



C.R.P. No.2734 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.09.2022

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

C.R.P.No.2754 of 2022
& C.M.P. No.14494 of 2022

1. Mahindra World City Developers Limited
represented by its Authorized Signatory,
Ground Floor, Mahindra Towers,
No.17/18, Patulous Road,
Chennai – 600 002.

2. Mahindra Industrial Park Chennai Limited,
Rep. by its Authorized Signatory,
Ground Floor, Mahindra Towers,
No.17/18, Patulous Road,
Chennai – 600 002.

... Petitioners

Vs.

1. Omsakthy Agencies (Madras) Pvt. Ltd.,
Represented by its Authorized Signatory
S.Udhayakumar,
TS-64, SIDCO Industrial Estate,
Ekkattuthangal,
Chennai – 600 032.

2. Rangunandhan

3. M/s. Harsha Estates,
rep. by its Managing Partner,
Dr. M.Shivabhagyam
No.11, Arihant Ocean Towers,
No.77, Wallajah Road,



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Chennai – 600 002.

4. V.Noorjahan, partner, M/s.Harsha Estates,
5. M.P.Farook, partner, M/s.Harsha Estates,
6. D.Masthan, partner, M/s.Harsha Estates ... Respondents

Civil Revision Petition is filed under Article 227 of The Constitution of India to set aside the fair and decretal orders dated 08.6.2022 passed in I.A.No.1 of 2019 in O.S.No.18 of 2019 on the file of the Principal District Court at Tiruvallur and allow this Civil Revision Petition.

For Petitioners : Mr.Srinath Sridevan
For Respondents
4 & 5/caveators : Mr.P.S.Raman, Senior Counsel
for Mr.V.Chandra Prabu

ORDER

This Civil Revision Petition has been preferred against the fair and decretal orders dated 08.6.2022 passed in I.A.No.1 of 2019 in O.S.No.18 of 2019 on the file of the Principal District Court at Tiruvallur.

2. The revision petitioners are defendants 5 and 6 in the suit. Respondents 3 to 6 /plaintiffs have filed the said suit seeking the relief of specific performance and for permanent injunction. The above suit was originally filed before this Court under its ordinary original civil jurisdiction



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as C.S.No.197 of 2007 and later, it was transferred to the file of the Principal District Court, Tiruvallur and got renumbered as O.S.No.18 of 2019. During the pendency of the suit, an Interlocutory Application in I.A.No.1 of 2019 was filed by defendants 3 and 4 namely respondents 1 and 2 herein to reject the plaint under Order VII Rule 11 of the Civil Procedure Code. Even when the matter was pending before this Court, an earlier application in A.No.4437 of 2015 was filed by the first defendant for the same relief, which was renumbered as I.A.No.4 of 2022, after transfer of the said suit to the file of the Principal District Court, Tiruvallur. By the impugned common order, both I.A.No.1 of 2019 and I.A.No.4 of 2022 were dismissed. Challenging the order in I.A.No.1 of 2019, the above civil revision petition has been filed. However, in this civil revision petition, this Court is not concerned with I.A.No.4 of 2022, as it was not challenged.

3. The facts leading to filing of I.A.No.1 of 2019, are as hereunder:

The said suit, which was originally filed before this Court under its ordinary original civil jurisdiction in C.S.No.197 of 2007 by the plaintiffs, had been subsequently transferred on the point of jurisdiction to the file of the Principal District Court, Tiruvallur and got renumbered as O.S.No.18 of



2019; the said suit had been filed for the relief of specific performance based on an agreement dated 08.08.2006; there are two connected suits pending in C.S.Nos.198 and 199 of 2007; originally the respective first defendant in the suits filed applications in A.Nos.3562 to 3564 of 2010 for revocation of leave granted and A.Nos.4437 to 4439 of 2015 for rejection of the plaints; the said applications were allowed by a learned Single Judge of this Court vide an order dated 23.11.2016; however, the said common order was challenged by filing O.S.A.Nos.104, 105, 110, 111, 122 and 123 of 2017; and the Hon'ble Division Bench of this Court, vide a common judgment dated 23.07.2018, upheld the orders passed in A.Nos.3562 to 3564 of 2010 and set aside the orders passed in A.Nos.4437 to 4439 of 2015 and transferred the suits to the file of the District Court, Tiruvallur.

