

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

228

CR No.669 of 2022 (O&M)

Reserved on : 22.12.2022

Date of Decision : 04.01.2023

Mount Shivalik Hospitality Pvt. Ltd.

....Petitioner

VERSUS

M/s J. Salwan & Company

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr.Sanjeev Sharma, Senior Advocate with
Mr. Sandeep Singh, Advocate for the petitioner.

Mr. Sanjay Kaushal, Senior Advocate with
Ms. Ojaswaini, Advocate for the respondent.

ALKA SARIN, J.

The present revision petition has been preferred by the tenant-petitioner aggrieved by the order dated 22.02.2022 whereby the application filed by it for dismissal of the rent petition has been dismissed by the Rent Controller.

The tenant-petitioner took the demised premises on rent from the landlord-respondent vide lease and licence deed dated 19.02.2018. In 2021 the landlord-respondent filed an ejectment petition against the tenant-petitioner seeking its eviction from the demised premises. On 30.11.2021 the tenant-petitioner filed an application for dismissal of the ejectment petition in view of Section 69(2) of the Indian Partnership Act, 1932 (hereinafter referred to as the 'Partnership Act') contending that the landlord-respondent was an unregistered partnership firm. The landlord-respondent filed a reply to the said application and contested the same. Vide the impugned order the Rent Controller dismissed the said application. Hence, the present revision petition.

Learned counsel for the tenant-petitioner would contend that para 1 of the ejectment petition refers to a partnership deed dated 06.05.2019. However, there are no pleadings as to the said partnership being a registered one and hence the ejectment petition would be barred under Section 69(2) of the Partnership Act. It is further the contention that the names of the partners are not reflected in the Register of Firms. Learned senior counsel submitted that the lease and licence deed would be considered to be a contract arising in the normal course of business of the landlord-respondent and hence the rigors of Section 69(2) of the Partnership Act would be attracted. Reference was also made to Section 14 of the Partnership Act to contend that since the demised premises belong to the firm and the rent is also going to the partnership firm, therefore, the present transaction would be considered as a transaction in the course of business of the landlord-respondent and the ejectment petition would be barred under Section 69(2) of the Partnership Act. It is further the contention that the partnership deed does not bar the demised premises from being rented and even in this manner the transaction would be considered to be a transaction in the course of business. It is also submitted that the lease and licence in the present case is subsisting and no termination notice has been given to the tenant-petitioner and this was also a reason for considering the transaction as being in the course of business. In support of his contentions, learned senior counsel has relied upon the following judgments :

- (i) **Patil Automation Private Limited & Ors. vs. Rakheja Engineers Pvt. Ltd. [(2022) 10 SCC 1]**
- (ii) **Andhra Pradesh Coop. Wool Spinning Mills Ltd. & Anr. vs. G. Mahanandi & Company & Ors. [AIR 2003 Andhra Pradesh 418]**

- (iii) **Satish Sharma vs. Hem Chand Sharma & Anr. [2015 (88) RCR (Civil) 493]**
- (iv) **Mukesh Kumar vs. M/s Continental Construction Ltd. [2010 (4) RCR (Civil) 639]**
- (v) **Jagdish Chander Gupta vs. Kajaria Traders (India) Ltd. [AIR 1964 SC 1882]**
- (vi) **Saifuddin Hussainibhoy Siamwala & Ors. vs. The Burma Cycle Trading Co. [AIR 1968 Madras 154]**
- (vii) **Saifuddin Hussainibhoy Siamwala & Ors. vs. Burma Cycle Trading Co. [(1971) 3 SCC 881]**
- (viii) **Hansraj Manot vs. Messrs. Gorak Nath Champalal Pandey [1961 (66) CalWN 262]**
- (ix) **Gorak Nath Champalal Pandey vs. Hansraj Manot, [1969 (74) CalWN 269]**
- (x) **Raptakos Brett & Co. Ltd. vs. Ganesh Property [(1998) 7 SCC 184]**
- (xi) **Purushottam & Anr. vs. Shivraj Fine Arts Litho Works & Ors. [(2007) 15 SCC 58]**

Per contra learned senior counsel appearing on behalf of the landlord-respondent has contended that the present transaction cannot be treated as a transaction in the course of business of the landlord-respondent and hence it would not attract the rigors of Section 69(2) of the Partnership Act. It is submitted that Section 69(2) of the Partnership Act cannot be a bar for the enforcement of a statutory right or a common law right by an unregistered firm and the right to evict a tenant was not a right arising from a contract but it was a common law right or a statutory right. Reliance has

been placed upon the following judgments :

