

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SANTOSH
SUBHASH
KULKARNI

**INTERIM APPLICATION NO. 3780 OF 2022
IN
SUIT NO. 2055 OF 1985**

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Vikram Pravinchandra Kapadia ...Applicant
In the matter between
M/s. Bonny Enterprises & ors. ...Plaintiffs
Versus
Pravinchandra Hemchand Kapadia & ors. ...Defendants

Ms. Adeeba Khan, a/w Mohammed Asim Shaikh, for the
Applicant.
None for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 20th DECEMBER, 2022

PC:-

1. This application is taken out to recall the compromise decree dated 8th September, 1987 passed by this Court in accordance with the Consent Terms executed between the parties in Suit No.2055 of 1985. The substance of the application is that on the date of the institution of the suit, plaintiff no.1 M/s. Bonny Enterprises was not a registered partnership firm.

2. The learned Counsel for the applicant - defendant no.7 submits that the fact that the firm was not duly registered came to the knowledge of the applicant recently when the applicant

obtained information under Right to Information Act. Attention of the Court was invited to a copy of the application for registration of the firm, which was preferred on 18th February, 1987. The learned Counsel for the applicant submitted that as on the date of the institution of the suit the firm was not registered and the said fact is confirmed by one of the partners of the firm on an affidavit sworn on 19th March, 1986.

3. Evidently, the decree on the basis of the Consent Terms was passed on 15th September, 1987. It is not the case that the applicant – defendant no.7 was not a party to the Consent Terms. Nor is it the case that consideration mentioned thereunder has not been received. The sole contention is that the plaintiff no.1 was not a registered partnership firm on the date of execution of the agreement or institution of suit.

4. The application suffers from serious delay and latches. In any event, the bar under Section 69(2) of the Indian Partnership Act may not operate as the suit was for specific performance of an agreement for sale allegedly executed by the defendants on 15th September, 1978, the legality and binding effect of which was confirmed by the consent decree dated 8th September, 1987.

5. Hence, the application stands rejected.

[N. J. JAMADAR, J.]