IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.385 OF 2024

Shantilal Rupchand Oswal ... Applicant
versus
M/s. Sai Leela Developers and Ors. … Respondents

Mr. R.S.Kulkarni, for Applicant.
Mr. Tejas Deshmukh with Mr. Harishchandra D. Chavan, for Respondent No.1.

CORAM: N.J.JAMADAR, J.

DATE : 5 FEBRUARY 2025

P.C.

1. Heard the learned Counsel for the parties.

2. This revision is directed against the order dated 24 April 2024 passed by the learned Civil Judge, Sr. Division, Pune, whereby the application for rejection of the plaint preferred by the Applicant – Defendant No.1 under Order VII Rule 11 of the Code of Civil Procedure, 1908, came to be rejected.

3. Shorn of unnecessary details, the background facts leading to this revision can be stated, in brief, as under :

3.1 The applicant had instituted Special Civil Suit No.2081 of 2010 for specific performance of the contract contained in the Agreement dated 26 August 1995 and declaration and injunction against Respondent Nos.2 to 17 herein. By an order dated 12 October 2010, the said suit was decreed pursuant to a compromise arrived at between the parties. The Applicant filed Execution Application No.1060 of 2012, and, eventually, the Sale Deed dated 20 January 2020 came to be executed in favour of the applicant by an Officer of the Court.

3.2 Respondent No.1 has instituted instant Suit seeking, inter alia, declaration that the Plaintiffs are the owners and in possession of the suit property, the decree passed in Special Civil Suit No.2081 of 2010 has been obtained by fraud, and, thus, null and void and does not affect the suit property, the Sale Deed dated 20 January 2020 executed in favour of the applicant is also illegal and void and does not bind the Plaintiff and the consequential relief of injunction.

3.3 The applicant filed written statement and contested the suit.

3.4 The applicant also preferred an application for rejection of the plaint, primarily on the ground that the suit is barred by law of limitation. Respondent No.1 had known in the year 2007 itself that the instruments in question were executed in favour of the applicant. Therefore, the suit instituted in the year 2023 is ex-facie barred by limitation.

3.5 By the impugned order, the learned Civil Judge was persuaded to reject the application observing, inter alia, that the question of limitation was a mixed question of fact and law and the plaint cannot be rejected on the ground of bar of limitation.

3.6 Before the learned Civil Judge, in addition to the bar of limitation, a ground that the suit was also barred by the provisions contained in Section 69 of the Indian Partnership Act, 1932, was also urged on the premise that the Plaintiff is an unregistered partnership firm, and, therefore, was precluded from instituting the suit. The learned Civil Judge repelled the said contention as well, opining that the Plaintiff was espousing a common law right and the bar did not operate.

3.4 Being aggrieved, the applicant has invoked the revisional jurisdiction of this Court.

4. I have heard Mr. R.S.Kulkarni, learned Counsel for the Applicant, and Mr. Tejas Deshmukh, learned Counsel for Respondent No.1, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

5. At the outset, it is necessary to note that Mr. Kulkarni pressed into service the ground of bar under Section 69 of the Indian Partnership Act, 1932 only.

6. Mr. Deshmukh, learned Counsel for Respondent No.1, would urge that since the said ground was not specifically taken in the application for rejection of the plaint, the Respondent No.1 has not had an opportunity to meet the said case, and, therefore, this Court may not consider the said contention in exercise of revisional jurisdiction.

7. Mr. Kulkarni countered by canvassing a submission that the bar under Section 69 is a matter of law and can be urged before this Court.

8. Without delving into the aspect of absence of specific ground in the applicant, I deem it expedient to determine the revision application as the enquiry in an application for rejection of plaint was limited to the determination of the question as to whether, from a meaningful reading of the plaint, the suit would be barred by any provision of law. Moreover, the said ground was urged before, and has been decided by, the learned Civil Judge.