- (i) **Shiv Developers through its Partner Sunilbhai Somabhai Ajmeri vs. Aksharay Developers & Ors. [2022 (1) RCR (Civil) 802]**
- (ii) **Umesh Goel vs. Himachal Pradesh Cooperative Group Housing Society Ltd. [(2016) 11 SCC 313]**
- (iii) **Haldiram Bhujawala & Anr. vs. Anand Kumar Deepak Kumar & Anr. [(2000) 3 SCC 250]**
- (iv) **Sawan Ram vs. Gobinda Ram & Anr. [1980 (1) RCR (Rent) 21]**
- (v) **Krishan Engineering Works (Regd.) vs. Durga Dass [(2001) 2 RCR (Civil) 69]**
- (vi) **A.S. Mehta & Co. & Ors. vs. Yogendranath Sachdev [2001 SCC OnLine AP 1019]**

I have heard learned counsel for the parties.

In the present case the applicability of Section 69(2) of the Partnership Act to the ejectment petition filed by the landlord-respondent is to be seen. Section 69 of the Partnership Act reads as under :

“69. Effect of non-registration - (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suits 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.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect, -

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920) to realise the property of an insolvent partner.

(4) This section shall not apply, -

(a) to firms or to partners in firms which have no place of business in the territories to which this Act extends, or whose places of business in the said territories are situated in areas to which, by notification under Section 56, this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in Section 19 of the Presidency Small Cause Courts Act, 1882 (5 of 1882), or, to outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts

Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.”

In the present case, during the pendency of the ejectment petition, an application was filed for dismissal of the ejectment petition which would be akin to an application under Order VII Rule 11 CPC and at this initial stage while dealing with the said application only the contents of the ejectment petition can be seen. The ejectment petition does not mention the words that the landlord-respondent firm is a registered partnership firm. However, in order to see the applicability of Section 69(2) of the Partnership Act, it would be necessary to delve into the issue as to whether the said transaction could be said to be a transaction in the course of business.

In the case of **Krishan Engineering Works** (*supra*) this Court while dealing with the question whether the rigors of Section 69 of the Partnership Act would be applicable to rent petitions, held that the bar applies only if the suit arises out of a contract and that if a right accrues not from the contract but from another statute and enactment then the provisions of Section 69 of the Partnership Act would not be attracted. Therefore, Section 69 of the Partnership Act was held not be attracted in a petition filed under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973.

Much emphasis has been laid by learned counsel for the tenant-petitioner that the transaction in the present case arises out of the contract entered into during the course of business. However, a bare perusal of the partnership deed appended with the present petition does not reveal that renting of properties by the landlord-respondent was a part of it's business.

case of **Patel Automation** (*supra*) is on the *suo moto* powers of the Court under Order VII Rule 11 CPC. There is no quarrel with the said proposition. However, that proposition is not attracted to the facts of the present case. In case of **Mukesh Kumar** (*supra*) it was held that the transaction arose in the course of business. This is not so in the case in hand. In the present case, the right to file an ejectment petition under the Rent Act is a statutory right and further is not arising out of a transaction in the course of business of the respondent-landlord. The judgments relied upon by the learned senior counsel for the petitioner would be of no help in view of the law laid down by the Supreme Court, as discussed in the subsequent paragraphs.

In **Raptakos Brett** (*supra*), the plaintiff filed a suit for possession on the expiry of the lease period as well as for damages for illegal occupation of the premises claiming to be a registered partnership firm. On the question of maintainability of the suit, the Trial Court held that the suit was not hit by Section 69(2) of the Partnership Act. The appeal was dismissed by the High Court and the matter was taken up to the Hon'ble Supreme Court by the defendants. Para 7 of the judgment of the Supreme Court reads as under :

“7. In view of the aforesaid rival contentions, the following points arise for our consideration :

- (i) Whether the suit filed by the respondent was barred under Section 69 sub-section (2) of the Partnership Act either wholly or in part;*
- (ii) If the suit was so barred, whether subsequent registration of the plaintiff's firm under the Partnership Act could revive the suit to make it competent at least from the date on which such*

registration pending the suit was obtained by the respondent firm;

(iii) What final order ?

We shall deal with these points in the same sequence in which they are catalogued herein above.”

The Supreme Court ultimately held the suit not being barred by the provisions of Section 69(2) of the Partnership Act.

In **Haldiram Bhujawala** (*supra*), **Raptakos Brett** (*supra*) was further explained. In **Haldiram Bhujawala** (*supra*), the suit was filed by the plaintiff for permanent injunction restraining the defendants, their partners, servants etc. from infringing the trade-mark No.285062 and from using the trademark/name ‘HALDIRAM BHUJIA WALA’ or any identical name/mark deceptively similar. The defendants therein filed an application under Order VII Rule 11 CPC raising the plea of bar to maintainability of suit in view of Section 69(2) of the Partnership Act. A Single Judge of the Delhi High Court dismissed the application. The order of the Single Judge was affirmed by the Division Bench. The Supreme Court culled out the following propositions of law which read as under :

“8. The points that arise for consideration are :

(i) Whether Section 69(2) bars a suit by a firm not registered on the date of suit where permanent injunction and damages are claimed in respect of a trade mark as a statutory right or by invoking Common Law principles applicable to a passing-off action ?

