



2025:DHC:4658-DB



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

% Judgement delivered on: 30.05.2025

+ **RFA(COMM) 41/2024**
HOME AND INDL INTERNATIONAL
COATINGSAppellant

versus

ARROWSHELF RETAIL FIXTURES PREVIOUSLY
DELTROL AND ORSRespondents

Advocates who appeared in this case:

For the Appellant : Mr Abhimdnue Shrestha and Mr Divyansh
Khurana, Advocates.

For the Respondents : Mr Deepak Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

INTRODUCTION

1. The Appellant has filed the present appeal impugning Judgment dated 01.12.2023 ('**impugned judgment**') passed by the learned District Judge, West District, Tis Hazari Courts, Delhi ('**Trial Court**') in CS (COMM) No.



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283/2021, (“**Suit**”) whereby the learned Trial Court dismissed the Suit filed by the Appellant for the recovery of ₹5,66,028/- along with interest for misjoinder of the Parties.

FACTUAL BACKGROUND

2. The Appellant is engaged in the business of paints and varnishes like wood coatings, hardeners, thinners, metal coatings, etc. The Appellant supplied goods to a partnership firm named ‘Deltrol’ on debit and credit between 2014 and 2021. Respondent No. 2, who was one of the partners of ‘Deltrol’ was dealing with the Appellant on behalf of Deltrol. The Appellant raised invoices against all the supplies and maintained a ledger account recording all the transactions with Deltrol. The payments for the supplies were made either by way of cheques or through NEFT by Deltrol.

3. At the end of financial year 2017-18, there were dues of ₹5,66,028/- payable by Deltrol to the Appellant. The Respondent No.2 had issued a cheque of ₹1,00,000/- on behalf of Deltrol, however, the said cheque was returned unpaid to the Appellant on 04.04.2017.

4. As the said outstanding amount was not paid, on 07.04.2021, the Appellant filed the Suit before the learned Trial Court, seeking recovery of the outstanding amount along with interest and costs. However, the Appellant impleaded Respondent No.1 / Arrowshelf Retail Fixtures as Defendant No.1 in the said suit, claiming that Deltrol has been renamed as ‘Arrowshelf Retail Fixtures’ (“**Arrowshelf**”) relying upon the particulars displayed on the website of Arrowshelf.

5. Initially the Suit was filed as a Summary Suit under Order XXXVII of Code of Civil Procedure, 1908 (“**CPC**”), however the same was treated as an



ordinary suit *vide* order dated 27.08.2021 passed by the learned Trial Court. Respondent No. 3 was also impleaded by the Appellant in his capacity as partner of Respondent No. 1 during the pendency of the Suit.

6. By way of the impugned judgment, the learned Trial Court dismissed the Suit on two grounds – *firstly*, the Appellant was not able to prove its case that Deltrol and Arrowsheff are the same partnership firm, and that the alleged outstanding dues against Deltrol can be attributed to Arrowsheff; and *secondly*, the Suit was not filed in compliance with Section 69 of the Partnership Act, 1932.

7. Aggrieved by the impugned judgment passed by the learned Trial Court, the present Appeal has been filed before this Court.

SUBMISSIONS BY THE APPELLANT

8. Learned Counsel for the Appellant submitted that the learned Trial Court held that the Suit was barred under Section 69 of the Partnership Act, 1932, merely for the reason, that the documents of registration of the Appellant as a partnership firm were initially not placed on record. It was submitted that the said defect, being curable in nature, was pointed out by the Appellant's Counsel at the stage of final arguments and the registration documents were also handed over to the learned Trial Court. Hence, it was submitted that the learned Trial Court erred in interpreting Section 69(2) of the Partnership Act, 1932.

9. It was further submitted that a conjoint reading of the said provision with Order XXX Rule 1 of the CPC makes it clear that a partner can sue and be sued in the name of the partnership firm and that there is no requirement



under law for a partner to mandatorily seek authorization of all the other partners to sue in the name of the partnership firm.

10. Learned Counsel for the Appellant submitted that the learned Trial Court failed to appreciate the fact that the website of the Respondent No.1 clearly uses the names 'Deltrol' and 'Arrowshelf Retail Fixtures' interchangeably. Therefore, both the names refer to the same partnership firm which has outstanding liability due to non-payment for the goods supplied by the Appellant.

11. It was submitted that the learned Trial Court was not convinced with the factum of name change based on the website particulars, which were placed on record and were admitted and exhibited without objection from the Respondents. As per the learned Counsel for the Appellant, the learned Trial Court wrongly dismissed the Suit merely for non-joinder or mis-joinder of the parties.

12. Learned Counsel for the Appellant submitted that the learned Trial Court did not consider the original invoices, proof of delivery, the ledger maintained in the regular course of business, original cheque issued by Respondent No. 2, the statement of Appellant's bank and C Forms handed over by Respondent No. 2, by which the claim of the Appellant was provided. It was submitted that the said documents were admitted by the Respondents and exhibited without objection.

13. It was submitted that a partner is liable in his individual capacity for the acts of the partnership and Respondent No. 2 should not have been absolved of his liability as one of the partners in Deltrol only for the reasons that in the array of parties he was shown as one of the partners in Arrowshelf.