9. Mr. Kulkarni submitted that the learned Civil Judge committed an error in appreciating the real nature of the suit and the juridical character of the Plaintiff. Inviting the attention of the Court to the cause title of the plaint Mr. Kulkarni urged that, the suit has been instituted by Shankar P. Jagtap in the capacity of a partner of Sai Krupa Developers. Incontrovertibly, Sai Krupa Developers is not a registered partnership firm. Thus, the bar under Section 69(2) of the Indian Partnership Act, 1932 operates with full force and vigiour. The suit has been instituted by an unregistered partnership firm to enforce the right arising from the contract against the applicant is who a third party. The learned Civil Judge, thus, committed a manifest error in declining to reject the plaint on the ground of bar under Section 69(2) of the Indian Partnership Act, 1932.

10. To buttress this submission, Mr. Kulkarni placed strong reliance on the

decisions of the Supreme Court in the cases of Purushottam and Anr. V/s. Shivraj Fine Arts Litho Works and Ors.[1], Farooq V/s. Sandhya Anthraper Kurishingal and Ors.[2] and Shiv Developers V/s. Aksharay Developers and Anr.[3].

11. Mr. kulkarni further submitted that the learned Civil Judge misconstrued the ratio of the decision in the case of Shiv Developers (supra).

12. In opposition to this, Mr. Deshmukh, learned Counsel for Respondent No.1 supported the impugned order. Mr. Deshmukh submitted that the prayer for rejection of the plaint on the ground of bar under Section 69(2) of the Act, was completely misconceived as the suit has not been instituted by a partnership firm. Mr. Deshmukh laid emphasis on the character of the persons who have instituted the suit. Firstly, the suit has been instituted by M/s. Sai Leela Developers, association of persons (AOP), comprising of Sai Krupa Developers, a partnership firm. Secondly, Naresh T. Wadhwani is also one of the two plaintiffs and had instituted the suit to enforce his individual rights. It was for this reason the Defendant No.1 had not taken the ground of bar under Section 69(2) of the Act, in the application for rejection of the plaint. However, when it was realized that the bar of limitation cannot be sustained, a feeble attempt was made to urge the ground of want of registration of the firm.

13. Mr. Deshmukh submitted that the legal position is absolutely clear. If

1 (2007) 15 SCC 58
2 (2018) 12SCC 580
3 (2022) 13SCC 772

the right which is sought to be enforced by the unregistered firm does not emanate from the contract by such firm with the third party defendant, in respect of such firm's business transactions, the bar under Section 69(2) of the Act, 1932 does not come into play. To bolster up the aforesaid submission, Mr. Deshmukh placed a strong reliance on the decision of the Supreme Court in the case of Haldiram Bhujiawala and Anr. V/s. Anand Kumar Deepak Kumar and Anr.[4]

14. To begin with the nature of the suit. From a meaningful reading of the plaint as a whole, which is the normative discipline to determine an application for rejection of the plaint under Order VII Rule 11 of the Code, it becomes abundantly clear that the plaintiffs claimed to have acquired the suit property from the defendants No. 2 to 17 under a registered Sale Deed on 3rd May, 2010 and that they have been put in possession of the suit property thereunder; they were not parties to Special Civil Suit No. 2081 of 2010; the said suit was instituted after the vendors of the applicant had already divested their right, title and interest in the suit property in favour of the plaintiffs; the decree in the said suit was, thus, obtained by a fraud and, consequently, neither the decree passed in the said suit nor the Sale Deed executed in favour of the plaintiffs, in execution of the said decree, bind the plaintiffs.

15. Evidently, there is no privity of contract between the plaintiffs and the

4 (2000) 3 SCC 250.

applicant. Nor the suit has been instituted to enforce the obligations under the contract executed between the plaintiffs and defendant No. 1. The plaintiffs are, thus, asserting their independent proprietary title over the suit property in the capacity of the prior purchasers of the suit property.

16. In the backdrop of the aforesaid nature of the suit, the question that wrenches to the fore is whether the bar under section 69(2) of the Act, 1932 comes into play even if it is assumed that the suit has been instituted by an unregistered partnership firm, discounting the objection on behalf of the plaintiffs that the plaintiff No. 1 is, in fact, an Association Of Persons (AOP); of which Saikrupa Developers, an unregistered partnership firm, is a constituent.

17. Section 69 of the Indian Partnership Act, 1932 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 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.
> …………….

18. On a plain reading of the aforesaid provision, it becomes abundantly

clear that to attract the bar against institution of a suit by an unregistered partnership firm, the following conditions ought to be satisfied :

First, the partnership firm must not be registered under the Act, 1932 on the date of the institution of the suit and the person suing is not shown in the register of firms as a partner of the firm.