(ii) Whether the words ‘arising from a contract’ in Section 69(2) refer only to a situation where an

unregistered firm is enforcing a right arising from a contract entered into by the firm with the defendant during the course of its business or whether the bar under Section 69(2) can be extended to any contract referred to in the plaint unconnected with the defendant, as the source of title to the suit property ?”

It was held in para 9 as under :

“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 enforced came up directly for consideration in this Court in M/s. Raptokas Brett Co. Ltd. v. Ganesh Property, (1988) 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 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.”

Thereafter, the Supreme Court in paras 23 to 27 held as under :

“23. From the above passage it is firstly clear that contract must be a contract by the plaintiff firm not with anybody else but with the third party defendant.

24. 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 dealings of the plaintiff's firm with such third party-defendant.

25. It will also be seen that the present defendants who are sued by the plaintiff-firm are third parties to the Ist 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 words “arising out of a contract” in Section 69(2), it is referring to a contract entered into in course of business transactions by the unregistered plaintiff firm with its customers-defendants and 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 partners of the firm are before they deal with them in business.

26. 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 unauthorisedly 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 firms’ business with defendants but is based on the alleged unauthorised 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.

27. In fact, the Act has not prescribed that the transaction or contracts entered into by a firm with the third party are bad in law if the firm is an unregistered firm. On the other hand, if the firm is not registered on date of suit and the suit is to enforce a right arising out of a contract with the third party-defendant in the course of its business, then it will be open to the plaintiff to seek withdrawal of the plaint with leave and file a fresh suit after registration of the firm subject of course to the law of limitation and subject to the provisions of the Limitation Act. This is so even if the suit is dismissed for a formal defect. Section 14 of the Limitation Act will be available inasmuch as the suit has failed because the defect of non- registration falls within the words "other cause of like nature" in Section 14 of the Limitation Act, 1963. (See Surajmal Dagduramji Shop v. M/s. Srikishan Ram Kishan, AIR 1973 Bombay 313)."

Yet again in the case of **Purushottam** (*supra*), the plaintiff therein was carrying on business as a whole-sale paper merchant in the name and style of ‘Dinesh Paper Mart’ as the sole proprietor of the concern. He supplied goods to the defendant-firm. The plaintiff-proprietary firm was taken over by a partnership w.e.f. 01.01.1980. The suit was filed by the plaintiff while its application for registration was pending. The High Court therein took the view that the suit was barred by the provisions of Section 69(2) of the Partnership Act. The Hon’ble Supreme Court, relying on the case of **Haldiram Bhujiawala** (*supra*), held in paras 23 to 25 as under :

“23. Relying upon the aforesaid analysis this Court in Haldiram Bhujiawala and Anr. (supra) held that the contract contemplated by Section 69 of the Act is the contract entered into by the firm with the third party defendant. The contract by the unregistered firm referred to in Section 69(2) must not only be one entered into by the firm with a third party defendant, but must also be one entered into by the plaintiff firm in the course of the business dealings of the plaintiff firm with such third party defendant.

24. With respect, we find ourselves in complete agreement with the principles enunciated in Haldiram Bhujiawala and Anr. (supra). Having regard to the purpose Section 69(2) seeks to achieve and the interest sought to be protected, the bar must apply to a suit for enforcement of right arising from a contract entered into by the unregistered firm with a third party in the course of business dealings with such third party. If the

right sought to be enforced does not arise from a contract to which the unregistered firm is a party, or is not entered into in connection with the business of the unregistered firm with a third party, the bar of Section 69(2) will not apply.

25. In the instant case the contract was entered into with the respondent firm by the erstwhile proprietor of the concern namely Purushottam. The partnership firm came into existence later. The amount claimed in the suit were due to the proprietor Purushottam who carried on his proprietary business in the name and style of “Dinesh Paper Mart”. When he entered into partnership with others, he contributed to the partnership by way of his contribution to the capital, all the assets and liabilities of his erstwhile proprietary concern. Thus, though the partnership firm, which was unregistered, became entitled to enforce the contractual obligation of the defendant firm which it owed to Purushottam, the contract was not one entered into by the unregistered firm with a third party, nor was it one entered into by the unregistered firm in the course of its business dealings with the defendants. So viewed, the bar of Section 69(2) cannot apply to the suit filed by the Plaintiff-appellant.”

Though the judgment in **Purushottam** (*supra*) has been relied upon by the learned senior counsel for the tenant-petitioner it, however, does not help his case in any manner.

