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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 13th December, 2022*

\+ C.R.P. 201/2022 & CM APPL. 53818-20/2022

M/S. HIMLAND HOUSING PVT. LTD. ..... Petitioner
Through: Mr. Arvind Kumar Singh, Advocate with Mr. Ashok Kumar, Authorized Representative.

versus

M/S. OMBIR PANWAR & CO. ..... Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This revision petition assails the order/judgment dated 06.09.2022 passed by the learned Trial Court, whereby an application filed by the Petitioner herein under Order 7 Rule 11 read with Section 151 CPC has been dismissed. Petitioner herein is Defendant No. 1 before the Trial Court while Respondent is the Plaintiff and the parties are referred to hereinafter by their litigating status before the Trial Court.

2. The narrative of facts to the extent relevant for deciding the present petition and shorn of unnecessary details is that, Plaintiff runs its business in the name and style of 'M/s. Ombir Panwar & Co.'. The suit was filed by the Plaintiff through Mr. Ombir Singh Panwar, one of its partners, for recovery of Rs.14.50 lakhs, against Defendant No.1 therein/Petitioner herein and other Defendants.

3. The case of the Plaintiff as set out in the plaint is that Defendants approached the Plaintiff at his office and in collusion with each other and some of their associates, allured and induced the Plaintiff to invest in their project namely, 'Himland Executive Residences', which is a housing project. Plaintiff was assured that flats will be allotted in its name and believing the Defendants, Plaintiff invested huge sums of money in the project of the Defendants through cash/RTGS, details of which are furnished in the plaint.

4. Plaintiff has also averred in the plaint that Defendants had acknowledged the receipt of the payments amounting to Rs. 14.50 lakhs, in writing. However, despite receiving the payments, Defendants neither allotted the flats in the name of the Plaintiff nor refunded the amount, despite several requests in this regard. An FIR bearing no. 0351/2016 has also been lodged at PS Anand Vihar against the Defendants and their associates.

5. Aggrieved by the actions of the Defendants, Plaintiff filed the suit, from which the present petition arises and Defendants filed their written statement, denying the averments in the plaint. Additionally, an application under Order 7 Rule 11 CPC was also filed by Defendant No. 1 for rejection of the plaint on the ground that the suit is barred under Section 69 of the Partnership Act, 1932 (hereinafter referred to as the 'Act').

6. It was urged by Defendant No. 1 before the Trial Court that Plaintiff is a partnership firm and one of its partners has filed the suit, however, Plaintiff has not placed on record any document to substantiate that the partnership is registered. It was also the case of Defendant No. 1 that *vide* order dated 11.07.2018, Court had earlier

dismissed an application filed by the Plaintiff under Order 12 Rule 6 CPC on the ground that there is nothing on record to suggest that Plaintiff is a registered firm and the transaction regarding the purchase of flats was between the Plaintiff-Firm and Defendant No.1-Company. On this ground, rejection of plaint was sought.

7. Plaintiff filed reply to the application denying the assertions made therein and also opposed the rejection of the plaint on an application under Order 7 Rule 11 CPC. Case of the Plaintiff was that the Court has already framed an issue 'whether the suit is barred under Section 69(2) of the Act' and therefore, the application filed by Defendant No. 1 be dismissed. Reliance was placed on the judgments of the Supreme Court in ***Haldiram Bhujiawala and Another v. Anand Kumar Deepak Kumar and Another, (2000) 3 SCC 250*** and ***Purushottam and Another v. Shivraj Fine Art Litho Works and Others, (2007) 15 SCC 58***.

8. Having heard the learned counsels for the parties, the Trial Court disagreed with Defendant No. 1 and dismissed the application. Relevant paras of the impugned order are as follows:-

> *"10 Record perused. At the outset it is pointed out that defendant has taken the plea of rejection/dismissal of plaint in its written statement. Further more, the averment of the defendant that the suit of the plaintiff is not maintainable as the plaintiff is not registered u/s 59 of the Partnership Act is a triable issue and same needs to be proved during the trial. On the contention of the defendant that there was no cause of action, the suit of the plaintiff cannot be rejected. It would not be just, fair and proper to decide the rights of parties without considering the evidence which the parties may adduce during the course of trial. The requirements of order 7 rule 11 CPC for rejection of plaint is not made out. Same is meritless and deserves dismissal outrightly. It appears that the present application has been moved just to delay the proceedings. Therefore, keeping in view all these facts and circumstances, the present application of defendant under order 7 rule 11 CPC is hereby dismissed forthwith.*
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> *11 Application stands disposed of accordingly."*

9. Learned counsel appearing on behalf of the Petitioner reiterates the arguments made before the Trial Court and submits that since the Plaintiff is an unregistered partnership firm, the plaint deserves to be rejected at the outset under Order 7 Rule 11 CPC by virtue of the provisions of Section 69(2) of the Act. In support of the proposition, reliance is placed on the judgment dated 07.04.2021 of the Calcutta High Court in ***CS/174/2019*** titled as ***Md Mofazzular Rahman & Ors. v. Md. Sarfarz Alam & Ors.***, more particularly, paras 31, 32, 33 and 34 thereof.

