

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2207 OF 2018

Samrat Span Realities,]
A Partnership Firm registered under]
the Indian Partnership Act, 1932]
Through its Partner – Rajendra Kesharchand Bora] .. Petitioner

Versus

1. The Registrar of Firms, Pune]
2. Nitin Sughanlal Sethia]
3. Avinash Mansingrao Patil]
4. Sunil Shrirang Koratkar]
5. Sushil Dattatray Patil]
6. Vasundhara Sushil Patil] .. Respondents

Mr. R.D. Soni, with Mr. V.R. Kasale, i/by Ram & Co., for the Petitioner.
Mr. R.P. Kadam, AGP for Respondent No.1.
Mr. Rushikesh C. Barge for Respondent Nos.2 to 6.

**CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ**

DATE : 16TH JANUARY, 2024.

ORAL JUDGMENT : { Per A.S. Chandurkar, J. }

1. RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The refusal on the part of the Registrar of Firms to record change in the constitution of the Partnership Firm consequent upon expulsion of

some partners is under challenge in this writ petition filed under Article 226 of the Constitution of India.

3. The facts relevant for adjudicating the writ petition are that it is the case of the petitioner-Firm that its partners, along with respondent nos.2 to 6, constituted a Partnership Firm - Firm that was duly registered under the provisions of the Indian Partnership Act, 1932 (*for short, "the Act of 1932"*). The Firm consisted of thirteen partners. Eight partners issued a notice to the remaining partners on 25th June 2011 stating therein that since the said noticees failed to comply with the contractual obligations mentioned in the Partnership Deed dated 14th August 2009, they were being expelled from the Firm. This notice was replied by respondent nos.2 to 6 denying the allegations as made and questioning the legality of their expulsion. Based on such action of expulsion, the partners claiming to constitute the Firm, issued a notice on 3rd January 2014 to the Registrar of Firms with a request to delete the names of the expelled partners from the Registrar of Firms and amend the entries accordingly. This was followed by various reminders and ultimately by a notice dated 19th February 2016, the Registrar of Firms was called upon to take necessary steps within a period of seven days of receiving the notice. In response, the Assistant Registrar of Firms issued a communication to the petitioner on 15th March 2016 stating therein that there was no provision under the Act of 1932 to record any change that occurs in a Firm on the basis of expulsion of a

partner. It was further stated that under Section 63, read with Form “E”, there was no provision to record such change. The partners were directed to take necessary steps and obtain orders from a Court of law. Being aggrieved, the Firm, through one of its partner, has challenged this communication dated 15th March 2016. A further intimation given to the Firm on 14th June 2017, reiterating the same stand is also under challenge.

4. Mr. R.D. Soni, learned counsel for the petitioner referred to various provisions of the Act of 1932 and especially Sections 32, 33 and 63 of the Act of 1932 to submit that expulsion of a partner was permissible under the Act of 1932. The provisions of Section 32(2) to (4) thereof had been made applicable even with regard to an expelled partner by treating such partner to be a retired partner. The Registrar of Firms, therefore, was not justified in refusing to take necessary steps so as to remove the names of the expelled partners. The requisite information having been duly furnished under Form “E”, prescribed under the Maharashtra Partnership Rules, 1989 (*for short, “Rules of 1989”*), the Registrar of Firms ought to have acted accordingly. It was further submitted that if the partners who had been expelled sought to raise a dispute, the same was liable to be adjudicated in accordance with law. Only on the ground that there was some dispute with regard to the aspect of expulsion, the Registrar of Firms could not have refused to record the change in the constitution of the Firm, as reported. The reasons given by the Assistant Registrar of Firms

were not supported by the provisions of the Act of 1932 and hence the refusal on the part of the Registrar of Firms to record the change was liable to be set aside.

5. On the other hand, Mr. Rushikesh C. Barge, learned counsel for respondent nos.2 to 6 opposed the writ petition and submitted that in terms of the Deed of Partnership, it was open for the aggrieved partners to invoke the arbitration clause present in the Partnership Deed. Referring to clauses 18, 19 and 23 of the Partnership Deed, it was submitted that the manner in which such dispute could be resolved between the partners had been clearly indicated. Merely on the say of the petitioner that some of the partners had been expelled, such change could not be recorded unless it was held that the expulsion of the partners was after following the due process and by complying with the terms in the Deed of Partnership. It was denied that the said respondents had committed any breach of their contractual obligations and were thus liable to be expelled from the Firm. The action of the petitioner in seeking to expel the respondent nos.2 to 6 was unjustified and without following the prescribed procedure. Hence, the writ petition was liable to be dismissed.

