IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.02.2021

PRONOUNCED ON : 25.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.1323, 1353 & 1354 of 2008

M/s.Sakthi Durga Engineering
Represented by its Partner R.S.Krishnan
No.26, Hunters Road,
Vepery, Chennai - 600 007. ...Appellant in all the second appeals/ Appellant/Plaintiff

Vs.

P.S.Raman ...Respondent in all the second appeals/Respondent/Defendant

Common Prayer :- Second Appeals have been filed under Section 100 of CPC against the Judgement and Decree dated 26.09.2007 passed in A.S.Nos.188, 181 & 186 of 2006 on the file of the I Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 23.04.2004 passed in O.S.No.4672, 4639 & 4673 of 1999 on the file of the XIII Assistant Judge, City Civil Court, Chennai.

For Appellant in all the second appeals : Mr.R.Parthasarathy

For Respondent in all the second appeals : Mr.V.Balasubramanian

COMMON JUDGMENT

S.A.Nos.1323, 1353 & 1354 of 2008 are directed against the common Judgement and Decree dated 26.09.2007 passed in A.S.Nos.188, 181 & 186 of 2006 on the file of the I Additional District Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 23.04.2004 passed in O.S.No.4672, 4639 & 4673 of 1999 on the file of the XIII Assistant Judge, City Civil Court, Chennai. Respectively.

2.The second appeals have been admitted on the following substantial questions of law:

" i).Whether an unregistered firm can maintain a suit for recovery of money lend by the firm, when such lending was not in the normal course of business of the firm and when the appellant firm is an engineering concern?

ii).Whether the suit filed by the appellant was hit by Section 69(2) of the Indian Partnership Act, 1932, when the appellant was only seeking to work out its common law remedy for recovery of money lent by it to the respondent?

iii).Whether it was necessary for the firm and all its partners to sue as plaintiffs in the suit for recovery of money lent by the appellant to the respondent otherwise than the normal course of business?

iv).Assuming without admitting that the registration of the appellant firm is held to be necessary for maintaining a suit, whether the registration of the appellant firm subsequent to the filing of the suit would cure the initial defect of non registration at the time of presentation of the plaint?

v).Whether the learned trial Court and Appellate Court could have ignored the fact that the respondent had never disputed his signature in the promissory note executed by him in favour of the appellant and whether the same does not raise a presumption of due consideration in favour of the appellant and that the appellant is a holder in due course?

vi).Whether the learned trial Court and lower Appellate Court were right in ignoring the basic requirement of burden of proof which the respondent was duty bound to discharge when he never disputed his signature in the promissory note executed by him in favour of the appellant?

vii).Whether the application for filing of additional document under Order 41 Rule 27 can be rejected even without determine whether the said document would have a material baring on the crucial issue arising for decision or whether there is substantial cause for allowing the application?

3.The unsuccessful plaintiff is the appellant in all the three appeals. The suits have been laid by the plaintiff for recovery of money based on the promissory notes.

4.Since the issues involved in the second appeals are lying in a narrow campus as regards the maintainability of the plaintiff's suits due to want of the registration of the plaintiff's firm, it is unnecessary to go into the facts of the case in detail put forth by the plaintiff as well as the defendant in the matter.

5.Suffice to state that the abovesaid three suits had been laid by the plaintiff against the defendant for the recovery of money based on the promissory notes. According to the plaintiff, they are carrying on the business of construction and in the course of business, the defendant approached the plaintiff to develop his property at Ambattur and entered into a memorandum of understanding with reference to the development of his property and the plaintiff paid advance to the defendant, subsequently, the plaintiff requested the defendant to hand over the original documents of the property for submitting the plans to the authorities and the defendant informed the plaintiff that the documents are mortgaged with the T.I.I.C as collateral for some loans obtained by the defendant and requested the money from the plaintiff and believing the same, according to the plaintiff, it had lent the money to the defendant and in evidence of the borrowals, the defendant had executed the promissory notes in question and as the defendant failed to pay the amount borrowed, the suits have come to be laid by the plaintiff.

6.The defendant resisted the plaintiff's suits on various grounds, however, as far as the disposal of the appeals are concerned, it is sufficient, if the main defence put forth by the defendant for resisting the plaintiff's suits is considered in the second appeals.