SUBMISSIONS BY THE RESPONDENTS

14. Learned Counsel for the Respondents submitted that the Appellant has failed to bring on record any partnership deed or other documentary evidence to show that the Appellant is actually registered as a partnership firm, in which PW-1/Mr. Sunil Khurana is a partner. It was further submitted that Mr. Sunil Khurana, in his cross-examination, admitted that he has not placed on record any document establishing that he has been authorized by other partners to file the Suit. Therefore, for the aforesaid reasons, the Suit was bad in law due to non-compliance of Section 69 of the Partnership Act, 1932.

15. Learned Counsel for the Respondents has relied upon the decision of this Court in ***Ess Vee Traders and Ors. vs. Ambuja Cement Rajasthan Limited 2006 (3) ARBLR 152 (Delhi)*** to submit that the provision of Section 69 (2) of the Indian Partnership Act, 1932 is mandatory and make the registration of a firm a condition precedent to the institution of a suit.

16. It was further submitted that no cause of action arises against the Respondents as the documents relied upon by the Appellant do not establish that the firm, namely Deltrol and Arrowshef are the same entity. It was further submitted that Mr. Sunil Khurana, in his cross-examination, has admitted that the Appellant never dealt with Arrowshef.

17. It was submitted that the Appellant has made a frivolous attempt to intentionally associate the Respondents to a firm that is a complete stranger to them. There was no privity of contract between the Appellant and the Respondents and no agreement or any authenticated documents have been filed by the Appellant to show any transaction between the parties. Further, no cause of action arose against the Respondents as the invoices does not



belong to the Respondents and no demand for payment was ever made by the Appellant to the Respondents. It was submitted that the PW-1 had admitted during his cross-examination that the Appellant had not dealt with Arrowshef Retail Fixtures and not placed any invoices of Arrowshef on record.

18. It was further submitted that the Appellant failed to establish that the firm Detrol and Arrowshef Retail Fixtures are one and the same entity.

19. In view of the foregoing submissions, it was prayed by the learned Counsel for the Respondents that the present Appeal be dismissed.

ANALYSIS AND CONCLUSION:

20. Mainly, there are two issues that require consideration in order to decide the challenge to the impugned judgment:

- i) Whether the learned Trial Court was correct in ruling that the Suit was bad in law for non-compliance of Section 69(2) of the Partnership Act, 1962; and
- ii) Whether 'Deltrol' and 'Arrowshef' are different names of the same entity.

21. In order to answer the first issue, there are two sub-issues that need to be delved into – *first*, whether the Appellant's failure to bring the documentary evidence on record to establish its registration as a partnership deed fatal to the Suit; and *second*, whether Mr. Sunil Khurana can file the Suit without the authorization of the other partners of the Appellant partnership firm.

22. Section 69(2) of the Partnership Act, 1932 reads as under:



“(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.”

23. In ***Varun Pahwa v. Renu Chaudhary***, (2019) 15 SCC 628, the Hon’ble Supreme Court, while allowing the petitioner to correct an inadvertent error in the plaint, observed that:

“10. In *Uday Shankar Triyar v. Ram Kalewar Prasad Singh* [*Uday Shankar Triyar v. Ram Kalewar Prasad Singh*, (2006) 1 SCC 75] , this Court held that procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use. The Court held as under : (SCC pp. 83-84, para 17)

“17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:

- (i) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;
- (ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;



- (iii) where the non-compliance or violation is proved to be deliberate or mischievous;
- (iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;
- (v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant.”

24. As evident from the above-quoted judgment, it is trite law that a procedural defect should not be allowed to defeat the substantive right accrued to the litigant without affording a reasonable opportunity.

25. In the present case, the learned Trial Court observed that during the course of arguments, the production of ‘Form A’ and ‘Form B’ from the Register of Firms by the Appellant’s Counsel to prove the registration of the Appellant firm at such a belated stage was of no use and hence, the suit was in non-compliance of Section 69 of the Partnership Act, 1932.

26. The Appellant’s initial failure to bring the documentary evidence on record to establish its registration as a partnership firm was a curable defect and the learned Trial Court ought to have provided an opportunity to cure the procedural defect and considered the documents produced at the final hearing to decide the issue on non-compliance with Section 69 of the Indian Partnership Act, 1932. Hence, the Suit was wrongly dismissed on the issue of non-compliance with Section 69 of the Indian Partnership Act, 1932.

27. Moving to the second sub-issue, the learned Trial Court in the impugned judgment observed that there is nothing on record to show that Mr. Sunil Khurana was authorized by other partners to file the Suit.



28. Order XXX Rule 1 of the CPC reads as under:

“1. Suing of partners in name of firm.—

(1) Any two or more persons claiming or being liable as partners and carrying on business in, [India] may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice such pleading or other document is signed, verified or certified by any one of such persons.”

29. In *Purushottam Umedbhai and Co. v. Manilal and Sons*, 1960 SCC OnLine SC 126, the Supreme Court held as under:

“8. Section 4 of the Indian Partnership Act, 1932, hereinafter referred to as the Act, states that:

“Partnership” is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually ‘partners’ and collectively ‘a firm’ and the name under which their business is carried on is called the ‘firm name’.”