6. Mr. R.P. Kadam, learned Assistant Government Pleader for respondent no.1 referred to the affidavit as well as additional affidavit filed on behalf of the respondent no.1. It was submitted that the dispute

with regard to expulsion of a partner ought to be resolved by the partners of the Firm and that the Registrar of Firms had no power to decide such dispute. He referred to the Rules of 1989 to submit that the refusal on the part of the Registrar of Firms to accept the expulsion did not call for any interference. Hence, there was no case made out to interfere in writ jurisdiction.

7. We have considered the rival submissions and we have also perused the documents on record. Having given due consideration to the scheme of the Act of 1932 and the Rules of 1989, in our view the impugned communications dated 15th March 2016 and 14th June 2017 are liable to be set aside. The Assistant Registrar of Firms has declined to accept the notice that was given by the petitioner intimating expulsion of respondent nos.2 to 6 on the premise that under the Act of 1932, there is no provision to record the aspect of expulsion in the Register of Firms. In this regard, it would be necessary to refer to certain relevant provisions of the Act of 1932. Section 33 of the Act of 1932 provides for the manner in which a partner of a Firm may not be expelled. The said provision reads as under :-

“33. Expulsion of a partner. —

- (1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.

- (2) The provisions of sub-sections (2), (3) and (4) of Section 32 shall apply to an expelled partner as if he were a retired partner.”

8. Section 63 of the Act of 1932 requires the recording of changes made in the constitution of a registered Firm as well as on the dissolution of a Firm. Section 63(1) reads as under :-

“63. Recording of Changes in and Dissolution of a Firm. -

- (1) When a change occurs in the constitution of a registered firm any incoming, continuing or outgoing partner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorised in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice along with the statement relating to the firm filed under section 59.”

9. The provisions of Section 65 of the Act of 1932 enable the Registrar of Firms to amend the Register, as maintained, on the basis of a decision taken by a Court dealing with any matter relating to a registered Firm. The said provision reads as under :-

“65. Amendment of Register by order of Court -

A Court deciding any matter relating to a registered firm may direct that the Registrar shall make any amendment in the entry in the Register of Firms relating to such firm

which is consequential upon its decision; and the Registrar shall amend the entry accordingly.”

10. Under Section 71(2), the State Government has been empowered to make rules in respect of matters prescribed therein. Sub-clause (c) and sub-clause (d) of Rule 71(2) being material, the same are reproduced hereunder :-

71. Power to make rules.-

(2) The State Government may also make rules -

- (a)
- (b)
- (c) prescribing the form of the Register of Firms, and the mode in which entries relating to firms are to be made therein, and the mode in which such entries are to be amended or notes made therein;
- (d) regulating the procedure of the Registrar when disputes arise.
- (e)”

11. In exercise of powers conferred by Section 71(2)(c) of the Act of 1932, the State Government, through the Law & Judiciary Department, has framed the Rules of 1989. Rule 7 provides for an amendment to be made in the Register of Firms and the same reads as under :-

“7. Amendment of Register —

When an entry made in the Register is to be amended, it shall be made by drawing a red line through the entry and thereafter a new entry shall be made at the end of the existing entries. Serial number of the new entry shall be made against the amended entry in red ink.”

12. Rule 8 provides for the procedure to be followed on a dispute being raised against any entry taken in such Register. Rule 8 reads as under :-

“8. Procedure on dispute —

- (a) Any person wishing to dispute any entry in the Register shall give the Registrar a notice in writing to that effect and the Registrar shall make a remark to that effect at the end of the then existing entries and shall also make a remark in red ink in the remarks column against the entry so disputed.
- (b) The Registrar shall then, as soon as may be, send an intimation of such notice to all the concerned partners of the firm and if the person giving such notice is one of the partners, to the remaining partners of such firm, as the case may be.”

13. Rule 16 empowers the Registrar to make further inquiries, as found necessary, with regard to any intimation or notice received by him under the Act of 1932 or the Rules of 1989. Rule 16 reads as under :-

“16. Power to make further inquiries -

The Registrar may make such further inquiries in respect of any statement, intimation, application or notice received by him under the Act or rules thereunder and may call for production of such evidence as he may consider necessary.”