7.Inter alia, the defendant would put forth the defence that the present suits laid by the plaintiff is void and the plaintiff is a partnership firm and represented by its partner R.S.Krishnan and the plaintiff has not filed any deed of partnership to show the existence of the partnership and also not produced any document to show that the firm is registered with the registrar of firms and therefore, according to the defendant, unless the said firm is registered as provided under the Indian Partnership Act, 1932, i.e. as stipulated under Section 69 of the Indian Partnership Act, it cannot sue in its name and therefore, the suits are not maintainable and liable to be dismissed on that score alone.

8.The defendant has also taken the other pleas, which are not required to be adverted to as above mentioned for the disposal of the second appeals.

9.In support of the plaintiff's case, PW1 was examined and Exs.A1 to A7 were marked. On the side of the defendant, DW1 was examined and Exs.B1 to B12 were marked.

10.On a consideration of the oral and documentary evidence adduced in the matter and the submissions put forth by the respective parties, the trial Court has held that the plaintiff's suits are not maintainable for want of registration and also answering the other issues framed in the matter against the plaintiff and in favour of the defendant, finally, proceeded to dismiss the suits laid by the plaintiff. Aggrieved over the same, the plaintiff has preferred the first appeals. The first appellate Court, on a consideration of the materials available on record, both oral and documentary and the submissions put forth by the respective parties, considering the only question of the maintainability of the plaintiff's suits for want of registration as per law, on that point, holding that the plaintiff's suits are not maintainable legally, accordingly, upheld the judgment and decree of the trial Court and consequently, dismissed the first appeals preferred by the plaintiff.

11.It is also noted that in the first appellate Court, the plaintiff had moved the petitions for the reception of additional evidence and the said petitions have also come to be dismissed by the first appellate Court. Impugning the judgment and decree of the Courts below, the present second appeals have been laid by the plaintiff.

12.Admittedly, the plaintiff's firm is not registered with the appropriate authority on the date of the filing of the suits. Even, according to the plaintiff, as submitted in the second appeals, the plaintiff's firm had come to be registered only on 18.12.2001. The plaintiff's counsel, during the course of arguments, put forth the two contentions and according to him, the Courts below had failed to appreciate that the plaintiff's firm is an engineering concern and does not do the business of money lending and as the money had been advanced by the plaintiff to the defendant and as to why the money had been advanced by the plaintiff to the defendant has been sufficiently explained in the plaint and the said transactions are not due to any dealings conducted by the plaintiff in the usual course of its business, therefore, according to him, the plaintiff's firm is not required to be registered to institute the suits for the recovery of money and the abovesaid relief could be claimed by the plaintiff as a common law remedy and therefore, according to him, the plaints are not hit by Section 69(2) of the Indian Partnership Act, 1932. Further, according to the plaintiff's counsel, though the plaintiff's firm was not registered on the inception of the filing of the suit, according to him, during the pendency of the suits, the plaintiff's firm had come to be registered on 18.12.2001 and therefore, according to him, the subsequent registration of the plaintiff's firm would cure the initial defect of non registration at the time of presentation of the plaint and the abovesaid factors had not been rightly considered and determined by the Courts below. Therefore, the plaintiff's counsel would also put forth that the first appellate Court had failed to consider the petitions preferred by it for the reception of the additional evidence under Order 41 Rule 27 CPC, which the documents, according to the plaintiff's counsel, have material baring on the issues involved in the matter.

