



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO.41 OF 2025

R.S. Infra Projects and Engineering Pvt. Ltd., and Others

Vs.

M/s. Shreyash Associates, through its Partner

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Abhishek Tripathi, Advocate for the Applicants.
 Mr. P.V. Bawankule, Advocate for the Non-Applicant.

CORAM: ROHIT W. JOSHI, J.

DATED : 01st DECEMBER, 2025

1. The only point which the learned Advocate for petitioner canvasses is that plaintiff which is a partnership firm was not in existence as on date, on which the cause-of-action for filing the suit arose. The relevant facts of the case are as under :-

2. The present respondent filed a suit for recovery of money against the present applicants, being Regular Civil Suit No.1002/2022. It is the case of the plaintiff that it is a partnership firm, which was engaged in the business of transportation and has provided trucks and trailers to the defendants from 12.05.2021 to 18.06.2021 and that the entire amount due and payable under the Transportation Agreement executed between the parties was not paid by the defendants to the plaintiffs.

3. In this suit the defendant No.2 filed an application for rejecting of plaint under Order 7 Rule 11

of the Code of Civil Procedure, 1908 which came to be rejected vide order dated 12.12.2024. Although several grounds were pressed into service in the application for rejection of plaint, during the course of hearing of the present revision application, the learned Advocate for the applicants/defendants has pressed into service only one contention with respect to existence of the plaintiff firm as on the date of transactions in question and registration thereof.

4. Learned Advocate for the applicants / defendants contends that the demise of partner in firm results in automatic dissolution of the firm by virtue of Section 42 of the Indian Partnership Act, 1932 (for short “the Act”). The said contention cannot be accepted for the purpose of rejection of plaint, as the facts of the case wherein, the existing partners of the said firm have re-constituted the firm by executing a fresh partnership deed and have filed the suit for recovery of amount which was payable to the firm.

5. Learned Advocate for defendant No.2 contends that the plaintiff firm came into existence on 18.10.2021 and that the alleged cause-of-action for filing the present suit has arisen between May, 2021 to June, 2021. He contends that the suit is not tenable since the alleged transactions relate to period when the plaintiff firm was not in existence. The contention is based on the deed of partnership dated 18.10.2021.

6. Per contra, learned Advocate for the non-applicant/plaintiff contends that the plaintiff firm was in existence as on the date on which the

transportation contract was being executed. It is contended that one of the partners of the firm namely Mr. Mukund S/o. Mohanlal Ved, had expired and therefore, a fresh deed of partnership came to be executed by and between remaining partners. Learned Advocate for non-applicant/plaintiff draws attention to extract from register of firm maintained by the Registrar of Firm with respect to the plaintiff firm, which shows that the existence of firm is from 30.04.1997.

7. Perusal of the Deed of Partnership dated 18.10.2021 will demonstrate that the said document is executed between four individuals as partners. It is mentioned at page No.2 of the partnership deed that earlier the said partners were carrying out business under the name and style of 'SHREYAS ASSOCIATES' alongwith another partner namely, one Mr. Mukund S/o. Mohanlal Ved, who had expired on 08.10.2021 and accordingly, the firm was being re-instituted w.e.f. 08.10.2021.

8. Perusal of Clause 2 of the partnership Deed at page No.3, will also indicate that the business under the name and style of 'SHREYAS ASSOCIATES' was agreed to be continued by the partners. The contents of the partnership deed coupled with the extract of Register will indicate that the firm was in existence as on the date of transactions between the parties. The fresh deed of partnership was executed by and between the remaining partners after the demise of one of the partners in the firm. Therefore, it cannot be said that the plaintiff does not have any cause of action for filing the suit, since, it

was not about existence as on the date of alleged transactions.

9. Even otherwise, Section 42 of the Act is subject to contract between the parties to the contrary and therefore, in every case death of partner will not necessarily result in dissolution of firm.

10. In that view of the matter the civil revision application is **rejected** with no order as to costs.

(ROHIT W. JOSHI, J.)

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