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

+ **RFA(COMM) 22/2023**

M/S SCJ COLOURS

..... APPELLANT

Through: **Mr.Pankaj Chaudhary, Advocate.**

versus

M/S P R TECHNOPLAST PVT LTD & ORS.

..... RESPONDENTS

Through: **None**

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Date of Decision: 04th October, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present appeal has been filed challenging the order dated 18th November, 2022 passed by the learned District Judge, (Commercial Court), Tis Hazari Courts, Delhi in CS(COMM) No.79/2020.

2. Since despite service of notice, none appeared for the respondents, they were proceeded *ex parte* on 28th August, 2023. It is pertinent to mention that even before the Trial Court, the respondents were proceeded *ex parte*. Consequently, this Court has no other option but to proceed ahead with the matter.



3. Learned counsel for the appellant states the Trial Court has dismissed the suit filed by the appellant under Section 69(2) of the Partnership Act, 1932 (hereinafter referred to as the 'Act') based on an incorrect conclusion that the subsequent registration of the partnership firm would not cure the initial defect of filing of the suit by an unregistered firm.

4. He contends that the Trial Court failed to appreciate that the appellant was duly registered with the Registrar of Firms, Delhi vide Certificate No.FIRM/WEST/2018/1534 of 2018 dated 26th December, 2018 and the suit in the present instance was filed on 03rd February, 2020 i.e. after the registration of the appellant firm. He states that the Trial Court erred in not considering the firm registration certificate which was duly available on its record.

5. He further submits that the Trial Court erred in misconstruing the observations of the Supreme Court in ***Delhi Development Authority vs. Kochhar Construction Works, (1998) 8 SCC 559***, to mean "*from bare reading of Section 69(2) of the Act, it is clear that institution of the suit by an unregistered partnership firm against any third party is not valid unless firm is registered and the persons suing are or have been shown in the Register of Firms as partners of the firm*".

6. He also states that the Trial Court in the impugned order has erroneously held that as the transactions between the parties took place prior to the appellant firm being registered, the suit was barred under Section 69(2) of the Act.

7. Having heard learned counsel for the appellant and having perused the paper book, this Court is of the view that once a partnership firm is registered, there is nothing in law which prevents the partnership firm from



filing a suit for claims in relation to transactions, which preceded such registration of the firm.

8. The Andhra Pradesh High Court in *M/s. Samyuktha Cotton Trading Co. vs. Bheemineni Venkata Subbaiah & Ors. AIR 2005 AP 1* has held that the bar contained under Section 69 of the Act is applicable to the filing of the suit by the firm. It further held that Section 69 of the Act “*does not insist that the transactions, which are subject matter of the suit, in relation to, or by a firm, shall be those which take place after the firm is registered. Once a firm is registered, there is nothing in law to disable it from bringing about claims or from pursuing remedies in a court of law, in relations to transactions, which preceded such registration*”.

9. Since the appellant firm was registered prior to the filing of the suit, this Court is of the view that the bar under Section 69(2) of the Act will not apply. Consequently, the impugned order is set aside and the matter is remanded back to the Trial Court for fresh consideration of the suit. The appellant is directed to appear before the District Judge (Commercial Court)-02, West/Tis Hazari Courts, Delhi on 22nd November, 2023.

10. Accordingly, the present appeal stands disposed of.

MANMOHAN, J

MINI PUSHKARNA, J

OCTOBER 04, 2023
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