10. I have heard learned counsel for the Petitioner herein and examined the contentions raised.

11. At the outset, the Court has asked the learned counsel to point out any averment in the application under Order 7 Rule 11 CPC, where it is stated that the 'M/s. Ombir Panwar & Co.' is an unregistered firm, on which the entire case of Defendant No. 1, seeking rejection of the plaint, is predicated. Learned counsel is, however, unable to point out any such averment in the application and draws the attention of the Court to paras 2 and 7 thereof, which read as under:-

> *"2. That as stated in the Para No.2 of the Plaint, the Plaintiff is a Partnership Firm and the present Case has been filed by the Plaintiff/M/s. Ombir Panwar & Co. through its partner, Sh. Ombir Singh Panwar, who is CA and LL.B. However, no document has been placed on record by the Plaintiff in support of the averment that the Plaintiff Firm is registered under Section 69 of the Partnership Act and Sh. Ombir Singh Panwar has been shown as Partner in the Register of Firms.*
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> *xxx xxx xxx*
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> *7. That, in view of the above stated facts and circumstances, it is, therefore, not only desirable but is also in the interest of justice that the present Case be dismissed with heavy costs being not maintainable as per provisions of S.69 of the Partnership Act."*

12. Reading of para 2 as aforementioned, clearly shows that the only averment made in the application is that 'no document has been placed on record by the Plaintiff in support of the averment that Plaintiff is registered under Section 69 of the Act'. Para 7 only contains a prayer that 'in the interest of justice the case be dismissed with heavy cost as not being maintainable under Section 69 of the Act'.

13. Therefore, it is palpably clear that Defendant No. 1 has not pleaded that Plaintiff is an unregistered firm and at the highest the case set up is that there is nothing placed on record by the Plaintiff to show its registration. Therefore, once Defendant No. 1 itself is unsure of the registration of the Plaintiff, it is not understood on what basis it has sought rejection of the plaint on this ground, at the threshold.

14. In any case, the principles of deciding an application under Order 7 Rule 11 CPC are clearly settled by the Supreme Court in ***Liverpool & London S.P. & I Association Ltd. v. M.V. Sea Success I and Another, (2004) 9 SCC 512***, wherein the Supreme Court has held that while deciding an application under the said provision, only the averments in the plaint on a mere demurrer have to be seen along with the documents annexed thereto. The defence taken by the Defendants in the written statement is wholly irrelevant. [***Ref.: Soumitra Kumar Sen v. Shyamal Kumar Sen and Others, (2018) 5 SCC 644, Chhotanben and Anr. v. Kiritbhai Jalkrushna Bhai Thakkar and Others, (2018) 6 SCC 422 and Alpana Gupta Through Power of Attorney Holder v. APG Towers Private Limited and Another, (2019) 15 SCC 46].***

15. It is also settled by the Supreme Court in ***Popat and Kotecha Property v. State Bank of India Staff Association, (2005) 7 SCC 510***

that disputed questions of facts and law will have to be decided only after trial.

16. Therefore, going by the demurrer in the plaint, it cannot be said that the Plaintiff is an unregistered firm and clearly Defendant No. 1 has not even pleaded so in the application, leave alone substantiating it. Therefore, as rightly held by the Trial Court, even assuming that such a plea is raised, whether or not the suit is barred under Section 69 (2) of the Act, is a triable issue and the plaint cannot be rejected at the outset. It is also relevant to note that it is a common ground between the parties that the Trial Court has already framed an issue on whether the suit is barred on account of the alleged non-registration under Section 69(2) of the Act, which will be decided at the appropriate stage of the suit.

17. Insofar as the judgment of the Calcutta High Court in ***Md Mofazzular Rahman & Ors. (supra)*** is concerned, there cannot be a doubt on the proposition that a suit is not maintainable, if the partnership firm is unregistered by virtue of provisions of Section 69 of the Act. However, as aforementioned, since an issue has been framed on this aspect, the same shall be tested at the appropriate stage. No infirmity can be found with the order of the Trial Court rejecting the application under Order 7 Rule 11 CPC.

18. In view of the above, there is no merit in the revision petition and the same is accordingly dismissed along with pending applications.

JYOTI SINGH, J

DECEMBER 12, 2022/*rk/shivam*