13.It is put forth by the plaintiff's counsel that the plaintiff's firm is carrying on the business of builders contractors, operators of earth moving equipments, contractions of Civil Electrical and Mechanical works and other related services of Building / Contract etc., and as interior decorators and to carry on such other line or lines of business as the partners may decide from time to time. Though the plaintiff would claim that it is only engaged in the abovesaid business, to substantiate the abovesaid claim of the plaintiff, the plaintiff had not endeavoured to produce the deed of partnership before the trial Court and only during the course of the first appeal, the plaintiff had endeavoured to produce the deed of partnership as an additional evidence in support of its case. In any event, according to the plaintiff, the lending of money is not the business of the plaintiff's firm and therefore, when the plaintiff has advanced the money to the defendant to discharge the mortgage of the property and retrieve the documents, which are in the custody of T.I.I.C based on the mortgage executed by the defendant, therefore, according to the plaintiff, the abovesaid lending of money would not fall within the nature of the work engaged by the plaintiff's firm and therefore, for the recovery of the said amount advanced by the plaintiff, the plaintiff's firm is not required to be registered. In this connection, the plaintiff's counsel would rely upon the decision of the apex Court reported in (2000) 3 Supreme Court Cases 250 (Haldiram Bhujia Wala and another Vs. Anand Kumar Deepak Kumar and another), for the proposition that the suit is not barred by Section 69(2) of the Indian Partnership Act, 1932, whereunder a statutory right or common Law right is being enforced and the plaintiff's advancement of money to the defendant not having done in the course of business engaged by the plaintiff's firm and therefore, according to the plaintiff, the registration of the firm is the sine qua non for the maintainability of the suits only in respect of cases filed to enforce any right arising from a contract. The proposition of law enunciated by the apex court in the decision referred to supra is not controverted by the defendant's counsel. In addition to that, the plaintiff's counsel also relied upon the decision of the apex Court reported in (1998) 7 Supreme Court Cases 184 (Raptakos Brett & Co.Ltd., Vs. Ganesh Property), and it had been pointed out by the plaintiff's counsel that the Supreme Court in the said decision had also considered whether the registration of the plaintiff's firm during the pendency of the suit would revive such suit or make the same competent at least from the date of registration. However, considering the discussion rendered by the apex Court in the abovesaid decision, no doubt, the abovesaid position of law has been considered by the apex Court vis-a-vis the decision of the apex Court reported in (1989) 3 Supreme Court Cases 476 (M/s.Shreeram finance Corporation Vs.Yasin Khan and others). However, it is noted that in the abovesaid decision, though the abovesaid position of law has been considered, the apex Court had not formulated or given any conclusive opinion on that point and left the same undecided as not surviving for consideration for the disposal of the case covered in the said decision. Considering the facts in the abovesaid position, the Supreme Court had determined that the suit having been laid based on a composite cause of action held that the plaintiff's suit is not barred as regards the second cause of action based on the failure of the defendant-lessee to comply with the statutory petition under Section 108 (q) and 111(a) of the Transfer of property Act and accordingly, upheld the decree of possession granted to the plaintiff in the abovesaid case.

14.As regards the first limb of the plaintiff's counsel's argument, when according to the plaintiff, it had entered into a memorandum of understanding with regard to the development of the property of the defendant at Ambattur and also paid advance to the defendant and when subsequent thereto and in continuation of the abovesaid contract, the plaintiff had requested the defendant to hand over the original documents of the property concerned for submitting the plans to the appropriate authority and when the plaintiff has clearly averred that the abovesaid acts had been done in the course of business and when to the abovesaid request of the plaintiff, the defendant had apprised that the original documents are mortgaged with the T.I.I.C as collateral for some loan obtained and accordingly, the plaintiff in furtherance of the contract entered into with the defendant, as the documents are required by the plaintiff to proceed further in the execution of the work following the contract, it is found that the plaintiff had advanced money to the defendant (assuming the plaintiff's case is true) for the purpose of retrieving the documents from T.I.I.C, so as to enable the plaintiff to carry out the work to be done pursuant to the contract entered into with the defendant. In such view of the matter, when according to the plaintiff, as averred in the plaint clearly all the abovesaid acts had been done only in the course of business as averred in para - 3 of the plaint and the acts contemplated in para - 4 of the plaint are also required to be done only for the purpose of the business entered into by the plaintiff with the defendant and when the plaintiff's contract of developing the property of the defendant is found to be one of the business engaged by the plaintiff, in such view of the matter, the lending of money by the plaintiff to the defendant simplicitor cannot be viewed as the lending of money as done by the financial institution as sought to be projected by the plaintiff's counsel and on the other hand, it is evident that the plaintiff's case of lending money to the defendant is only to take further action by the plaintiff vis-a-vis the contract entered into with the defendant qua the development of his property and therefore, when the case of the plaintiff as put forth in the plaint is viewed wholly, the contention of the plaintiff's counsel that the lending of money by the plaintiff to the defendant should be wholly delinked from the nature of its business, as such, cannot be countenanced and therefore, as rightly contended by the defendant's counsel, the same could only be viewed as a transaction engaged by the plaintiff in the usual course of its business and therefore, the contention of the plaintiff's counsel that the registration of the plaintiff's firm is not essential for maintaining the suits, as such, cannot be accepted and rightly disbelieved and rejected by the Courts below and therefore, I do not find merit in the argument of the plaintiff's counsel that the plaintiff is entitled to maintain the suits on the footing that lending of the money is not the business of the plaintiff and it's main business is only to do the civil engineering works and therefore, the registration of the plaintiff's firm is not the sine qua non for maintaining the suits and the abovesaid contention put forth by the plaintiff has been considered by the Courts below in the proper perspective and rightly rejected the same.