Second, such suit by the unregistered partnership firm must be against the defendant who is a third party.

Third the suit must be instituted for enforcement of right arising from a contract between such unregistered firm and the third party.

19. The necessary corollary of the aforesaid ingredients of the interdict against the institution of a suit by an unregistered partnership firm is that, in contradistinction to a suit arising from contact, an unregistered partnership firm is not precluded from enforcing either statutory or common law rights which do not emanate from the contract between such unregistered firm and the third party defendant in relation to the business of the firm.

20. The aforesaid position in law is settled by a catena of decisions. Since the decisions on which reliance has been placed by Mr. Kulkarni, advert to the pronouncement of the Supreme Court in the case of Haldiram Bhujiawala (supra), it may be apposite to notice the enunciation of law therein, first. In the said case, after adverting to an earlier pronouncement in the case of

Raptakos Brett and Co. Ltd. vs. Ganesh Property[5] the Supreme Court enunciated the legal position as under:-

> 22] In **Raptokas Brett and Co., [1998] 7 SCC 184** it was clarified that the contractual rights which are sought to be enforced by plaintiff firm and which are barred under section 69(2) are "rights arising out of the contract" and that it must be a contract entered into by the firm with the third party defendants. Majmudar, J. stated (at p.191) as follows :
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> "A mere look at the aforesaid provision shows that the suit filed by an unregistered firm against a third party for enforcement of any right arising from a contract with such a third party would be barred........"
>
> (emphasis supplied)
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> 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.
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> 23] 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 dealing of the plaintiffs firm with such third party - defendant.
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> 24] It will also be seen that the present defendants who are sued by the plaintiff - firm are third parties to the 1st 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

5 (1998) 7 SCC 184.

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 word "arising out of a contract" in Section 69(2), it is referring to a contract entered into in course of business transaction 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 firm are before they deal with them in business.

25] 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 firm's business with defendants but is based on the alleged unauthorised removal of the vehicle from the plaintiff firm's cus- tody 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.

26] In fact, the Act has not prescribed that the transactions or contracts entered into by a firm with a 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) Bom. 313)

27] For all the reasons given above, it is clear that the suit is based on infringement of statutory rights under the Trade Marks Act. It is also based upon the common law principle of tort applicable to passing-off actions. The suit is not for enforcement of any right arising out of a contract entered into by or on behalf of the unregistered firm with

> <u>third parties in the course of the firm's business transactions. The suit is therefore not barred by section 69(2)</u>. (emphasis supplied)

21. In the case of <u>Purushottam and Anr. (supra),</u> on which reliance was placed by Mr. Kulkarni, the Supreme Court expressly approved the decision in the case of <u>Haldiram Bhujiawala (supra)</u> and observed as under:-

> 23] <u>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.</u>
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> 24] <u>With respect, we find ourselves in complete agreement with the principles enunciated in Haldiram Bhujiawala and Anr. (supra).</u> 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. <u>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.”</u> (emphasis supplied)

22. The decision in the case of <u>Shiv Developers (supra)</u> makes the legal position beyond cavil. After expressly referring to the decision in the case of

Haldiram Bhujiawala (supra), the Supreme Court has exposited on the scope of the words “enforcing a right arising under the contract” as used in Section 69(2) of the Act of 1932 to the effect that, the bar under section 69(2) is not attracted to any and every contract referred to in the plaint as a source of title to an asset owned by the firm.

23. Reverting to the facts of the case at hand, as noted above, there is no privity of contract between the plaintiffs and the applicant, as such, even remotely. Thus, further inquiry as to whether the obligation has been incurred under a contract in connection with the business of the unregistered firm is not warranted. The plaintiffs are seeking the enforcement of their common law and statutory rights. Thus, the provisions contained in section 69(2) of the Act, 1932 have no application at all.

24. This Court does not find any infirmity in the impugned order. No case for exercise of revisional jurisdiction is thus made out.

25. Hence, the following order :

ORDER

(i) The Civil Revision Application stands rejected.

(ii) No costs.

(N.J.JAMADAR, J.)