 Supreme Court 1769**. The observations of their Lordships contained in para 6 of the judgment may be reproduced as under:-

In the present case the suit filed by the appellants is clearly hit by the provisions of sub-section (2) of section 69 of the said Partnership Act, as on the date when the suit was filed, some of the partners shown as partners as per the relevant entries in the Register of Firms were not, in fact, partners. One new partner had come in and two minors had been admitted to the benefit of the partnership firm regarding which no notice was given to the Registrar of Firms. Thus, the persons suing, namely, the current partners as on the date of the suit were not shown as partners in the Register of Firms. The result is that the suit was not maintainable in view of the provisions of sub-section (2) of section 69 of the said Partnership Act and the view taken by

the Trial Court and confirmed by the High Court in this connection is correct. Although the plaint was amended on a later date that cannot save the suit. Reference has been made to some decisions in the judgment of the Trial Court; however, we do not find it necessary to refer to any of them as the position in law, in our opinion, is clear on a plain reading of sub-section (2) of section 69 of the said Partnership Act.

Similarly, support can be drawn from **Bharath Trust Vs. Devakara Rao, 1993 Civil Court Cases 110 (Kerala)** and **Annapoorna Fertilizers and General Stores Vs. Arunodaya Fertilizers and General Stores 1993 CC Cases 569 (AP)**.

13. The learned counsel for the respondents however seeks support from **M/s Durga Dass Janak Raj Vs. M/s Preete Shah Sant Ram, AIR 1959 Punjab 530**. But this authority is not applicable to the facts of the present case. What has been observed therein is that on death of a partner, fresh registration for purposes of Section 69(2) is not necessary. As such, the said judgment is of no help to the respondents. Thus, when Anil Kumar was not shown as partner in the register of firms on the date when the suit was instituted, the same could not be maintained. Thus, maintaining the finding of the trial Court on issue No.1 that the firm is duly registered, the finding on issue No.6 is reversed that the suit could not be maintained.

Counsel for the appellants has not disputed that originally the firm M/s Vidulesh Kumar Arun Kumar was constituted in the year 1980 and the partnership came into existence on 18.09.1980 vide partnership deed Ex.PW9/3. At that time, the firm was constituted by Vidulesh Kumar and Arun Kumar. Vidulesh Kumar retired from the partnership on

11.08.1981 and dissolution deed dated 13.08.1981 is Ex.P10. On 12.08.1981, Anil Kumar and Arun Kumar constituted a firm under the same name and style i.e. M/s Vidulesh Kumar Arun Kumar, Guru Ka Mahal, Amritsar and the document is Ex.P9. The firm instituted the suit for recovery in September, 1984 wherein Vidulesh Kumar was impleaded as defendant No.3 though he had retired from the firm in the year 1981, therefore, was not partner of the firm at the time of institution of the suit. It is also undisputed position of the case that the firm was registered on 21.08.1984 with the Registrar of Firms, evidenced by form 'C' marked as Ex.A2. Counsel for the appellants has not disputed that Arun Kumar is registered as a partner of the firm as per form 'A' marked as Ex.A1. Sh. Anil Kumar, the second partner who became partner of the firm w.e.f. 12.08.1981 was not registered partner of the firm either at the time of registration of the firm on 21.08.1984 or at the time of institution of the suit.

The first appellate Court by relying upon judgments of this Court referred to in para 12 and that of Hon'ble the Apex Court in **M/s Shreeram Finance Corporation's case (supra)** had held that when Anil Kumar was not shown as partner in the Register of Firms on the date when the suit was instituted, the same could not be maintained and accordingly finding of the trial Court on issue No.6 is reversed.

Counsel for the appellants has submitted that finding of the first appellate Court reversing finding of the trial Court on issue No.6 is not

based upon correct appreciation of position in law with regard to implications of Section 69(2) of The Indian Partnership Act, 1932 (in short 'the Act'). For this purpose, he has placed reliance heavily upon judgment of Hon'ble the Supreme Court **Sharad Vasant Kotak Vs. Ramniklal Mohanlal Chawda, 1998 (1) RCR (Civil) 344**, judgment of Bombay High Court **Pratapchand Ramchand and Co. Vs. Jehangirji Bomanji Chinoy, AIR 1940 Bombay 257**, judgment of Punjab High Court **Dr. V.S. Bahl Vs. S.L. Kapur and Co., AIR 1956 Punjab 24** and Division Bench judgment of Gujarat High Court **Gujarat Water Supply and Sewerage Board, Gandhinagar Vs. Sundardas Hukumatram Shivanani, AIR 1991 (Gujarat) 170**.