3.1. The first plaintiff's firm is an unregistered firm, which is involved in commercial activities; as per law, the partnership deed should be registered on the date of filing of the suit and an unregistered firm cannot enforce any right, which arises from the contract in view of the bar under Section 69(2) of the Indian Partnership Act, 1932; the suit has been filed to enforce the alleged right that has arisen from a sale agreement, which is a contract; since the first plaintiff firm is an unregistered firm as on the date of



filing of the suit, no right arising out of a contract can be claimed before a Court; as per Section 17(1A) of the Registration Act, if the document of contract is not registered after amendment, such document shall not have any effect for the purpose of Section 53A of the Transfer of Property Act, 1882; since the agreement in question is an unregistered one, that cannot be looked into by the Court below for any purpose in view of the bar under Section 17(1A) of the Registration Act and hence, the plaint should be rejected.

4. Respondents 3 to 5 /plaintiffs 1 to 3 resisted the application to reject the plaint by filing their counter alleging that the issue of rejection of plaint had already been decided by the Hon'ble Division Bench of this Court by its common judgment dated 23.07.2018; even if it is presumed that the applications filed by the respective first defendant in A.Nos.4437 to 4439 of 2015 were left open to be decided by the District Court concerned, it is the respective first defendant - the applicant in those applications, who can raise the issue and not the other defendants; the first defendant in O.S.No.18 of 2019 was originally set exparte and he was once again brought on record by the Court below vide its order dated 05.07.2019; hence, the applicants in I.A.No.1 of 2019 namely defendants 3 and 4 have no *locus standi* to



maintain the application; the bar under Section 69(2) of the Indian Partnership Act does not affect the suit, since the suit is not to enforce a right merely under the contract, but to enforce a statutory common law right available to the plaintiffs under the extant law; the bar under Section 69(2) of the Indian Partnership Act is applicable only to contracts arising from business activities and not otherwise; the requirement of mandatory registration of the document was only made in the year 2012, but the sale agreement involved in the present case is of the year 2006; since the relief sought in the suit is only for specific performance, I.A.No.1 of 2019 is maintainable.

5. In the counter filed by respondents 4 and 5 herein/plaintiffs 2 and 3 to I.A.No.4 of 2022 (A.No.4437 of 2015), it is stated that the first defendant filed O.S.No.71 of 2007 before the District Munsif Court, Ponneri against the first plaintiff firm and subsequently filed an application to withdraw O.S.No.71 of 2007 and transfer it to be tried along with C.S.No.197 of 2007; the first defendant remained ex-parte and the suit was decreed ex-parte on 07.08.2009; the first plaintiff firm was directed to deposit the balance sale consideration of Rs.20,95,000/- within two months and the said sum was also deposited to the credit of O.S.No.71 of 2007 on 23.8.2009;



thereafter, at the instance of the first defendant, the exparte decree was set aside on 16.02.2010 and the first defendant filed the written statement; during pendency of the suit, the first defendant has transferred the suit property on 19.10.2012 in favour of a third party namely M/s.Om Sakthi Agencies; plaintiffs 1 to 3 filed an application in A.No.287 of 2014 to set aside the two sale deeds dated 19.10.2012 as null and void; the ingredients of Section 69(2) of the Indian Partnership Act are not satisfied in the present case and hence, the first defendant is not entitled to invoke the same; the first plaintiff firm is duly registered under the Registrar of Firms as early as 09.04.2009; only with an intention to drag the proceedings, the application to reject the plaint has been filed; since the plaintiffs had claimed a right arising from the statute, the suit is maintainable.

