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

\+ RFA(COMM) 158/2023 & CM 38953/2023 (Interim Stay)

SMT GEETA SHARMA & ANR. .....Appellants
Through: Mr. Pramod Kr. Sharma, Mr. Manish Kr. Sharma & Ms. Neeti Bhardwaj, Advs.

versus

MR PAWAN LAKHOTIA AND ORS .....Respondents
Through: Mr. Pankaj Bhagat & Mr. Sadre Alam, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

O R D E R

% **09.01.2025**

1. This Regular First Appeal impugns the order dated 18 April 2023, in terms of which the Trial Judge invoked Order VII Rule 11 of the **Code of Civil Procedure, 1908**[1] to dismiss the suit as being barred by virtue of Section 69 of the **Indian Partnership Act, 1932**[2]. The suit itself had been instituted seeking the following reliefs:

> "**a.** Direct the defendant no.1 to render the accounts of the said firm i.e. Defendant No. 2 M/s Frienz Fashion
>
> **b.** directing (after rendition of account of the Partnership firm i.e. M/S Friends Fashion) the Defendant No.1 to pay/ partition 1/3th share of each Plaintiff No.1 & 2 and Defendant No.3 of the total Share of the deceased Partner Shri Narender Sharma with interest at the rate of 24% per annum till the date of realization.
>
> **c.** Restrain the Defendant No.1 & 2 and his office bearers/well wisher from giving/transferring the movable and immovable properties of the Partnership Firm M/S Frienz Fashion in any manner whatsoever in favour of the Plaintiffs and against the Defendant No.1 &2.

[1] CPC
[2] Partnership Act

d. Costs of the present suit may also be awarded in favour of the Plaintiffs and against the Defendants.

e. Any other and further relief which this Hon'ble Court may deems fit and proper, in the light of circumstances of the case he also passed in favour of the Plaintiffs and against the Defendant."

2. From the allegations laid in the plaint, we note that the plaintiffs asserted that they were the spouse and the minor daughter of the late Sh. Narender Sharma, who was a partner in the partnership firm titled 'M/s Frienz Fashion'. The plaintiff's spouse is stated to have passed away and since the surviving partner of M/s Frienz Fashion failed to render any accounts, they were constrained to institute the present suit.

3. As we view the order impugned in the appeal, the Trial Judge has essentially taken the view that the suit would be barred by virtue of Section 69 of the Partnership Act, since the firm was not registered.

4. We find ourselves unable to sustain that line of reasoning bearing in mind the plain language in which that provision stands couched. Section 69 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.
>
> (3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect—
>
> > (*a*) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm; or
> >
> > (*b*) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 (3 of

1909), or the Provincial Insolvency Act, 1920 (5 of 1920), to realise the property of an insolvent partner.

(4) This section shall not apply—

(*a*) to firms or to partners in firms which have no place of business in [the territories to which this Act extends], or whose places of business in [the said territories] are situated in areas to which, by notification under [Section 56], the Chapter does not apply, or

(*b*) to any suit or claim or set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in Section 19 of the Presidency Small Cause Courts Act, 1882 (15 of 1882), or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim."

5. As is evident from the above, the bar which Section 69 creates is in respect of a suit for the enforcement of a right arising from the contract and which may be brought by a person who seeks to sue as a partner of a firm against that firm or a suit brought by a person alleging to be or to have been a partner in that firm. However, in the present matter, the plaintiffs were concededly not partners in M/s Frienz Fashion.

6. We also find ourselves unable to uphold the observation appearing in paragraph 15 of the order impugned before us and which reads as follows:

> "**15**. It is the own case of the plaintiff that the partnership firm has not dissolved after death of late Mr. Narinder Sharma. By virtue of Clause 19 of the partnership deed the legal heirs of the deceased partner later Mr. Narinder Sharma step into the shoes of late Shri Narinder Sharma and becomes the partners of the unregistered firm."

7. In our considered opinion, the Trial Judge has clearly misconstrued and misinterpreted Clauses 18 and 19 of the Partnership Deed and which are extracted hereinbelow:

> "18. Whereas on taking the decision of the dissolution of the firm, the final accounts shall be prepared till the date of termination or

dissolution after taking into account the liabilities and accruals of income/receipt till that date and the same shall be divided between the parties in their profit and sharing ratio.

19. That if any partner dies or become insane or is adjusted insolvent, the firm shall not be dissolved but shall be carried on by the remaining partners with the heir(s) of the legal representative(s) of such partner, if so desire by him/ them, on such terms & conditions as shall be agreed by them mutually."

8. As is manifest from a perusal of the Clauses, the plaintiffs could not be deemed to have become members of the firm post the death of the erstwhile partner. All that the said covenant provided was that the heirs of the erstwhile partner could seek induction in the firm *"if so desire by him/ them"* and on terms and conditions as *"agreed by them mutually."* The induction of the plaintiffs in the firm would have to necessarily be based on an expressed desire to step into the shoes of the deceased partner and which alone would have led to them becoming partners in the firm.

9. Undisputedly, the plaintiffs, at no point in time, expressed such an intention nor were they inducted based on mutually agreed terms and conditions. We also find ourselves unable to construe any of the averments made in the plaint which could be read as them conceding to be partners of the firm. We, consequently and for all the aforesaid reasons, find ourselves unable to sustain the impugned order.

10. The appeal is, accordingly, allowed and the order dated 18 April 2023 is hereby set aside. The suit shall consequently stand restored on the board of the concerned Commercial Judge to be tried afresh.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 9, 2025/kk