14. From the aforesaid provisions, it becomes clear that a partner of a registered Firm can be expelled by majority of the partners subject to such expulsion being made in exercise of good faith of powers conferred by the contract between the parties. On a partner being expelled, the provisions

of Section 32(2) to (4) of the Act of 1932 would apply and the same indicates that an expelled partner is treated at par as a retired partner. It is thus clear that expulsion of a partner is also recognized as a mode of retirement of a partner consequent upon his expulsion. As a consequence, the expulsion of a partner would result in a change occurring in the constitution of a registered Firm since such expelled partner would become an outgoing partner. Consequently, such change is required to be reported to the Registrar of Firms in Form "E", as prescribed by the Rules of 1989, to enable the Register of Firms to be amended. On the basis of such intimation in Form "E", if an entry is made in the Register by way of an amendment under Rule 7, it would be open for an aggrieved person to dispute such entry in the Register under Rule 8. On such dispute being raised, the Registrar would be required to send an intimation to all concerned partners of the Firm under Rule 8(b). While the Registrar has been conferred the power to make further inquiries as he may consider necessary, it becomes clear on a reading of Section 65 of the Act of 1932 that on such dispute being decided by the competent Court, the Registrar is required to make such amendment in the Register of Firms. It would thus be clear that on an entry being made in the Register of Firms, based on the intimation received in Form "E", if a dispute is raised to such entry, the same has to be recorded in red ink in the remarks column and the person aggrieved can seek legal remedy. Based on the outcome of the

same, the Register of Firms can be amended under Section 65 of the Act of 1932. It is thus clear that under the scheme of the Act of 1932 as well as the Rules of 1989, expulsion of a partner is recognized as a mode of retirement of a partner resulting in a change in the constitution of the Firm. Such change if disputed is subject to due adjudication by a competent Court. We, therefore, find that the Registrar of Firms misdirected himself while recording a finding that expulsion of a partner was not required to be taken note of in the Register of Firms and hence it was not necessary to report the same.

15. The issue can be viewed from another angle. Section 63(1) of the Act of 1932 requires a change to be intimated to the Registrar of Firms within a period of ninety days as per the Maharashtra State amendment. Section 69-A provides for the consequences of the failure to give such intimation or notice as contemplated by Sections 60 to 63, as the case may be. This would indicate that on such change being reported to the Registrar of Firms, further steps as prescribed under the Rules of 1989 in the matter of taking such entry will have to be taken notwithstanding the right of an aggrieved partner to challenge such entry.

16. The apprehension expressed by the learned counsel for respondent nos.2 to 6 that after recording the change as reported in Form "E", there would be no occasion for an affected party to challenge such change is

unfounded in view of the scheme of the Act of 1932 and especially for the reason that on a Court deciding any matter relating to a registered Firm, the Registrar is required to make an amendment in the entry in the Register of Firms based upon the decision of the Court. It is thus clear that a party aggrieved by the change as intimated can always seek legal redress in accordance with law and the note of such adjudication is thereafter required to be taken in the Register of Firms. An entry taken under Rule 7 of the Rules of 1989 is subject to the provisions of Section 65 of the Act of 1932.

17. For all the aforesaid reasons, we find that the relevant provisions of the Act of 1932 as applicable in the State of Maharashtra read with the Rules of 1989 were not considered by the Assistant Registrar while issuing the impugned communications. Thus, a case for interference has been made out. In the light of the discussion made hereinabove, the following order is passed :-

- (i) The communications dated 15th March 2016 and 14th June 2017 issued by the Assistant Registrar, Partnership Firms, Pune are set aside.
- (ii) Respondent no.1 shall entertain the application dated 19th February 2016 that has been submitted by the partner of the Firm intimating change in the constitution of the Firm.

- (iii) The Assistant Registrar of Firms shall thereafter take further steps in accordance with the provisions of Rule 8 of the Maharashtra Partnership Rules, 1989 and in accordance with Rule 8(b) thereof, issue notice to all the concerned partners of the Firm.
- (iv) It is clarified that Assistant Registrar of Firms is not required to adjudicate any dispute *inter se* between the parties, if the same arises. Any partner aggrieved by any entry taken under Rule 8(a) of the Rules of 1989 is free to take appropriate legal recourse in accordance with law.

18. Rule is made absolute in the aforesaid terms with no order as to costs.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]

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