

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Judgment reserved on : 02.12.2022
Judgment pronounced on : 12.12.2022**

CWP-19796-2018

ASSOCIATION OF PROPERTY PROFESSIONALS

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

....Respondents

CWP-20382-2018

KUMAR RAUNAK AND OTHERS

.....Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by: Mr. Vaibhav Jain, Advocate and
Mr. Amar Jeet, Advocate
for the petitioner in CWP-19796-2018

Mr. Aashish Chopra, Sr. Advocate with
Mr. Yash Pal Sharma, Advocate
for the petitioners in CWP-20382-2018.

Mr. Lokesh Sinhal, Sr. Addl. A.G. Haryana.

VINOD S. BHARDWAJ. J

Two writ petitions are being disposed of as parties agree
that the dispute involved in the present set of petitions is identical and

can be decided by a common judgment.

2. The question that arises for consideration in the present petition is as to whether the proprietorship concern is a juristic entity separate and distinct from the proprietor himself and thus liable to pay the charges applicable to the category “other than individuals” instead of the category of “individuals” under the RERA Act and the rules framed thereunder.

3.. For the facility of reference, facts have been drawn from ***CWP-20382-2018*** titled “***Kumar Raunak and others versus State of Haryana and another***”.

4. Briefly summarized, the facts of the case are that the petitioners are individuals engaged in the business of Real Estate i.e. introducing prospective buyers and sellers to each other for negotiation in relations to sale and purchase of Real Estate property. The petitioners, called as Real Estate Agents, are sole proprietors carrying on their work as individuals under the name of their respective sole proprietorship concerns. The petitioners have collectively formed an association of certified Realtors of India to enable its members to conduct their business with professional competence and to provide ethical Real Estate services. The Real Estate (Regulation & Development) Act, 2016 received the assent of the President of India and was published in the Gazette of India on 26.03.2016, hereinafter referred to as “RERA Act, 2016”. The object of the Act was to regulate and promote the Real Estate sector; to ensure that all the transactions in the Real Estate Sector take place in an efficient and transparent manner alongwith protecting the interest of the consumers while also providing the mechanism for speedy

adjudication of disputes. Section 9 of the aforesaid Act makes it obligatory for the Real Estate Agents to register themselves with the Haryana Real Estate Regulatory Authority. The term “Real Estate Agent” is defined in the said Act. The relevant provisions of the said Act reads thus:

2(zm) "Real Estate Agent" means any person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, by way of sale, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services whether as commission or otherwise and includes a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen by whatever name called.

Xx xx xx xx xx xx xx xx

9. (1) No Real Estate Agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3, being sold by the promoter in any planning area, without obtaining registration under this section.

(2) Every Real Estate Agent shall make an application to the Authority for registration in such form, manner, within such time and accompanied by such fee and documents as may be prescribed.

(3) The Authority shall, within such period, in such manner

and upon satisfying itself of the fulfillment of such conditions, as may be prescribed-

(a) grant a single registration to the Real Estate Agent for the entire State of Union territory, as the case may be;

(b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of the Act or the rules or regulations made thereunder:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(4) Whereon the completion of the period specified under sub- section (3), if the applicant does not receive any communication about the deficiencies in his application or the rejection of his application, he shall be deemed to have been registered.

(5) Every Real Estate Agent who is registered as per the provisions of this Act or the rules and regulations made thereunder, shall be granted a registration number by the Authority, which shall be quoted by the Real Estate Agent in every sale facilitated by him under this Act.

(6) Every registration shall be valid for such period as may be prescribed, and shall be renewable for a period in such manner and on payment of such fee as may be prescribed.

(7) Where any Real Estate Agent who has been granted registration under this Act commits breach of any of the conditions thereof or any other terms and conditions specified under this Act or any rules or regulations made thereunder, or where the Authority is satisfied that such registration has been secured by the Real Estate Agent through misrepresentation or fraud, the Authority may, without prejudice to any other provisions under this Act,

revoke the registration or suspend the same for such period as it thinks fit:

Provided that no such revocation or suspension shall be made by the Authority unless an opportunity of being heard has been given to the Real Estate Agent.