6. In the counter filed by the sixth respondent herein/plaintiff No.4 to I.A.No.4 of 2022 (A.No.4437 of 2015), it is stated that the advantage accrued to the plaintiffs by operation of law cannot be allowed to be defeated by technicalities under Section 69 of the Indian Partnership Act; there is no restriction under Order XXX of the Civil Procedure Code for a Partnership firm to file a suit to enforce a right that arises from a contract; Section 69 of the Indian Partnership Act will not have an overriding effect on



the provisions of Order XXX of the Civil Procedure Code; even, for any reason, if the plaint is rejected, the plaintiffs will have the liberty to file a fresh suit, since the rejection is only on technical reasons and not on merits; such a course can be avoided since the plaintiffs had registered the firm and even the technical defect is since rectified.

7. After hearing the parties, the learned Trial Judge had chosen to dismiss both applications vide order dated 08.06.2022. Aggrieved over the order in I.A.No.1 of 2019 alone, defendants 5 and 6 have filed the Civil Revision Petition.

8. Defendants 5 and 6 are the subsequent purchasers of the suit property. Though their vendors have filed an application for rejection of the plaint and got an order for dismissal, they have not chosen to challenge the same. Since the interest of defendants 5 and 6, being the subsequent purchasers, is affected due to the above said order, they filed a petition in C.M.P.13942 of 2022 for granting leave of this Court to file this Civil Revision Petition and the same was allowed on 24.8.2022.



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9. Mr.Srinath Sridevan, the learned counsel for the petitioners submitted that the first plaintiff firm ought to have been registered before filing the suit in order to invoke any rights arise out of a contract; in the absence of any registration, the first plaintiff firm cannot enforce any right before a Court in view of the bar under Section 69(2) of the Indian Partnership Act; the subsequent registration of the partnership firm will not relate back to the date of the suit and hence, it cannot cure the defect as alleged by the defendants; the Trial Court had applied the law on this point erratically and chosen to dismiss the application and that is not correct; when the essential requirement of law is not complied, the Court below ought to have held that in view of the non registration of the firm, the suit is not maintainable; the law does not make any difference between the statutory right or any other right; and the plain language of Section 69(2) of the Indian Partnership Act would only show that the first plaintiff firm is not entitled to maintain a suit for the right arising out of a contract.

9.1 In support of the above contentions, the learned counsel for the petitioners has relied upon the following judgments :

i) *Thomson Press (India) Limited Vs.*



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***Nanak Builders and Investors Private Limited
and others [reported in (2013) 5 Supreme Court
Cases 397];***

***ii) Central Board of Dawoodi Bohra
Community and another Vs. State of
Maharashtra and another [reported in (2005) 2
Supreme Court Cases 673];***

***iii) Loonkaran Sethiya Vs. Ivan E John
&Ors (Reported in AIR 1977 SC 336);***

***iv) Shreeram Finance Corporation Vs.
Yasin Khan [Reported in AIR 1989 SC 1769];***

***v) Delhi Development Authority Vs.
Kochhar Construction Work [reported in (1998)
8 SCC 559];***

***vi) U.P.State Sugar Corporation Ltd. Vs.
Jain Construction Co. [Reported in AIR 2004 SC
4335];***

***vii) T.Saviriraj Pillai Vs. M/s. RSS Vastrad
& Co. [reported in AIR 1990 Mad 198];***



viii) *M.S.A. Subramania Mudaliar Firm*

Vs. The East Asiatic Co. Ltd. [reported in (1936)

71 MLJ 663];

ix) *K.K.A. Ponnuchami Goundar Vs.*

Muthusami Goundar [reported in (1941) 2 MLJ

968];

x) *N.S.Hameed Noohu Vs. A.Abdul*

Rahman [reported in (2020) 3 CTC 485] and

xi) T.Arivandandam Vs. TV Satyapal

[reported in (1977) 4 SCC 467].