15.In view of the abovesaid factors, it is evident that as rightly contended by the defendant, the plaintiff's suits are not maintainable for want of registration in the light of

Section 69(2) of the Indian Partnership Act, 1932. The Supreme Court, in the decision reported in (1989) 3 Supreme Court Cases 476 (M/s.Shreeram Finance Corporation Vs. Yasin Khan and others) while considering the scope of Section 69 of the Indian Partnership Act, held as follows:

> "Partnership Act, 1932 - Section 69 (2) - Firm reconstituted prior to the date of filing suit by the firm against a third party but notice regarding the reconstitution given to the Registrar of Firms and note taken accordingly in Register of Firms subsequent thereto- Held, suit in contravention of Section 69 (2), hence not maintainable - Even though plaint was amended on a later date but that cannot save the suit - Practice and Procedure - Civil Procedure Code, 1908, Order VI Rule 17".
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> 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, two 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 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.

16.Considering the abovesaid position of law laid down by the apex Court, it is found that the suit filed by the plaintiff's unregistered firm is not maintainable and the persons, who suing viz., the current partners as on the date of the suit should also be established to be the partners of such a registered firm and in the absence of both, the suits are not maintainable as per sub-section 2 of the Section 69 of the Indian Partnership Act and it is also seen that the subsequent registration of the Partnership Firm pending the suits or afterwards would not cure the defect.

17.In the decision reported in 1989 (2) L.W 418 (Savariraj Pillai T. v. M/s.R.S.S. Vastred & Co.,), it has been held that the suit instituted by the unregistered firm is non est in the eyes of law and the abovesaid position of law as held in the abovesaid decision is extracted below:

> Learned counsel Mr.E. Padmanabhan, would straight-away rely upon the decision in Loonkaran Sethia v. Ivan N. John, AIR 1977 SC.336: 1977 (1) SCR 853 in which dealing with the scope of S. 39 of the Act, it was held that it is mandatory in character that a partner of an erstwhile unregistered partnership firm cannot bring a suit to enforce a right arising out of a contract within the ambit of S. 69.
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> In the matter of Abani Kantapal, a Division Bench in dealing with the scope of the section held that if a firm is not registered, excepting in a suit as contemplated under S. 69(1) of the Act, the Court will have no jurisdiction to entertain a suit in violation of S. 69(1). It further added:
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> ... In other words, the plaint that has been filed by the plaintiff will be considered a void plaint, if it contravenes the provisions of sub-sec. (1) and (2) of S. 89 of the Partnership Act...
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> A Division Bench of the same Court in an earlier decision in Ram Kumar Sha Chandrai a firm v. Dominion of India, held that if

the name of one person who was partner on date of suit is not shown in the register then the suit as filed is not maintainable. A Division Bench in Bank of KoothattuKulam v. Thomas, AIR 1955 T.C.155, held:

It is necessary not only that the firm should be registered, but the person suing must be shown as a partner in the firm. And when it is found that on the date when the plaint is filed the second part of this condition has not been carried out then S. 69(2) is not complied ... The registration after the institution of the suit cannot cure the defect of non registration before the date of suit.

A Division Bench of this court in Buhari Trading Co. v. Star Metal Co., in dealing with the dismissal of a suit which was sought to be withdrawn on the ground that the plaintiff therein was an unregistered firm, held that it would not be a bar to file a fresh suit, on the same cause of action after the firm gets registered, for doing that, no permission is needed. This decision also proceeds on the basis that the suit earlier filed is non est in the eye of law.