[Emphasis Added]

5. Further, Section 3 & 4 of the RERA, 2016 as well as the Haryana Real Estate Regulation and Development Rules, 2017 provide for the form, manner, time and fee for making an application to RERA for registration as Real Estate Agents. An application for registration by the Real Estate Agent is provided under Rule 9 of the Rules, 2017. Registration and renewal is granted under Rule 10 and Rule 11 respectively. The said Rules are reproduced hereinafter below:-

“9. (1) Every Real Estate Agent shall make an application In writing to the Authority in Form REA-1, in triplicate, for registration alongwith following documents, namely:

(a) the brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, society, partnership, company etc.);

(b) the particulars of registration (whether as a proprietorship, partnership, company, society etc.) including the bye-laws, memorandum of association, articles of association, etc. as the case may be;

(c) name, address, contact details and photograph of the Real Estate Agent, if it is an individual and the name, address, contact details and photograph of the partners, directors etc. in case of other entities;

(d) the authenticated copy of the PAN card of the

Real Estate Agent;

(e) the authenticated copy of the address proof of the place of business;

(f) such other information and documents, as may be specified by regulations.

(2) The Real Estate Agent shall pay a registration fee at the time of application for registration by way of a demand draft or a bankers cheque in favour of "Haryana Real Estate Regulatory Authority" drawn on any Scheduled bank or through online payment, as the case may be, for a sum calculated at the rate mentioned in Schedule II.

10. (1) On receipt of the application under rule 9, the Authority shall within a period of thirty days either grant registration to the Real Estate Agent or reject the application, as the case may be:

Provided that, the Authority may grant an opportunity of being heard to the Real Estate Agent to rectify the defects, if any, within a period of thirty days from the date of issuance of communication regarding such defects.

(2) Upon the registration of a Real Estate Agent, the Authority shall issue a registration certificate with a registration number in Form REA-II to the Real Estate Agent.

(3) In case of rejection of the application, the Authority shall inform the applicant in Form REA-III.

(4) The registration granted under this rule shall be valid for a period of five years.

11. (1) The registration granted to a Real Estate Agent under the Act, may be renewed, on an application made by the Real Estate Agent in Form REA-IV, in triplicate, within three months prior to the

expiry of the registration granted.

(2) The application for renewal of registration shall be accompanied with a demand draft or a bankers cheque in favour of "Haryana Real Estate Regulatory Authority" drawn on any Scheduled bank or through online payment, as the case may be, for a sum calculated at the rate mentioned in Schedule II.

(3) The Real Estate Agent shall also submit all the updated documents set out in clauses (a) to (1) of sub-rule (1) of rule 9 at the time of application for renewal.

(4) In case of renewal of registration, the Authority shall inform the Real Estate Agent about the same in Form REA-V and in case of rejection of the application for renewal of registration, the Authority shall inform the Real Estate Agent in Form REA-III: Provided that no application for renewal of registration shall be rejected, unless the Real Estate Agent has been given an opportunity of being heard: Provided further that the Authority may grant an opportunity to the Real Estate Agent to rectify the defects, if any, within a period of thirty days from the date of issuance of communication regarding such defects.

(5) The renewal granted under this rule shall be valid for a period of five years.