10. In contrast, Mr.P.S.Raman, the learned Senior Counsel appearing on behalf of respondents 4 and 5/caveators submitted that by filing a suit for specific performance, the plaintiffs have only sought the relief of specific performance; the right to enforce a contract by seeking the relief of specific performance is flowing out from a statute and hence, it is a statutory right; in the judgment of the Hon'ble Supreme Court, there is a distinction drawn between the right flowing from a statute and a right enforced through business transactions; since the contract for purchasing a property cannot be



construed as a business transaction, the non registration of the first plaintiff firm, cannot be a bar to maintain the suit; the first plaintiff firm got subsequently registered and in view of the rectification of the technical defect also, the suit cannot be rejected; the learned Trial Judge has rightly applied the distinction made by the Hon'ble Supreme Court between the rights flowing from the statute and other rights and thus dismissed the application; since the learned Trial Judge has rightly applied the legislation, there is no need for interference.

10.1 In support of his contentions, the learned Senior Counsel appearing on behalf of respondents 4 and 5 /caveators has relied upon the following Judgments:

i) *Haldiram Bhujawala Vs. Anand Kumar*

Deepak Kumar [reported in (2000) 3 Supreme Court Cases 250]; and

ii) *Shiv Developers through its Partner*

Sunilbhai Somabhai Ajmeri Vs. Aksharay Developers and others [Civil Appeal No.785 of 2022 dated 31.1.2022].

11. The records would show that originally the suits have been filed



in C.S.Nos.197 to 199 of 2007 under the ordinary original civil jurisdiction of this Court. During that time, three applications in A.Nos. 4437 to 4439 of 2015 were filed to reject the complaints and other set of applications in A.Nos.3562 to 3564 of 2010 were also filed seeking revocation of the leave granted on 19.01.2009 for filing the suits. The above said applications along with several other applications were disposed by a common order by a learned Single Judge of this Court on 23.11.2016. In the said common order dated 23.11.2016, the leave to sue was granted on 19.1.2007 was revoked and the applications in A.Nos.3562 to 3564 of 2010 were allowed. Further, the applications in A.Nos.4437 to 4439 of 2015 filed by the respective first defendant seeking to reject the complaints were also allowed.

12. When the above said common order dated 23.11.2016 passed by the learned Single Judge was challenged by filing O.S.A. Nos.104, 105, 110, 111, 122 and 123 of 2017, the Hon'ble Division Bench of this Court, by the common judgment dated 23.7.2018, held that after revoking the leave granted, the learned Single Judge ought not to have passed an order to transfer the suits to the Court of competent jurisdiction by leaving all other issues open and the learned Single Judge ought not to have taken up the applications in A.Nos. 4437 to 4439 of 2015 to reject the complaints, after



revoking the leave granted. It is seen that during the pendency of the said original side appeals, a Division Bench of this Court granted interim order on 22.6.2017. However, in the said common judgment of the Hon'ble Division Bench, it was directed that the said interim order already granted restraining the defendants from alienating the property should continue.

13. The said common judgment of the Hon'ble Division Bench dated 23.7.2018 was also challenged before the Hon'ble Supreme Court by one of the parties namely the third defendant - M/s.Om Sakthy Agencies (Madras) Private Limited in S.L.P.No.33902 of 2018 and the same was disposed on 14.1.2019, by holding that while the suit was directed to be presented before the Court of competent territorial jurisdiction, the granting of interim order or otherwise should be left to the discretion of the transferee Court. Because of the order dated 14.1.2019 passed by the Supreme Court in the said special leave petition, the transferee Court namely the Principal District Court, Tiruvallur had taken up the issue with regard to rejection of plaint.

14. The primary contention of the learned counsel appearing for the petitioners is that the suit is not maintainable in view of the non registration of the first plaintiff firm and at the time when the suit was filed before the



ordinary original civil jurisdiction of this Court, it is true that the first plaintiff firm was not registered, though it is claimed by the plaintiffs at the time when the suit was so transferred to the transferee Court, the firm got registered.