To counter the contentions of learned counsel Mr.E. Padmanabhan based on these decisions learned counsel Mr.T.R. Rajagopalan, would submit that it is only a formal defect in view of the provisions found in Order 23 Rule 1 (3) (b) C.P.C. and relied on Sri Saravana Chit Fund Co., v. Serudeen, which deals with failure to issue the statutory notice under Section 25 of the Chit Funds Act, and on the suit being dismissed for want of notice, it was treated as a technical defect, and to prevent parties from suffering, permission was granted to withdraw the suit under Order. 23 Rule.1 (3) C.P.C. with liberty to file a fresh suit, so that there may not be miscarriage of justice. This decision of the learned Judge could not apply in relation to a suit covered by S. 69(2) of the Act, which had been held by the Supreme Court as mandatory. The concept of formal defect which could be available under Order 23 rule 1(3) C.P.C. would have no relevance when a mandatory requirement is not complied with, for the institution of a suit. A learned Judge in Atul v. Radkishore also took, the same view in respect of Order 23 rule 1 (d) C.P.C. to the effect that a formal defect is a defect of form which is prescribed by rules of procedure such as misjoinder of parties, causes of action, non payment of court fees etc., and in a case where plaintiff fails to incorporate a prayer for dissolution of partnership in a suit for accounts it would no doubt result in dismissal of suit, but it being a formal defect, plaintiff would be permitted to come again with a properly drafted plaint. This is again a decision, which does not deal with non compliance of a mandatory requirement.

Kanniya v. Papayapa is a full Bench decision which dealt with the powers of an appellate court to allow a suit to be withdrawn with liberty to file a fresh suit, and hence, it has no application to the point in this revision. Therefore, those decisions do not in any manner enable the plaintiff to secure the withdrawal of the suit with permission to file a fresh suit.

Yet, learned counsel Mr.T.R. Rajagopalan, would submit that, when the suit had been filed by the firm, the fact that the firm being represented by a partner whose name was not registered with the Registrar of Firms, on the date of filing of the suit, would not make it a void suit, and that S. 69(2) would have no application. In the light of the decisions relied on by learned Counsel Mr.E. Padmanabhan and which had been referred to above, such a distinction would not be available to salvage a suit of this nature, which is hit by the mandatory requirements of S. 69 (2) of the Act. In this context, Messrs. Shreeram Finance Corporation v. Yasin Khan, 1989 (2) LW 542 requires to be referred to. It was held therein that a suit hit by Section 69(2) is not maintainable, because it is a mandatory requirement."

18.Similarly, in the decision reported in 1991 TLNJ 107 (Selvam Estates v. Thangapandia Maharajan), it has been held that the registration of a firm is a condition precedent to its right to institute a suit of the nature mentioned in Section 69 (2) of the Partnership Act and that the registration after the institution of the suit cannot cure the defect of non registration before the date of the suit and the position of law has been explained in the abovesaid decision as follows:

"Mr.T.V. Ramanujam, placed reliance on the judgment reported in Bank of Koothattukulam v. Thomas, AIR 1955 T.C.155, a Division Bench of Travancore Cochin High Court held as follows:

In Loon Karan v. Ivan E. John, AIR 1977 SC.336 : 1977 (1) SCR 853 the Supreme Court held as follows:

Section 69 of the Partnership Act is 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 the matter of Abani Kanta Pai, AIR 1986 Cal. 143, a Division Bench of Calcutta High Court held as follows:

M/s. Shreeram Finance Corpn., v. Asin Khan, 1989 (2) LW 512, was relied on by the learned counsel for the defendants to say that the suit has been instituted against a person (1st defendant) who is not a partner. The firm registration certificate also does not show that name of the first defendant Thangapandian as a partner of the plaintiff firm. The Supreme Court in the above case held that the said suit is clearly hit by the provisions of sub sec (2) of Section 69 of the said Partnership Act, as on the date when the suit was filed, two of the partners shown as partners as per the relevant entries in the Registrar 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 current partners as on the date of suit were not shown as partners in the Registrar of Firms. Thus the Supreme Court dismissed the suit filed by the Appellant on the question of maintainability in view of the provision of sub section (2) of section 69 of the Partnership Act by confirming the view taken by the trial court and the High Court. The Supreme Court further held that though the plaint was amended on a later date that cannot save the suit. The Bar under . S. 69 can only be with reference to the plaintiff and not with reference to the persons who are sued as defendants.

Another recent decision of our High Court was also relied by the learned counsel for the defendants which is reported in T. Savariraj Pillai v. M/s R.S.S. Vastrad & Co .AIR 1990 mad. 198, Sathiadev , J. held that requirements of Section 69 of the Partnership Act are mandatory and the suit filed by a party without complying with the requirements under Section 69 of the Partnership Act is fatal and hence, the suit filed is void. Hence permission to withdraw the suit with liberty to file a fresh suit cannot be granted.