[Emphasis Added]

6. The petitioners, therefore, submitted an application for registration as Real Estate agents to the Haryana Real Estate Regulatory Authority alongwith enclosed demand drafts of the requisite fee in accordance with RERA Act, 2016 and the Rules of 2017. It is pertinent

to point out that the petitioners, who are sole proprietor(s)/proprietorship would have to pay the requisite registration fee as applicable to individuals under Rule 9 (2) of the 2017 Rules. The registration fee as mentioned in the schedule to the Rules of 2017 is extracted as under:

Sr. No.	Type of agent	Registration fee	Renewal fee
1.	For individual	Rs. 25,000/-	Rs.5,000/-
2.	Other than individual	Rs. 2,50,000/-	Rs. 50,000/-

7. The petitioner were issued the Registration Certificates as per law, valid for a period of 05 years in the statutory form REA-II. The petitioners, however, were served with letters by respondent No.2 wherein it was submitted that the petitioners, having applied as a proprietorship concern, were required to submit the fee as applicable to the categories “other than individual” i.e. a sum of Rs. 2,50,000/- instead of Rs. 25,000/- . Demand for the deficient amount of Rs. 2,25,000/- was thus raised from the petitioners to be deposited within a period of 15 days failing which their license was threatened to be revoked. The petitioners submitted their response to the said letter. The period for depositing the amount was thereafter extended by the respondents vide public notice dated 18.05.2018 mandating the sole proprietors to convert their registration certificates in the name of their respective proprietorship concerns on payment of the charges applicable to the entities “other than individuals”. The said public notice clearly amounted to rejection of their response. The present writ petitions were thus filed.

8. Notice was issued to the respondents-State of Haryana

which filed its short reply where the State took a stand that the dispute did not relate to the State Government as the notification was issued by the Real Estate Regulatory Authority. No reply on behalf of respondent No.2 was filed even though appearance on behalf of the said respondent No.2 had been entered by Sh. Kanwaljit Dahiya, Advocate.

9. The question being legal, hence, the matter has been proceeded ahead without awaiting any formal reply.

10. Learned counsel appearing on behalf of the petitioners has argued that the public notices have been issued by respondent No.2 in a mechanical manner and notwithstanding the fact that the sole proprietorships fall under the head of “individuals” in Schedule-II, the fee notified for the category “other than individual” has been illegally claimed from them. He submits that the petitioners had duly deposited the fee as was applicable to their category. He argues that a sole proprietorship has no existence beyond the “individual” and does not have any separate juristic entity separate from the individual himself. The proprietary concern is only the business name in which the proprietor carries on the business. Hence, any reference to the sole proprietorship concern means and includes the sole proprietor thereof, who is an individual, and vice versa. It is contended that an “individual” has not been defined in the Act and even a “sole proprietorship” has not been defined. Definition of a “person” has however been given under Section 2 (z, g) of the Act which includes an individual. In support of his arguments, he places reliance on the Judgment of the Hon’ble Supreme Court in the matter of **“M/s Bhagwati Vanaspati Traders versus**

Senior Superintendent of Post Offices, Meerut report as 2015 (1) SCC

617. The relevant extract of the aforesaid judgment reads thus:-

8. To overcome the mandate of rule 17 extracted hereinabove, as also, the decision rendered by this Court in *Raja Prameelamma case (supra)*, and the proposition of law declared in *Arulmigh Dhandayadhapaniswamy Thirukoil case (supra)*, learned counsel for the appellant placed emphatic reliance on the decision of this Court in ***Ashok Transport Agency v. Awadhesh Kumar & another., 1999(1) R.C.R.(Civil) 197: (1998) 5 SCC 567.*** He invited our attention to the following observations recorded therein :-

“6. A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Indian Partnership Act, 1932. Though a partnership is not a juristic person but Order 30, Rule 1 CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business. The provisions of Rule 10 Order 30 which make applicable the provisions of Order 30 to a proprietary concern, enable the proprietor of a proprietary business to be sued in the business names of his proprietary concern. The real party who is being sued is the proprietor of the said business. The said provision does not have the effect of converting the proprietary business into a partnership firm. The provisions of Rule 4 Order 30 have no application to such a suit as by virtue of

Order 30, Rule 10 the other provisions of Order 30 are applicable to a suit against the proprietor of proprietary business "insofar as the nature of such case permits". This means that only those provisions of Order 30 can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case."