15. Per contra, the learned Senior Counsel appearing for respondents 4 and 5/caveators claimed that since the first plaintiff firm was registered at the time when the suit was presented before the competent Court subsequent to the order of the Hon'ble Supreme Court, the bar under Section 69(2) of the Indian Partnership Act cannot be operative.

16. There is no quarrel on the point that the registration of the firm is a condition precedent for a firm to enforce a right by instituting a suit and hence, the Court had no jurisdiction to proceed with the case. The fact that the first plaintiff firm was not registered at the time when the suit was first presented before the ordinary original civil jurisdiction of this Court was not denied though the first plaintiff firm was subsequently registered. Since the suit relates back to the time when it was first presented before the Court, it cannot be claimed that subsequent registration had cured the technical defect of non-registration. Transferring the suit to the Court of competent



territorial jurisdiction will not make it a fresh suit and hence the respondents 3 to 6 cannot plead that the subsequent registration can cure the mandatory requirement of registration.

17. The other limb of the argument of the learned Senior Counsel appearing for respondents 4 and 5/caveators is that the bar under Section 69(2) of the Indian Partnership Act applies only to those rights, which have been settled between the parties in the course of business transaction but a right which stems out from a contract with the third party is governed by statute, for which the plaintiffs are entitled to claim relief under the common law and that the sale agreement to purchase a specific property for a firm cannot be construed as a business transaction.

18. There was no distinction with regard to the right flowing from a contract in connection with business or any other transaction with third parties till a judgment was rendered by the Supreme Court in ***Raptakos Brett & Co. Ltd. Vs. Ganesh Property [reported in (1998) 7 SCC 184]***. Subsequent to the above judgment, the position of the law has changed to the advantage of an unregistered firm. The question as to whether Section 69(2) of the Indian Partnership Act is a bar to a suit filed by an unregistered



firm is for a statutory right or for a common law right, came up for the direct consideration of the Supreme Court in ***Raptakos Brett & Co. Ltd. (cited supra)***. After dealing with the above legal point, the Hon'ble Supreme Court has held that Section 69(2) of the Indian Partnership Act cannot be a bar for enforcing a right of an unregistered firm arising out of a statutory right or common law right.

19. In the later judgment of the Hon'ble Supreme Court in ***Haldiram Bhujiawala (cited supra)***, the position of law laid down in the judgment of ***Raptakos Brett & Co. Ltd. (cited supra)*** was followed and it was held that the relief claimed in respect of infringement of trademark is a right based on the statutory right and hence, the firm is entitled to maintain the suit even if it is not registered or in other words Section 69(2) of the Indian Partnership Act is not a bar to enforce those rights before the Court of law. The relevant portions in the decision in ***Haldiram Bhujiawala (cited supra)*** read thus :

"23. The further and additional but equally important aspect which has to be made clear is that - the contract by the unregistered firm referred to in Section 69(2) must not only be one entered into by the firm with the third party -



defendant but must also be one entered into by the plaintiff firm in the course of the business dealing of the plaintiffs firm with such third party - defendant.

24. It will also be seen that the present defendants who are sued by the plaintiff - firm are third parties to the 1st plaintiff firm. [Section 2\(d\)](#) of the Act defines 'third parties' as persons who are not partners of the firm. The defendants in the present case are also third parties to the contract of dissolution dated 16.11.74. Their mother, Kamla Devi was no doubt a party to the contract of dissolution. The defendants are only claiming a right said to have accrued to their mother under the said contract dated 16.11.74 and then to the defendants. In fact, the said contract of dissolution is not a contract to which even the present 1st plaintiff firm or its partners or the 2nd plaintiff were parties. Their father Moolchand was a party and his right to the trade mark devolved in plaintiffs. The real crux of the question is that the legislature when it used the word "arising out of a contract" in [Section 69\(2\)](#), it is referring to a contract entered into in course of business transaction by the unregistered plaintiff firm with its customers - defendants and



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the idea is to protect those in commerce who deal with such a partnership firm in business. Such third parties who deal with the partners ought to be enabled to know what the names of the firm are before they deal with them in business.