Counsel for the respondent/defendant No.1 has supported the judgment and decree passed by the Court in appeal by relying upon judgment of Hon'ble the Supreme Court in **M/s Shreeram Finance Corporation's case (supra)**. Another submission made by counsel is that the moment Vidulesh Kumar retired from the partnership of firm M/s Vidulesh Kumar Arun Kumar, there was no partnership firm that remained in existence and as such, a fresh partnership firm was required to be constituted when Anil Kumar purportedly joined as a partner with Arun Kumar. For this purpose, he has referred to Section 42(c) of the Act and judgments of Hon'ble the Apex Court **Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Nagpur Vs. Seth Govindram Sugar Mills, 1966 AIR (SC) 24** and **Mohd. Laiquiddin and another Vs.**

Kamala Devi Misra (dead) by Lrs and others, RCR (Civil) 687.

I have heard counsel for the parties, perused the paper book and records but express my inability to accept contention of the appellants or differ with finding of the appellate Court recorded in paras 12 and 13 reproduced hereinbefore.

Counsel for the appellants is not in a position to make any convincing arguments as to how the judgment in **M/s Shreeram Finance Corporation's case (supra)** relied upon by the appellate Court is not applicable to the facts of the case at hand. On the contrary, the judgments relied upon by counsel for the appellants do not have bearing on the facts of the case at hand and were decided by the Courts in view of peculiar facts and circumstances involved therein. In **Sharad Vasant Kotak's case (supra)**, the Apex Court has held, reads thus:-

We are also not impressed by the arguments of the learned counsel for the appellants that if the definition of Section 4 is applied to Section 69(2A) then unless the names of all partners find a place in the Register of Firms, the suit filed by the Plaintiff cannot be sustained. The fact that the firm was registered and Plaintiff's name finds a place in the Register of Firms are not in dispute., The name of the newly introduced partner, of course, does not find a place in the Register of Firms. That means the person whose name does not find a place in the Register of Firms may incur certain disabilities and that will not disable the plaintiff to press the suit against the firm, which was registered against the persons whose names find a place in the Register of Firms. We are not called upon to decide what are the disabilities of the person,

whose name does not find a place in the Register of firms. For the purpose of Section 69(2A), the partnership firm will mean the firm as found in the certificate of registration and the partners as found in the register of firms maintained as per rule in Form 'G'. The present suit being one for dissolution and accounts by one of the partners, whose name admittedly finds place in the Register of Firms alongwith the names of all the appellants, the requirements of Section 69 (2A) are satisfied. Section 4 of the Act is also complied with for this limited purpose.

A plain but careful reading of the aforesaid extract leaves no manner of doubt that the firm was registered and plaintiff's name was also there in the register of firms. The name of newly introduced partner did not find a place in the register of firms but in the said case, there were more than one partner whose name was found in the register of firms maintained as per rule in Form 'G' and in those circumstances, it was held that their Lordships were not called upon to decide what are disabilities of the person whose name does not find a place in the registrar of firms. Counsel for the appellants has failed to point out if in the referred authority, any such ratio has been laid down that even if one person is registered as partner of a registered firm and the second person who is stated to have entered into partnership with the registered partner does not find place in the register of firms, still the registered firm can maintain a suit through registered partner on the basis of liability created under a contract with the third party. The other judgments relied upon by the appellants do not lay down any such proposition in law, favourable to the appellants to assail findings of the first

appellate Court. In this view of the matter, the appellants cannot derive any advantage to their contentions from the referred authorities.

Indisputably, in the present case, a new partnership firm was created when Anil Kumar entered into partnership with Arun Kumar after Vidulesh Kumar retired from the firm. In the given scenario, there is no dispute that a partnership firm under the name of M/s Vidulesh Kumar Arun Kumar was in existence from the year 1981 onwards wherein Arun Kumar and Anil Kumar were the partners but the said firm was registered in the year 1984 and only Arun Kumar was the registered partner of the said firm and Anil Kumar was not registered as such. That being so, contention raised by counsel for the respondent/defendant by referring to Section 42(c) of the Act and judgment relevant in that context has no relevance with the aforesaid controversy.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

23.09.2019
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No