M/s Om Borewell vs. M/s Trilochan Singh and Company and Another

CrMP No. 5672 of 2025

Reserved on 05.11.2026

20.11.2026 Present: Mr Harshit Sharma, Advocate for the applicant.

Mr Pawan Sharma, Advocate for the respondents

The applicant has filed the present application for substitution of Mr. Vivek Sachdeva. It has been asserted that the appeal was filed by M/s Om Borewells, a partnership firm, through Pawan Kumar Sachdeva, one of the partners, through his general power of attorney, Sh. Shanti Prakash @ Shanti Lal. Pawan Kumar Sachdeva has ceased to be a partner, and Sh. Shanti Prakash has expired. Vivek Sachdeva is one of the partners of the firm, who wants to proceed with the appeal. Therefore, it was prayed that the present application be allowed and Vivek Sachdeva be brought on record.

2. No reply to the application was filed.

3. I have heard Mr Harshit Sharma, learned counsel for the applicant and Mr Pawan Sharma, learned counsel for the respondents.

4. Mr Harshit Sharma, learned counsel for the applicant, submitted that Mr Pawan Kumar Sachdeva has retired from the firm and Mr Vivek Sachdeva is continuing

as a partner. He is entitled to continue with the appeal. Therefore, he prayed that the present application be allowed and Vivek Sachdeva be brought on record.

5. Mr Pawan Sharma, learned counsel for the respondents, submitted that Vivek Sachdeva has no connection with the firm and cannot continue with the appeal. He has also not produced any authorisation to continue with the appeal. Therefore, he prayed that the present application be dismissed.

6. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

7. A copy of the amended deed of partnership annexed to the application shows that Mr Pawan Kumar Sachdeva retired as a partner with effect from 31st March 2015, and Vivek Sachdeva continued to be the partner to the extent of 50%. It was laid down by the Karnataka High Court in ***Padmavati Finance Registered vs. Md. Yosuf Ali S/O Haji Abdul Hameed, Criminal Appeal No.3608/2009 decided on 05-07-2013,*** that any partner of the firm can file a complaint under Section 19(2)(a) to (h) of the Partnership Act. It was observed: -

> "21. Section 22 of the Indian Partnership Act deals with the mode of doing an act to bind the firm, which reads as follows:

> "22. Mode of doing an act to bind the firm. - In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm's name, or in any other manner expressing or implying an intention to bind the firm".

Thus, as per the provisions which are barred under Section 19(2)(a) to (h) of the Partnership Act, any partner of the firm can file the complaint, as the definition under Section 2(a) of the Partnership Act gives rise to a right enforceable by or against the firm.

22. In the instant case, one of the partners of the firm complained about the accused when the cheque issued by him was dishonoured. The partner of the firm, therefore, has an enforceable right under the law on behalf of the firm or against the firm unless barred under Section 19(2) of the Partnership Act or against the bylaws of the partnership deed.

23. In the instant case, learned counsel for the complainant fairly submitted that there are no specific bylaws permitting any partner of the firm to file a complaint with the firm for the benefit of the firm, which is the payee defined under Section 142 of the Act.

24. Even during the trial, the accused had not produced any kind of evidence to prove that the firm is not intending to prosecute him for the offence under Section 138 of the Act and that the firm has no intention to prosecute him. In that view of the matter, the complainant representing the firm is competent to lodge the complaint on behalf of the firm for recovery of the amount due to the firm from the accused by invoking the provisions of Section 138 of the Act.

25. Having regard to the above facts and circumstances, the learned Magistrate was not justified in acquitting the accused on the sole ground that the complainant was not authorised to file a complaint on behalf of the firm.

8. It was laid down by the Bombay High Court in ***Reshmi Constructions v. Laxman Vithal Chunekar*, *2014 SCC OnLine Bom 2894: (2014) 5 Mah LJ 537*** that the partner of a firm can file a complaint on behalf of the firm without any authorisation. It was observed at page 541:

> **"17.** From the above provisions of the Act, it is clear that every partner is an agent of the Firm and his other partners for the purpose of the business of the firm, and the acts of every partner bind the firm and his partners, unless, of course, the partner had, in fact, no authority to act for the firm and his other partners. The learned trial Magistrate relied upon the judgment of this Court in the case of ***Alka Toraskar v. State of Goa, 2007 (1) Goa L.T. 159,*** which pertains to a Co-operative Society. The trial Magistrate further relied upon ***Fragrant Leasing and Finance Co. Ltd. v. Jagdish Katuria, 2008 All MR (Cri.) Journal 3*** and the judgment in the case of ***Chico Ursula D'Souza v. Goa Plast Pvt. Ltd., 2008 (6) Mh. L.J. 353: 2008 (3) Mh. L.J. (Cri.) 323: 2009 (1) All MR 290***, both of which pertain to a Company. Admittedly, a Company is a separate juristic person distinct from its directors or shareholders, and the Company acts through the resolution passed by the Board of Directors. Because of the above, a person who claims to represent another is bound to produce an authority or power which entitles him to appear. The above is not the case with the Partnership Firm. As has already been seen above, each partner is an agent of the Firm. In the present case, it is not that some person, on the strength of a power of attorney, had filed a complaint and had deposed on behalf of the complainant. In the present case, the complaint was not filed by PW 1, but it was filed by the Firm, through PW 1, as a partner of that Firm. The person who deposed on behalf of the complainant was one of the partners of the said Complainant-Firm. In fact, the agreement dated 5-4-2005 was signed by the same partner, Shri Pandharinath Chafadkar (PW 1), for himself and as attorney of the other two partners, Arun Chafadkar and Narayan Nigalye. In the circumstances above, the finding of the Trial Magistrate that there was no authority for PW 1 to file the complaint or to depose on behalf of the complainant is not correct."

9. Thus, the absence of authorisation is not material in the present case.

10. The applicant Vivek Sachdeva continues to be the partner and is entitled to continue with the appeal. Therefore, the present application is allowed, and the

name of Vivek Sachdeva is ordered to be substituted as the partner of the firm.

11. Necessary amendments be made in the memo of parties and the amended memo of parties be filed within a week.

(Rakesh Kainthla)
Judge

20th November, 2026
(Nikita)