(emphasis is ours)

Based on the observations recorded in the aforesaid judgment, the second contention advanced by the learned counsel for the appellant was, that in sum and substance, a sole proprietorship concern allows the fictional use of a trade name on behalf of an individual. It was contended, that truthfully only one individual is the owner of a sole proprietorship concern. As such, according to learned counsel, the name of the sole proprietorship concern, can again be substituted with the name of the sole proprietor. If that is allowed, the NSC purchased by the appellant would strictly conform to the mandate of law. According to learned counsel, it makes no difference whether the individual's name, or the proprietorship's name is recorded while purchasing an NSC. It was pointed out, that if the respondent was not agreeable in accepting the trade name, the respondent ought to have corrected the NSC by substituting the name of M/s. Bhagwati Vanaspati Traders with that of its sole proprietor, namely, B.K. Garg.

9. We find merit in the second contention advanced at the hands of the learned counsel for the appellant. It is indeed true, that the NSC was purchased in the name of M/s. Bhagwati Vanaspati Traders. It is also equally true, that M/s. Bhagwati Vanaspati Traders is a sole proprietorship concern of B.K. Garg, and as such, the irregularity committed while issuing the NSC in the name of M/s. Bhagwati Vanaspati Traders, could have easily been

corrected by substituting the name of M/s. Bhagwati Vanaspati Traders with that of B.K. Garg, For, in a sole proprietorship concern an individual uses a fictional trade name, in place of his own name. The rigidity adopted by the authorities is clearly ununderstandable. The postal authorities having permitted M/s. Bhagwati Vanaspati Traders to purchase the NSC in the year 1995, could not have legitimately raised a challenge of irregularity after the maturity thereof in the year 2001, specially when the irregularity was curable. Legally, rule 17 of the Post Office Savings Bank General Rules, 1981, would apply only when an applicant is irregularly allowed something more, than what is contemplated under a scheme. As for instance, if the scheme contemplates an interest of Y% and the certificate issued records the interest of Y+2% as payable on maturity, the certificate holder cannot be deprived of the interest as a whole, on account of the above irregularity. He can only be deprived of 2%, i.e., the excess amount, beyond the permissible interest, contemplated under the scheme. A certificate holder, would have an absolute right, in the above illustration, to claim interest at Y%, i.e., in consonance with the scheme, despite rule 17. Ordinarily, when the authorities have issued a certificate which they could not have issued, they cannot be allowed to enrich themselves, by retaining the deposit made. This may well be possible if the transaction is a sham or wholly illegal. Not so, if the irregularity is curable. In such circumstances, the postal authorities should devise means to regularise the irregularity, if possible.

11. Reference was also made to the judgment of this Court in the matter of “Ms/ Bedi Sons Steels & Wires versus M/s B.G. Brothers” dated 22.01. 2002 passed in Criminal Misc. No. 50086-M- of

2001. The relevant extract of the same is reproduced as under:-

“7. The same question was again raised in N. Vaidyanathan Deepika Milk Marketing v. M/s. Dodia Dairy Limited, 1994(4) RCR (Civil) 470 (Madras) : 2000(1) Civil Court Cases 182 . It would be appropriate to refer to the detailed discussion in paras 14 to 23 of the judgment regarding the controversy raised which read as under :-

"14. There is no dispute with regard to the fact that Section 141 of the Act is not applicable in this case as the said section would involve only companies. As per the decision of this Court and Apex Court, the company as well as the partners of the company can be jointly or separately prosecuted. But, as agreed by the counsel for the both the parties, there cannot be any separate complaint against a proprietary concern, as it does not come within the definition of firm or company as per Section 141 of the Act. It cannot also be debated that a firm has no separate legal entity apart from its proprietor. In other words, a proprietary concern cannot fit in with the explanation of the company appended to Section 141 of the Act.

15. But the question that arises for consideration in the instant case is, whether a prosecution could be launched against a proprietary concern by putting the cause title as proprietary concern represented by its proprietor.