In a recent judgment of the Hon'ble Supreme Court in the case of **Shiv Developers** (*supra*), the plaintiff, which is an un-registered firm by the name of Shiv Developers, was engaged in the business of construction of buildings and comprised of two partners. It was averred in the plaint that on 26.11.2013 the appellant and defendant nos.2 and 3 had purchased a property. A partnership was formed in the name of Aksharay Developers. The said partnership was formed for the purposes of the project related with the suit property. It was averred that on 23.02.2015 a firm was constituted by respondent nos.2 and 3 therein but without including Sunilbhai Somabhai Ajmeri and respondent No.4 as partners. It was alleged that a sale deed was got executed by respondent nos.2 and 3 as a part of a conspiracy in favour of respondent-firm therein without passing off the sale consideration. Hence, a suit was filed challenging the sale deed dated 24.02.2015. The respondent filed an application for rejection of the plaint on the ground that the sale was barred by the provisions of Section 69(2) of the Partnership Act. The Trial Court rejected the application. The High Court allowed the revision and set aside the order of the Trial Court. The Hon'ble Supreme Court held that the bar of Section 69(2) of the Partnership Act would not be attracted to the case.

Hon'ble Supreme Court in the case of **Shiv Developers** (*supra*), after a detailed discussion and considering various judgments including the decisions in **Raptakos Brett** (*supra*) and **Haldiram Bhujawala** (*supra*), held as under :

“19.1 As noticed, the crucial and key factor in the present case remains that the sale transaction in question is not arising out of the business of the appellant firm. Equally significant fact is that the

subject suit is for enforcing a right of avoidance of a document on the ground of fraud and misrepresentation as also the statutory rights of seeking declaration and injunction. Significantly, the composition of defendant firm “Aksharay Developers” (defendant No.1) has itself been questioned by the plaintiff- appellant while alleging that on 22.04.2014, this firm was constituted with four partners but later on, the defendant Nos.2 and 3 (respondent Nos.2 and 3 herein), constituted another firm in the same name with themselves as partners while leaving aside the other two.

19.2. We are not commenting on the merits of the case of either of the parties but this much is apparent from a look at the frame and contents of the plaint as also the prayers therein that the present one cannot be said to be such a suit by the unregistered firm which would attract the bar of Section 69(2) of the Act of 1932.

20. To put it differently, the relevant principles, when applied to the facts of the present case, leave nothing to doubt that the transaction in question was not the one entered into by the plaintiff firm during the course of its business (i.e., of building construction); and it had been an independent transaction of sale, of the firm’s share in the suit property, to the contesting defendants. The bar of Section 69(2) is not attracted in relation to the said sale transaction. Moreover, the subject suit cannot be said to be the one for enforcement

of right arising from a contract; rather the subject suit is clearly the one where the plaintiff seeks common law remedies with the allegations of fraud and misrepresentation as also of the statutory rights of injunction and declaration in terms of the provisions of the Specific Relief Act, 1963 as also the Transfer of Property Act, 1882 (while alleging want of the sale consideration). Therefore, the bar of Section 69(2) of the Act of 1932 does not apply to the present case.”

The law as laid down is very clear that the ‘words arising out of a contract’ in Section 69(2) of the Partnership Act refers to a contract entered into the course of a business transaction by the un-registered firm with the defendant customers and that Section 69(2) of the Partnership Act 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. To attract the bar of Section 69(2) of the Partnership Act the contract in question must be the one entered into by firm with the third-party defendant and must also be the one entered into by the plaintiff firm in the course of its business dealings and that Section 69(2) of the Partnership Act is not a bar to a suit filed by an unregistered firm if the same is for enforcement of a statutory right or a common law right. The judicial precedents cited make it clear that to attract the bar of Section 69(2) of the Partnership Act the contract in question must be the one entered into by the partnership firm with the defendant and must also be the one entered into by the plaintiff firm in the course of its business dealings and that Section 69(2) of the Partnership Act cannot be a bar for the enforcement of a statutory right or a common law right by an unregistered firm and the right

to evict a tenant was not a right arising from a contract but it was a common law right or a statutory right.

In view of the above, I do not find any illegality or irregularity in the exercise of jurisdiction by the Rent Controller while passing the impugned order. The present revision petition is devoid of any merits and is accordingly dismissed. Pending applications, if any, also stand disposed off.

It is, however, made clear that since an argument was raised by learned senior counsel for the tenant-petitioner that certain payments need to be adjusted and that needs to be taken into account while assessing the rent, the Rent Controller shall before assessing the rent give an opportunity to the tenant-petitioner to place on record whatever documents it wishes in order to show the payments which it claims need to be adjusted.

04.01.2023
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO