

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.2288 OF 2023
IN
FIRST APPEAL NO.1469 OF 2019**

M/s Pragati Developers (through its partner)
Jakir Majid Hoble & AnrApplicants/Appellants

V/s.

M/s Cornis Realty Pvt Ltd through its
Director Yogesh Vasant Wani ...Respondents

**WITH
CIVIL APPLICATION NO.3404 OF 2019
IN
FIRST APPEAL NO.1469 OF 2019**

Mr. R. D. Soni a/w Mr. Sujay Gawade and Ms Mudita Pawar i/b Shree & Co.
for Applicants
Mr. Hitesh Vyas for Respondents

**CORAM : K.R. SHRIRAM &
RAJESH S. PATIL JJ
DATED : 29th MARCH 2023**

P.C. :

1 Today only two interim applications are listed, one of which, is for extension of stay. With the consent of the counsel, we decided to take up the appeal itself for admission.

2 This appeal is impugning a judgment dated 6th May 2019 passed by Joint Civil Judge Senior Division, Pune, holding that appellants' suit was not maintainable since appellant no.1 was not a firm registered as per the

mandate of Partnership Act and the persons suing were not shown in the Register of Firms as partners of the firm as per the mandate of Section 69(2) of Indian Partnership Act 1933. Admittedly, the firm was not registered on the date the suit was instituted. The suit was instituted on 27th March 2014 in the name of partnership firm under the name and style of Pragati Developers. The firm was registered on 13th November 2018 during the pendency of the suit and when appellants' witness was under cross-examination.

3 The law is settled law that on the date the suit is instituted in any court by or on behalf of a firm against third party to enforce right arising from a contract, the firm should be registered and the persons suing should be shown in the Register of Firms as partners in the firm. The subsequent registration cannot cure that defect in view of the plain language of Section 69 of the Indian Partnership Act (*M/s Shreeram Finance Corporation Vs. Yasin Khan & Ors.*¹ and *Delhi Development Authority Vs. Kochhar Constructions Work*²).

4 The suit filed has been for avoidance of a Sale Deed dated 15th October 2013 registered at Serial No.1909 of 2013 at the office of Sub-Registrar, Haveli No.26. Appellants had also sought declaration about the status of the said transaction, perpetual injunction and payment of balance consideration amount being alternative relief. Therefore, indisputably the suit filed was for enforcement of right arising from the contract.

1. (1989) 3 SCC 476

2. (1998) 8 SCC 559

5 The Trial Court has rightly come to the conclusion that the prohibition contained in Section 69(2) of the Indian Partnership Act is a bar to the suit and that the suit is not maintainable.

6 In the circumstances, appeal dismissed. Appellant to pay a sum of Rs.1,00,000/- as cost to respondent and this amount shall be paid within four weeks from today by way of cheque drawn in favour of advocate for respondent.

7 Consequently, interim applications also stand disposed.

(RAJESH S PATIL, J.)

(K.R. SHRIRAM, J.)