It is very useful to refer a very recent judgment of our High Court by Srinivasan, J., reported in A.P.S. Baharudeen v. Antony, 1991 TLNJ 27. That is an appeal filed by plaintiffs in a representative capacity, who lost their case before both the courts below. They sought permission to withdraw the second appeal with liberty to file a fresh suit C.M.P. No. 1372 of 1990 was filed for the said relief in the second appeal. The said C.M.P. was resisted by the respondents in the appeal. Learned Judge in his detailed and well considered judgment held as follows:

The learned Judge was of the view that permission to withdraw a suit with liberty to file a suit can be granted if the suit has to fail by reason of formal defect or a ground analogous thereto. The learned Judge further held as follows:-

I have carefully considered the rival submission made by the learned counsel for the plaintiff and the learned counsel for the respective defendants. The above review of the case law on the subject shows that the views held by practically all the High Courts in India is that the registration of the firm is a condition precedent to its right to institute a suit of the nature mentioned in Section (2) of the Partnership Act and that the registration after the institution of the suit cannot cure the defect of non registration before the date of the suit. It follows from this, that the plaintiff is not entitled to withdraw the present suit and file a fresh suit on the same cause of action. Since in my opinion, the defect pointed out by the defendants is not a formal defect but goes to the root of the matter Hence I have no jurisdiction to proceed with the trial with the condition precedent to the right to institute a suit has not been fulfilled in this case. Hence the question of withdrawing a void plaint does not arise since it is not a formal defect. If the plaint is treated as a void plaint, the question of granting permission does not arise at all."

19.Considering the position of law outlined in the abovesaid decision, it is evident that the illegality in the institution of the suit goes to the root of the very institution of the suit and the plaint itself is found to be non est in law. The subsequent registration, after the institution of the suit, will not cure the defect of non registration before the date of presentation of the suit. It is further noted that the very plaint of the unregistered firm having been taken on file, being non est in law, it follows that the Court has no jurisdiction to proceed with the trial of such a suit as the primordial condition precedent to the very institution of the suit has not been complied with or fulfilled by the plaintiff.

20.The abovesaid position of law has also been followed by our High Court in the decision reported in 1999 (II) CTC 540 (M/s.K.R.M.Money Lenders rep.by its Power Agent Karuppiah Vs. Mr.A.Manoharan @ Doss), where in, the position of law has been explained as follows:

> " Partnership Act, 1932, Section 69(2) - Suit instituted by partnership firm which was unregistered on date of institution of suit - Firm subsequently registered - Subsequent registration of firm does not cure defect of non-registration before presentation of suit - Non-registration of firm is illegality going to root of suit and plaint is itself non-est in law - Firm instituting suit should establish that firm is registered and disclose particulars of partners who constitute firm on date of institution of suit. -
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> Code of Civil Procedure, 1908, Order 7, Rule 1 - Plaint and pleadings - Defect in filing suit by unregistered firm goes to root of suit and Court is bound to consider same even if defendants had failed to raise such objection - Court has to reject plaint if barred by law - Suit by unregistered firm barred under Section 69(2) of Partnership Act - Suit to be rejected and plea of waiver of such objection by defendants is of no avail.
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> Practice and procedure - Suit by unregistered Firm decreed - One defendant

alone filing appeal and raising objection regarding maintainability of suit by unregistered Firm - Plaint to be rejected and decree to be set aside - Plea that decree would be valid against other defendants who did not file appeal would be mockery of system as there would be two different decrees on same point or cause of actions."

21.In the light of the abovesaid factors, it is found that the plaintiff's suit is hit by Section 69(2) of the Indian Partnership Act, 1932. The subsequent registration of the plaintiff's firm would not cure the defect of non registration before the presentation of the suit. In view of the fact that the non registration of the firm is an illegality going to the root of the suit and thereby, the plaint itself is non est in law, the position of law being above, in such view of the matter, the contention of the plaintiff's counsel that the plaintiff's firm having been subsequently registered with the appropriate authority, the same would cure the defect of non registration on the date of the filing of the suit has to be discountenanced and with reference to the abovesaid position of law, as no conclusive opinion has been formulated or outlined by the apex Court in the decision reported in (1998) 7 Supreme Court Cases 184 (Raptakos Brett & Co.Ltd., Vs. Ganesh Property) relied upon by the plaintiff's counsel and resultantly the law enunciated by the apex Court in the decision reported in (1989) 3 Supreme Court Cases 476 (M/s.Shreeram Finance Corporation Vs.Yasin Khan and others) is holding the field as held by our High Court in the various decisions referred to supra.