25. Further [Section 69\(2\)](#) is not attracted to any and every contract referred to in the plaint as the source of title to an asset owned by the firm. If the plaint referred to such a contract it could only be as a historical fact. For example, if the plaint filed by the unregistered firm refers to the source of the firm's title to a motor car and states that the plaintiff has purchased and received a Motor Car from a foreign buyer under a contract and that the defendant has unauthorizedly removed it from the plaintiff firm's possession, it is clear that the relief for possession against defendant in the suit does not arise from any contract with defendant entered into in the course of plaintiff firm's business with defendants but is based on the alleged unauthorized removal of the vehicle from the plaintiff firm's custody by the defendant. In such a situation, the fact that the unregistered firm has purchased the vehicle from somebody else under a contract has absolutely no bearing on the right of the firm to sue the defendant for



possession of the vehicle. Such a suit would be maintainable and [Section 69\(2\)](#) would not be a bar, even if the firm is unregistered on the date of suit. The position in the present case is not different."

20. However, the learned counsel for the petitioners submitted that the decision rendered in ***Haldiram Bhujawala (cited supra)*** following the decision in ***Raptakos Brett & Co. Ltd. (cited supra)*** is only a Division Bench judgment and the attention of this Court was drawn by the learned counsel for the petitioners to the full bench decision in ***Loonkaran Sethiya Vs. Ivan E. John and others*** reported in ***AIR 1977 SC 336***. The said judgment was rendered by a Full Bench of the Hon'ble Supreme Court in the year 1976. In the said judgment, by giving a literal interpretation to Section 69(2) of the Indian Partnership Act, it was held that an unregistered partnership cannot bring a suit to enforce a right arising out of a contract. It is relevant to extract paragraph 20, which reads as hereunder :

"A bare glance at the section is enough to show that it 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 other words, a partner of a erstwhile unregistered partnership firm cannot bring a suit to enforce a right arising out of a contract falling within the ambit of [section 69](#) of the Partnership Act. In the instant case, Seth Suganchand had to admit in unmistakable terms that the firm 'Sethiya & Co.' was not registered under the [Indian Partnership Act](#). It cannot also be denied that the suit out of which the appeals have arisen was for enforcement of the agreement entered into by the plaintiff as partner of Sethiya & Co. which was an unregistered firm. That being so, the suit is undoubtedly a suit for the benefit and interest of the firm and consequently a suit on behalf of the firm. It is also to be borne in mind that it was never pleaded by the plaintiff, not even in the replication, that he was suing to recover the outstandings of a dissolved firm. Thus the suit was clearly hit by [Section 69](#) of the Partnership Act and was not maintainable."

21. A similar decision was taken in ***Shreeram Finance Corporation*** (*cited supra*) wherein another Division Bench of the Hon'ble Supreme



Court has held as hereunder:

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"5. Section 69 of the said Partnership Act deals with the effect of non-registration of firms. Sub-section (2) of the said section, which is material for the purposes of this appeal, runs as thus:

'(2). No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third-party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.' 6. 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 regard- ing 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."

22. The decision rendered in ***Shreeram Finance Corporation (cited supra)*** was later referred in the decision in ***Delhi Development Authority (cited supra)*** and once again it has been asserted that an unregistered firm cannot maintain the suit for claiming a right arising out of a contract.

23. In the decision in ***U.P. State Sugar Corporation Ltd. (cited supra)***, the Hon'ble Supreme Court has categorically made it clear that the registration of firm has to be seen at the time when the suit is presented and not any time later.



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24. It is the further contention of the learned counsel for the petitioners that by following the Full Bench judgment of the Hon'ble Supreme Court ***Loonkaran Sethiya (cited supra)***, the Courts have been holding time and again that an unregistered firm cannot maintain a suit for a right arising out of contract and the judgment held in ***Raptakos Brett & Co. Ltd. (cited supra)*** is a Division Bench judgment, and hence that cannot gain superiority over the Full Bench judgment.

