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S.A.No.139 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.139 of 2024

The Chennai Law Firm,
Represented by Partner, Adv. Edser Raj
No.505, 5th Floor,
Kaveri Complex,
96, Nungambakkam High Road,
Chennai 600 034.

... Appellant

Vs.

Keyvish Associates (P) Ltd,
Represented by its Authorised Signatory N.Srinivasan,
Branch office at
504, 5th Floor, Kaveri Complex,
96, Nungambakkam High Road,
Nungambakkam,
Chennai 600 034.

Registered office
11, SBI 1st Colony 3rd Street,
By pass road,
Madurai 625 010.

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 12.07.2023 in A.S.No.32 of 2023



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on the file of the Principal District Judge, City Civil Court, Chennai, reversing the judgment and decree dated 10.02.2022 in O.S.No.4365 of 2021 on the file of the XIX Assistant City Civil Court, Chennai.

For appellant : Mr.L.Sriram
for M/s.The Chennai Law Firm
Party in person

JUDGMENT

The plaintiff partnership firm challenges the judgment and decree passed by the learned Principal Judge, City Civil Court, Chennai, in A.S.No.32 of 2023, in and by which, the learned Judge has reversed the judgment and decree of the learned XIX Assistant Judge, City Civil Court, Chennai, in O.S.No.4365 of 2021.

2. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the Trial Court.



FACTS OF THE CASE:

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2.1. The plaintiff firm had filed a suit in O.S.No.4365 of 2021 on the file of the XIX Assistant Court, City Civil Court, Chennai, for recovery of sum of Rs.6,57,056.20/- together with interest at 18% per annum from the date of the suit till the date of realisation. The plaintiff would submit that it is a legal firm providing legal services. The defendant had approached them for professional help, which was to file petitions under Section 14 of the SARFAESI Act. The plaintiff would submit that the defendant had agreed to pay the plaintiff 50% of the fees at the time of filing of the petition and the balance on the completion of the assignment.

2.2. The plaintiff would submit that the defendant was not regular in releasing the payment in time and in a joint meeting held on 23.06.2019, it was agreed that the amount payable to the defendant was a sum of Rs.4,76,250/- as on 23.06.2019. The defendant agreed to release a sum of Rs.53,000/- and the same was also released



immediately. Since the agreement was entered into, the plaintiff continued to do work for the defendant. However, the defendant had not made payment towards fees and there was an outstanding of Rs.6,57,056.20/-.

2.3. The plaintiff had issued a demand notice dated 02.09.2020 under the Insolvency and Bankruptcy Code, 2016, with an intention to file a petition before National Company Law Tribunal, which went unanswered. Meanwhile Covid-19 pandemic had set in. The plaintiff had also sent notice to the defendant's company on 05.04.2021 which remained unanswered. Therefore, the plaintiff had come forward with the under chapter suit for recovery of above sum.

2.4. The defendant, on entering appearance, took out an application seeking leave of the Court to defend the suit in I.A.No.2 of 2021. The contentions raised by the defendant were as follows:

(a)The suit for recovery of money due for providing legal



services was not maintainable under Order XXXVII Rule 1(2);

(b)The plaintiff was not a registered partnership firm and therefore, the suit was not maintainable; and

(c)The partners are also not shown in the plaint.

2.5. The plaintiff had deliberately kept away the communication between the parties which would clearly show that there was no concluded contract and the summons, as contemplated under Order 37 of CPC, has not been issued.

TRIAL COURT:

3. The learned XIX Assistant Judge, City Civil Court, Chennai, had rejected the leave to defend petition and had directed the defendant to pay a sum of Rs.6,57,056.20/- together with interest at 12% per annum from the date of filing of the suit till the date of judgment and thereafter, at the rate of 6% per annum till the date of realisation.



