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

% *Date of Decision: 16.02.2024*

+ **RFA(OS)(COMM) 7/2023 and CM APPL. 18924/2023**

M/S ALMASS INDIA

..... Appellant

Through: Mr.Anand Mishra and Ms.Ayushi
Rajput, Advocates.

versus

MUNICIPAL CORPORATION OF
DELHI & ANR.

..... Respondents

Through: Ms.Sunieta Ojha, Standing Counsel
for R1/MCD.
Mr.Ripu Daman Bhardwaj, CGSC,
Mr.Sahaj Garg, GP and
Mr.Kushagra Kumar, Advocate for
UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J.

CM APPL. 18926/2023 & CM APPL. 18928/2023

1. The appellant has filed CM APPL.18926/2023 seeking condonation of delay of 24 days in filing the appeal and the application, CM APPL.18928/2023, for seeking condonation of delay of 4 days in re-filing the accompanying appeal.
2. The learned counsel for the respondents has no objection if the delay in filing and refiling the appeal are condoned.
3. In view of the above, the delay in filing and refiling the appeal



stands condoned.

4. The applications stand disposed of.

CM APPL. 18925/2023

5. Exemption is allowed, subject to just exceptions.

6. The application stands disposed of.

CM APPL. 18927/2023

7. The appellant has filed this application seeking exemption from filing the *ad-valorem* court fee and in the alternative grant of six months' time to pay the same. It is claimed that since the suit was dismissed by the learned Single Judge on a preliminary issue on points of law therefore, the impugned judgment is a 'shadow of a decree and is not a real decree'. It is contended that therefore the appellant is not liable to pay *ad-valorem* fees.

8. The said contention is clearly unmerited. The appellant's suit was dismissed by the learned Single Judge on a preliminary issue regarding maintainability of the suit, framed by the learned Trial Court. The contention that the value of the disputes for the purpose of the appeal is different from the value of the subject matter of the suit, is clearly unmerited.

9. The learned counsel for the appellant referred to a decision of this Court in *M/s Sehgal Industrial Works v. M/s Tru-Temp*



*Industries & Ors*¹ in support of his contention. The reliance on this decision is misconceived. The issue involved in said case was on the question of the court fee payable on an appeal against an order denying extension of time for payment of the court fees. This Court had noted that the appellant had not disputed that the court fee was payable; the appellant had merely sought further time for payment of the court fees. In the said facts, this Court concluded that the appeal is required to be treated as one covered under Article I, Schedule I of the Court fees Act, 1870 and accordingly directed that the court fees of ₹2.65 paid on the appeal was proper.

10. In view of the above, the prayer requesting for an exemption from the payment of the court fees is dismissed. However, the appellant is granted two weeks' time from date to pay the proper court fees.

11. The application stands disposed of in the above terms.

RFA(OS)(COMM) 7/2023 and CM APPL. 18924/2023

12. The appellant – an unregistered partnership firm – has filed the above captioned intra-court appeal against the order dated 14.11.2022 (hereafter *impugned judgement*) passed by the learned Single Judge in CS(COMM) no.66/2015 captioned *Almass India v. South Delhi Municipal Corporation*. By the impugned judgement, the learned Court rejected the appellant's suit for recovery of ₹58,79,832/- and

¹ 1986 SCC OnLine Del 72



other reliefs, on the basis of the preliminary issue as struck and recorded by the order dated 13.11.2018. The said preliminary issue is extracted below:-

“1. Whether the suit filed by an unregistered partnership firm is maintainable in view of the bar imposed by Section 69 of the Indian Partnership Act, 1932? OP”

13. The learned Single Judge held that the suit filed by an unregistered partnership firm was not maintainable in view of the bar of Section 69(2) of the Indian Partnership Act, 1932 (hereafter *the Partnership Act*). There is no ambiguity in Sub-section (2) of Section 69 of the Partnership Act. There is no dispute that in terms of Section 69(2)² of the Partnership Act institution of a suit by an unregistered firm is proscribed. However, according to the learned counsel for the appellant, the suit was maintainable as it was based on common law and not on the basis of any contract. It is contended that any suit by an unregistered firm, which is based on common law is maintainable notwithstanding the bar under Section 69(2) of the Partnership Act.

14. The learned Single Judge examined the plaint and found that there was no merit in the aforesaid contention. The learned Single Judge found that the case instituted by the appellant arose from the contract dated 16.12.2013, entered into between the parties. According to the appellant, the said contract was void as it was violative of the Outdoor Advertisement Policy, 2007 (OAP). The learned Single Judge considered that this dispute was also based on the terms of the contract entered into between the parties.

² “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.”



15. Further, the appellant also sought a decree for recovery of ₹17,49,625/- which was furnished by the appellant as a security and advanced to the respondents in terms of the contract in question.

16. A plain reading of the plaint indicates that the appellant's cause of action is premised on the terms of the contract between the parties

17. It is also material to note that the learned Single Judge had also referred to the decision in *Purushottam v. Shivraj Fine Art Litho Works*³ wherein the Supreme Court had explained that the rationale of the provision under Section 69(2) of the Partnership Act was for the protection of a third parties that deal with the partnership firm. The Supreme Court also noted, in unambiguous terms, that an unregistered firm cannot bring a suit for enforcing a right arising from the contract.

18. The learned counsel for the appellant submits that Section 69(2) of the Partnership Act is unconstitutional, and therefore, the appellant would be entitled to maintain the suit. The said contention is insubstantial. The appellant has not raised any such ground or claimed any such relief in the suit. Concededly, no such plea was raised in the plaint; it was raised in the replication. A firm has no independent identity other than its partners. Thus, proscribing an unregistered firm from seeking recourse to litigation does not fall foul of any rights guaranteed by the Constitution of India.

19. We find no infirmity in the decision of the learned Single Judge.

³ (2007) 15 SCC 58



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The appeal is unmerited and is dismissed with cost of ₹15,000/-.
Pending application, also stands disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

FEBRUARY 16, 2024

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