

919.86.22 cra.doc

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 86 OF 2022

**SMT. PREMABAI RAMESHCHANDRA
UPADHYE AND ORS**

....APPLICANTS

V/s.

M/S. TEJASWI CONSTRUCTIONS AND ORS

.....RESPONDENTS

**Mr. G. S. Godbole a/w Ketki Gadkari a/w Pradeep Salgar a/w
Aishwarya Shinde Advocate for Applicants**

**Mr. Sandeep Maurya i/b Simran Vishwakarma Advocate for
Respondent nos. 1 to 4**

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 28, 2022.

P.C.:

1) This Petition is by Defendant to Special Civil Suit No. 57/2018 pending on the file of Jt. Civil Judge Senior Division, Solapur for grant of specific performance. Application Exh. 36 came to be moved by the Petitioner under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 (Hereinafter referred to as 'CPC' for the sake of brevity) claiming that Suit is barred under Section 69(2) of the Indian Partnership Act.

2) According to counsel for the Petitioner, Plaint depicts 4 Plaintiffs out of which Plaintiff no. 1 is partnership firm and Plaintiff nos. 2 to 4 are shown to be its partners. He would further claim that Plaintiff no. 4 has signed in the capacity of partner, however, on the date of lodging of the Suit, Plaintiff no. 4 who has verified the Suit pleadings was not registered as partner in the record of Registrar of partnership firm. Drawing support from Section 69(2) of the Indian Partnership Act, Mr. Godbole would urge that Petitioners were justified in moving an Application under Order VII Rule 11(d) of Code of Civil Procedure, 1908. He has expressly relied on language of Section 69(2) of the Partnership Act so as to ascertain his claim that Suit is not maintainable to enforce the right arising out of the contract on behalf of partnership firm as the person suing shown as partner with the Registrar of the Firms.

3) So as to substantiate the said claim, he has invited attention of this Court to the very reasons furnished by the Court below while passing the order impugned.

4) Section 69-A of the Indian Partnership Act is inserted by State Amendment which provides for penalty for contravention of Section

60, 61, 62 or 63 of the Partnership Act. As such, said Section provides that if intimation or notice as provided under aforesaid sections in respect of any registered firm is not sent or given to the Registrar within period specified, the Registrar may after offering reasonable opportunity of being heard may grant or refuse amendment in the record relating to firm. It provides that such amendment can be granted subject to payment of penalty.

5) Fact remains that Plaintiff no. 1 firm which is registered in 2008 and Plaintiff no. 4 shown to be partner of Plaintiff no. 1 firm about which registration was ordered on 09/03/2018 as reflected from extract of Registrar of firms produced at Exh. 56. It appears that Exh. 43 copy of deed of retirement from partnership firm dated 01/04/2017 and from the entries which are produced on record at Exh. 56 by the Petitioner it is apparent that Plaintiff no. 4 is already accepted as partner. In the aforesaid background, the claim that suit is barred under Section 69(2) of the Indian Partnership Act, cannot be inferred as Section 69-A acts as an exception to Section 69 on the issue of maintainability of the Suit.

6) As such, it has to be held that Suit cannot be said to be hit by

provisions of Section 69(2) of the Partnership Act which warrants rejection of the Plaintiff.

7) That being so, no case for interference is made out. Revision stands dismissed.

[NITIN W. SAMBRE, J.]