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LOWER APPELLATE COURT:

4. Challenging the said judgment, the defendant had filed an appeal in A.S.No.32 of 2023 before the learned Principal Judge, City Civil Court, Chennai. The learned Judge took note of the fact that the suit was filed by an unregistered firm against a 3rd party for recovery of money and observed that the suit was not maintainable under Section 69(2) of the Indian Partnership Act, 1932.

5. The Lower Appellate Court had taken note of the fact that the plaintiff had not produced the Registration Certificate of the plaintiff company and it only produced the document which is issued by this Court which is nothing but a communication, whereunder, this Court had permitted the partnership firm to file a case in the name of the firm.

6. Aggrieved by the said judgment and decree, the plaintiff is



before this Court.

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DISCUSSION:

7. Mr.L.Sriram, learned counsel appearing on behalf of the appellant, would submit that the bar under Section 69(2) of the Partnership Act would not apply to a common law claim or the statutory claim. He would submit that the bar under Section 69(2) of the Partnership Act is not attached to every contract. He would further submit that the fee due to the plaintiff which is a partnership firm of lawyers is not a business venture and therefore, it comes within the category of “arising from a contract” under Section 69(2) of Partnership Act, as it is the remuneration for the services that has been rendered. In support of this contention, he relied upon the judgments of the Hon'ble Supreme Court in the following cases.

(i) ***The Tamil Nadu Retrenched Census Employees' Association vs. K.Thennan*** reported in ***2006(1) MWN (Cr.)(DCC) 70*** ;



(ii) ***Raptakos Brett and Co.Lts vs. Ganesh Property*** reported in (1998) 7 SCC 184 and

(iii) ***Haldiram Bhujia Wala and another vs. Anand Kumar***

Deepak Kumar and another reported in (2000) 3 SCC 250.

8. Heard the learned counsel for the appellant and perused the materials available on record.

9. Section 69(2) of the Partnership Act talks about the registration of the firms and the effect of the non-registration of a firm that seeks to enforce the right arising from a contract. Section 69(2) of the Partnership Act would read as follows;

“No suit 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”

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A reading of the above Section would clearly show that no suit can be instituted by or on behalf of an unregistered firm to enforce any right arising from a contract against the 3rd party unless a firm is registered and the persons suing are shown as partners.

10. In the instant case, the plaintiff has clearly described themselves as a partnership firm. Thereafter, he has clearly stated that there was an agreement between themselves and the defendant, in and by which, they were assigned to file a petition under Section 14 of the SARFAESI Act on behalf of the defendant and as per the terms of the agreement, 50% of the fees was payable at the time of filing of the petition and the balance on the completion of the assignment. Therefore, the parties had entered into a contract of service. The right to claim remuneration from the defendant only emanates from this agreement/contract.



11. Therefore, the judgments relied upon on the part of the appellant viz., ***Raptakos Brett and Co.Lts vs. Ganesh Property*** reported in ***(1998) 7 SCC 184*** and ***Haldiram Bhujia Wala and another vs. Anand Kumar Deepak Kumar and another*** reported in ***(2000) 3 SCC 250*** cannot be pressed into service. In the judgment in the case of ***The Tamil Nadu Retrenched Census Employees' Association vs. K.Thennan*** reported in ***2006(1) MWN (Cr.)(DCC) 70***, the learned Single Judge of this Court had clearly held that the amount due towards an Advocate towards his professional service was an enforceable debt. Therefore, the plaintiff is seeking to recover this enforceable debt from the defendant which is evident from Exs.A1 to A4. Therefore, the Lower Appellate Court has rightly allowed the appeal and I see no reason to interfere with the same.

Accordingly, this second appeal stands dismissed as it does not make out any substantial questions of law. Consequently, connected C.M.P. stands closed. No costs.



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Index : Yes/No
Speaking order/non-speaking order
ssa

To

1. The Principal District Judge, City Civil Court, Chennai.
- 2.The XIX Assistant Judge, City Civil Court, Chennai.
- 3.The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

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