It is clear from this provision of the Act that the word “firm” or the “firm name” is merely a compendious description of all the partners collectively. It follows, therefore, that where a suit is filed in the name of a firm it is still a suit by all the partners of the firm unless it is proved that all the partners had not authorized the suit. A firm may not be a legal entity in the sense of a corporation or a company incorporated under the Indian Companies Act but it is still an existing concern where business is done by a number of persons in partnership. When a suit is filed in the name of a firm it is in reality a suit by all the partners of the firm.”

30. Therefore, it is clear from a conjoint reading of Section 69(2) of the Indian Partnership Act, 1932, and Order XXX Rule 1 of the CPC, in addition to the position laid down in the above-cited judgment, a suit filed in the name of a partnership firm by a partner is a suit by all the partners of the firm unless it is proven to the contrary that all the partners of the firm had not authorized the same.

31. In view of the above, since there was no averment or material on record to establish that all the partners of the Appellant firm had not authorised the filing of the Suit, the learned Trial Court erred in ruling that the Appellant’s filing of the Suit through Mr. Sunil Khurana was not in compliance with Section 69 of the Indian Partnership Act, 1932 and the Suit ought not to have been dismissed on this ground.

32. As regards the second issue on mis-joinder of Arrowshelf and non-joinder of Deltrol due to the claim of the Appellant that Deltrol and Arrowshelf are different names of the same entity, the learned Trial Court in



the impugned judgment observed that the Appellant's version regarding the change of the firm's name from Deltrol to Arrowshelf is not convincing enough.

33. It was further observed that the documents relied upon by the Appellant, particularly the invoices, e-way bills, ledger account statement, cheque and Form C, are all in the name of Deltrol. The learned Trial Court also observed that the address of Deltrol is entirely different from that of the Respondent No. 1. Lastly, the learned Trial Court observed that there was no connection at all between Deltrol and Arrowshelf that can be made out from the record.

34. Admittedly, the Appellant had never dealt with Arrowshelf. It is the Appellant's case that the name of Deltrol was later changed to Arrowshelf in order to fraudulently avoid payment of the dues.

35. To prove correlation between Deltrol and Arrowshelf, the Appellant has relied upon the current website of Respondent No.1 with its previous version of website. However, the address mentioned on the invoices of Deltrol is Plot No. 79, Gazipur Road, Village Nagla Gujran, Faridabad. Whereas the address of Arrowshelf is shown as Plot No. 72, Street No. E4, Saroorpur Industrial Area, Faridabad.

36. The Appellant has averred that the introduction of the Respondent No. 1 firm on its original website began with the statement – “We, Deltrol, started in the years 1992, are one of the foremost manufacturers of an extensive array of Heavy Duty Rack Counter...” which was starkly different from that of the later website which begins as – “We, Arrowshelf Retail



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Fixtures, started in the years 2020, are one of the foremost manufacturers of an extensive...”. The Appellant has produced both versions of the website as Ex PW-1/5 (Colly). However, it is not proved that when the changes in the website were made and the date of print of the webpage is shown to be the same. Further, the URL of the website shows domain name www.indiamart.com, which does not belong to Respondent No. 1 as the brochure of Arrowshelf produced at Ex PW -1/5 (Colly) shows www.arrowshelf.in as the domain name of Respondent No. 1.

37. Apart from the printout of the webpages above, the Appellant has not been able to produce any documentary proof to establish that Deltrol has changed name to Arrowshelf. Admittedly, the Appellant has not dealt with Respondent No. 1 in name and style of Arrow shelf Retail Fixtures.

38. The Appellant has not provided any justification for not joining Deltrol as a defendant in the Suit at the address known to the Appellant. The Legal Notice dated 03.11.2020 at Ex PW-1/4 was also addressed to Deltrol at the address mentioned in the invoices at Ex PW-1/1, which is different from the address of the Respondent No. 1.

39. Hence, the Appellant has not been able to prove that Deltrol, with whom the Appellant had transactions, was the same firm as Arrowshelf Retail Fixture. In absence of any privity of contract between the Appellant and the Respondent No. 1, the outstanding dues consequent to the business



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dealings conducted by the Appellant with Deltrol cannot be directed to be paid by the Respondent No.1 firm as the Appellant has not been able to establish that Deltrol has undergone a change in its name from Deltrol to Arrowshef Retail Fixtures.

40. Therefore, the learned Trial Court has rightly dismissed the Suit against the Respondent Nos. 1 and 3. Further, the Appellant has also not produced any proof that Respondent No. 2 was the partner of Deltrol to be made liable for the outstanding dues of Deltrol.

41. In view of the discussion above, the impugned judgment passed by the learned Trial Court in CS (COMM) No. 283/2021 is upheld to the extent that the Appellant had failed to prove any claim against the Respondents for the liability of Deltrol. Accordingly, the present Appeal is dismissed. No orders as to cost.

TEJAS KARIA, J

VIBHU BAKHRU, J

MAY 30, 2025/ 'ST'