16. In this context, it shall be noticed that the proprietary concern found in the cause title in the instant case has been separately prosecuted. Therefore, it cannot be contended that the prosecution is not maintainable merely on the ground that the proprietorship has no legal entity.

17. As stated earlier, the cause title shows that Deepika Milk Marketing is represented by its Proprietrix Mrs. Revathi Vaidyanathan. It is true that in *ShriSiva sa kth i Indu stries v. Arihant Metal Corporation*, 1992 L.W. (Crl.) 347 , the prosecution was quashed by this Court (Partap Singh, J.) as against the proprietary concern, as it was separately prosecuted holding that the proprietary concern is not a firm or a company.

18. But, in the said case it was made clear that both the proprietorship concern as well as the proprietor are one and the same person and so, the prosecution as against the proprietor of the said concern can be continued and that during the course of trial the said proprietor could not raise the contention that as a proprietor he cannot be proceeded with.

19. It is also clearly observed in the said decision that both the proprietary concern and the proprietor are one and the same person. It is observed by Hon'ble Arunachalam, J. (as he then was) in Ra ja v. Sta te by DSP/APRS Vigila nce TNEB Ma dra s, 1990 L.W. (Crl.) 203 that a proprietary firm has no separate legal entity apart from its proprietor, the firm name being another name of the proprietor himself.

20. In yet another decision in *Raman v. Krishna Pharmaceutical Distributors*, 1994 (III C.C.R. 1601), Hon'ble Pratap Singh, J. (as he then was) pleased to quash the proceedings as against Sri Janaki Pharmacy, represented by Proprietor since the proprietorship concern is not the legal entity holding that one Raman alone issued the cheque as a drawer of the cheque.

21. *If the same analogy is applied to this case, it is clear that Section 138 of the Act contemplates that prosecution could be launched against the drawer. According to the counsel for the respondent/complainant, the drawer, who issued the cheque in the instant case is the Deepika Milk Marketing by its Proprietrix Mrs. Revathi Vaidyanathan and as such, the complaint against the said drawer is maintainable.*

22. *As discussed above, the name of the drawer cannot be dissected and there cannot be any prosecution against the proprietary concern alone. Had there been prosecution against proprietorship separately or had there been prosecution against Revathy Vaidyanathan individually, then there is a point in urging that the drawer is not the accused.*

23. *As indicated above, it is settled position of law that the proprietorship concern by itself is not a legal entity apart from its proprietor, the proprietary concern and the proprietrix are one and the same person. To put it differently, the prosecution against the proprietrix representing proprietorship concern or proprietorship concern represented by Proprietrix are one and the same as both these things sink, sail and merge with only the entity."*

9. *It is apparent that in **Sri Sivasakthi Industries v. Arihant Metal Corporation (supra) and P.Muthuraman v. Shree Padmavathi Finance (Regd.) (supra)** the Madras High Court proceeded on the basis that where the sole proprietorship concern is to be sued it need not be made a party as it is not a company and the proceedings were quashed qua sole proprietorship concern. It flows from the decisions in*

these cases that even where prosecution is lodged against a proprietorship concern through the proprietor it has to be considered as against the proprietor as the proprietorship concern itself has no legal entity. The view taken in the above mentioned two cases of the Madras High Court as such would tantamount to ignoring the factual situation. As per requirement of Section 141 of the Act, in terms of the construction put to these provisions by the Hon'ble Supreme Court in Anil Hada v. Indian Acrylic Ltd. (supra) the stand taken by the petitioner during the course of arguments cannot be sustained.

10. I have dealt with the submission made on behalf of the petitioner at the first instance without going into the stand taken by the petitioner in the application filed under Section 245 of the Code relating to the maintainability of the complaint filed by the respondent. This position is clearly brought out in paras 3 to 5 of the application dated 26.10.1998 which read as under :-

"3. The perusal of the complaint shows that it has been filed by a proprietorship concern against the proprietorship concern. Under the law proprietorship concern has no legal entity or juristic person. Neither it can initiate any proceedings nor proceedings can be initiated against it. The word person has been defined under Section 11 of the Indian Penal Code as well as under Section 3(42) of the General Clauses Act. According to this definition any company or associate or body of person is recognised as legal entity but it does not include the proprietorship concern and the same has no recognition in the eyes of law.