22.The plaintiff's counsel, during the course of arguments, would also point out that the first appellate Court has failed to consider the proper perspective of the endeavour of the plaintiff to project the additional evidence, particularly, the partnership deed and the certificate of registration of the plaintiff's firm and the reasons adduced by the first appellate Court for rejecting the said petitions do not concur with the principles of law as outlined under Order 41 rule 27 CPC.

23.As above pointed out, the defendant, inter alia, while resisting the plaintiff's suit, put forth the plea that the plaintiff's suit is not maintainable for want of registration and the plaintiff's suit is barred under Section 69(2) of the Partnership Act. The position of law being above, when the maintainability of the plaintiff's suit itself is questioned by the defendant in the written statement, the plaintiff should have endeavoured to produce the deed of partnership before the trial Court at the earliest point of time. It is not the case of the plaintiff that the deed of partnership was not available at the time of the filing of the suit. Now, according to the plaintiff, the plaintiff's firm got registered subsequent to the institution of the suit i.e. on 18.12.2001 and when the judgment of the trial Court was rendered on 23.04.2004 much latter to the abovesaid registration and as above pointed out, the defendant having put forth the defence vehemently that the plaint is barred under Section 69(2) of the Indian Partnership Act for want of registration, despite the abovesaid position, the plaintiff should have endeavoured to produce the firm registration certificate also before the trial Court, the plaintiff having failed to do so, it is thus found that when it is not the case of the plaintiff that the trial Court had refused to admit the additional evidence and that the plaintiff was not having the knowledge about the existence of the additional evidence sought to be projected by him in the first appellate Court, it is seen that the first two ingredients of Order 41 Rule 27 CPC are not at all attracted. Now according to the plaintiff's counsel, the appellate Court should have proceeded to receive the additional evidence for enabling it to pronounce the judgment or for any other substantial causes in the matter, however, when it is seen that the subsequent registration of the plaintiff's firm would not cure the defect of non-registration on the date of presentation of the plaint, as above discussed, the first appellate Court was found to be justified in not entertaining the petitions preferred by the plaintiff for the reception of additional evidence. In toto, it is evident that none of the parameters envisaged under Order 41 Rule 27 CPC having been satisfied by the plaintiff in any manner, the first appellate Court is found to be wholly justified in dismissing the petitions preferred by the plaintiff for the reception of the additional evidence.

24.In the light of the abovesaid discussions, I hold that the lending of money by the plaintiff to the defendant (assuming the plaintiff's case is true and averred in the plaint) is only done in the normal course of its business and therefore, the plaintiff's suits are hit by Section 69(2) of the Indian Partnership Act, 1932 and the subsequent registration of the plaintiff's firm would not cure the defect of non registration at the time of the presentation of the suit and when the plaintiff has failed to satisfy the ingredients under Order 41 Rule 27 CPC, the substantial questions of law 1 to 4 and 7 formulated in the second appeal are answered against the plaintiff and in favour of the defendant. Inasmuch as non registration of the plaintiff's firm is an illegality going to the root of the suit and the plaint itself is non est in law, the Court has no jurisdiction to proceed with the merits of such a suit and in such view of the matter, the other contentions raised by the plaintiff in the second appeal by way of the substantial questions of Law No.5 &

6, in my considered opinion, are not required to be considered, particularly, when it has been held that the suit instituted by the plaintiff's unregistered firm is non est in the eyes of law.

In the light of the abovesaid discussions, the Judgement and Decree dated 26.09.2007 passed in A.S.Nos.188, 181 & 186 of 2006 on the file of the I Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 23.04.2004 passed in O.S.No.4672, 4639 & 4673 of 1999 on the file of the XIII Assistant Judge, City Civil Court, Chennai, are confirmed and all the three second appeals are dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sms

To:

1. The I Additional Judge,
   City Civil Court,
   Chennai.

2. The XIII Assistant Judge,
   City Civil Court,
   Chennai.

+1cc to M/s.R.Parthasarathy, Advocate, S.R.No.11626

+3ccs to Mr.V.Balasubramanian, Advocate, S.R.No.11514,11515,11516

S.A.Nos.1323, 1353 & 1354 of 2008

AK[co]
NSK 04/10/2021