25. In fact, the learned counsel for the petitioners also attracted the attention of this Court to the judgment held in ***Central Board of Dawoodi Bohra Community (cited supra)*** and submitted that there cannot be any disagreement on the point that a Division Bench of the Hon'ble Supreme Court cannot override the judgment of the Full Bench of the Hon'ble Supreme Court.

26. The decision in ***Loonkaran Sethiya (cited supra)*** has been delivered by a Full Bench of the Hon'ble Supreme Court. But, in the said case, there is generalized interpretation of Section 69(2) of the Indian



Partnership Act and no distinction was made between the rights arising out of a business transaction and the rights flowing from a statute in connection with any contract between the firm and a third party.

27. The same question came up directly for consideration in ***Raptakos Brett & Co. Ltd. (cited supra)***. The language employed in the decision of the Hon'ble Supreme Court in ***Haldiram Bhujawala (cited supra)*** while following the decision in ***Raptakos Brett & Co. Ltd.*** is extracted as hereunder to show that ***Raptakos Brett & Co. Ltd.***'s case has dealt the above said issue specifically.

"9. The question whether [Section 69\(2\)](#) is a bar to a suit filed by an unregistered firm even if a statutory right is being enforced or even if only a Common Law right is being enforce came up directly for consideration in this Court in [M/s. Raptokas Brett Co. Ltd. v. Ganesh Property](#), [1998] 7 SCC 184. In that case, Majmudar, J. speaking for the Bench clearly expressed the view that [Section 69\(2\)](#) cannot bar the enforcement by way of suit by an unregistered firm in respect of a statutory right or a common law right. On the facts of that case, it was held that the right to evict a tenant upon expiry of the lease was not a right 'arising from a contract' but was



a common law right or a statutory right under the [Transfer of Property Act](#). The fact that the plaint in that case referred to a lease and to its expiry, made no difference. Hence, the said suit was held not barred. It appears to us that in that case the reference to the lease in the plaint was obviously treated as a historical fact. That case is therefore directly in point. Following the said judgment, it must be held in the present case too that a suit is not barred by [Section 69\(2\)](#) if a statutory right or a common law right is being enforced."

28. Even though the decision in ***Loonkaran Sethiya (cited supra)*** was delivered by a Full Bench of the Hon'ble Supreme Court, the application of Section 69(2) of the Indian Partnership Act for situations where the firm derives a right from a statute has not been dealt in the said judgment. Since the above question directly fell for consideration for the first time before the Hon'ble Supreme Court in ***Raptakos Brett & Co. Ltd. (cited supra)***, it cannot be understood in a way that the Division Bench Judgment of the Hon'ble Supreme Court is overriding the Full Bench Judgment of the Hon'ble Supreme Court.



29. In the case on hand, respondents 3 to 6/plaintiffs have filed the suit for specific performance based on the sale agreement entered into between the first plaintiff firm and a third party. The allegation was that the vendor had failed to execute the sale agreement as agreed. The right to enforce a specific performance is a right flowing from a statute. In view of the liberal interpretations given by the Hon'ble Supreme Court in *Raptakos Brett & Co. Ltd. (cited supra)*, the plaintiffs are entitled to maintain the suit for specific performance even if the first plaintiff firm remained unregistered at the time when the suit was filed originally. Though there are other issues and other points raised in the application filed to reject the plaint, they cannot directly affect the sustainability of the plaint and rest of the issues can very well be raised at the time of trial.

30. For the above stated reasons, I find no reason to interfere with the order of the learned Principal District Judge, Tiruvallur dated 08.6.2022 passed in I.A.No.1 of 2019 in O.S.No.18 of 2019. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

01.09.2022



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Index: Yes / No

Speaking order / Non speaking order

To

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