4. The framing of the complaint as such is not maintainable at all.

5. The dismissal of the complaint for the reasons referred to above is warranted by law and equity and is also in the interest of justice."

12. Learned Senior Additional Advocate General, Haryana appearing on behalf of respondent No.1-State submits that the demand in question had been raised by the Real Estate Regulatory Authority and as such, the respondent-State has no competing interest. He, however, could not refer to any judgment to the contrary.

13. I have heard learned counsel on behalf of the respective parties and have gone through the documents appended alongwith the instant petitions and also the judgments cited by them.

14. The question thus requires determination is as to whether the sole proprietor is an entity distinct and separate from the individual himself and as to whether the fee prescribed for categories "other than individual" under the RERA, 2016 thereunder would be applicable to the case in hand.

15. Ordinarily understood, sole proprietorship is an unincorporated business that is just one owner by himself or herself. Creation of a separate business or a trade name is not necessary or a pre-requisite in a sole proprietorship/sole proprietary business module and even if a separate business name is used for carrying on the business, the same by itself does not give any separate juristic entity or legal existence to the proprietary name separate and distinct from the owner. The said aspect has already been examined in detail by the Hon'ble Supreme

Court in the matter of *M/s Bhagwati Vanspati Traders (supra)* extracted above and in the matter of “*Ashok Transport Agency versus Awadhesh Kumar and Another*” that a proprietor concern is only the business name in which the proprietor of the business carries on the business. A sole proprietorship concern thus allows a fictional use of a trade name on behalf of the individual whereas truthfully only one individual exists and that they can be substituted as each other insofar as their entities are concerned. It makes no difference whether the name of an individual is used or that of the trade name.

16. The Madras High Court, while dealing with an issue in a case under the Negotiable Instruments Act in the matter of “*N Vadiyanathan Deepika Milk Marketing versus M/s Dodla Diary Limited*” dated 05.04.1999 had also held that both the proprietary concerned and the proprietor are one and the same person and a propriety firm has no separate legal entity apart from its proprietor, the firm name being the other name of the proprietor himself.

17. In the above-said background, it is essential to look into the definition/interpretation of sole proprietorship under various other statutes/statutory framework as an external aid to assign meaning to the said phrase. In the context of the taxation law, a sole proprietorship business in India is not taxed as a different legal entity. Rather, the business owners file their business taxes as a part of their individual tax returns. Similarly, under the Chartered Accountants Act, 1949, Section 2 (haa) defines sole proprietorship to mean individual who engages himself in the practice of accountancy or offers to perform his services refer to in clauses (ii) to (iv) of Sub Section 2. Thus, the entity of sole

proprietorship has been described as that of the individual himself. Further, a sole proprietorship does not require any mandatory registration under any law. The requirement for registration of license is only specific to the nature of the business being undertaken. There is no regulatory or statutory mechanism which gives a distinct entity to a sole proprietorship other than that of the individual-the owner himself.

18. It is thus a well settled position in law that a proprietary concern and the proprietor are one and the same and that they cannot be treated as separate juristic entities. The proprietary concern derives its identity and individuality from the proprietor and subsumes itself in the proprietor. Segregation of the two is incomprehensible in law when it comes to determining their rights and liabilities and legal fiction regards them as one. They would thus fall under the definition of an individual. Consequently, the petitioners as sole proprietors cannot be treated as an entity “other than individual” when the registration as a Real Estate Agent is in the name of the proprietary concerned. The demand raised through Public Notice (Annexure P-8) is thus bad and unsustainable and the petitioners would be liable to pay the registration charges/renewal charges as are applicable to the individuals instead of the category “other than individual”.

The petitions are accordingly allowed in the terms as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

DECEMBER 12, 2022

Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No