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*Before M.M. Kumar, J*

M/S I.B.P. COMPANY AND ANOTHER—*Petitioners*

versus

M/S UDAY SINGH JEET RAM & OTHERS—*Respondent*

*C.R. No. 1296 of 2004*

12th March, 2004

*Code of Civil Procedure, 1908—O. XIV Rl. 2(2)—Indian Partnership Act, 1932—S. 69(2)—Contract of supply of petroleum products between a firm & IBP Company—Dispute regarding partnership deed & agreement of the firm—Suit for declaration—Firm not registered at the time of filing suit but subsequently registered—Whether the suit not maintainable—Held, no—No right is sought to be enforced arising from a contract by institution of the suit against a third party/IBP Company—Revision petition liable to be dismissed.*

*Held*, that this petition is liable to be dismissed because no right is sought to be enforced arising from a contract against a third party like the defendant-petitioners. It is appropriate to mention that the defendant-petitioners are supplying the petroleum products and high speed diesel to the firm. The dispute is whether the firm is M/s Uday Singh Ajit Singh or it is M/s Udav Singh Jeet Ram. Obviously, no right is sought to be enforced arising from a contract by institution of the suit by plaintiff-respondent No. 1.

(Para 6)

*Further held*, that defendant-respondent No. 7 who is alleged to have committed interpolation by incorporating his name with the name of Udav Singh has not raised any objection of the bar created by Section 69(2) of 1932 Act which is the real contesting party to the suit filed by plaintiff-respondent No. 1. In pith and substance, Section 69(2) of 1932 Act would not come in play because the plaintiff-respondent No. 1 is not seeking to enforce any right arising from a contract subsisting between the defendant-petitioners and plaintiff-respondent No. 1.

(Para 8)

S.C. Kapoor, Sr. Advocate with Ashish Kapoor, Advocate, for  
*the petitioners.*

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**ORDER****M.M. KUMAR, J.**

(1) This petition filed under Section 115 of the Code of Civil Procedure, 1908 (for brevity, the Code) prays for quashing order dated 6th December, 2003 passed by the learned Additional Civil Judge (Sr. Division). Bahadurgarh holding that the subsequent registration of the firm by plaintiff-respondent 1 would cure the initial defect in the filing of suit by an unregistered firm as contemplated by Section 69(2) of the Indian Partnership Act, 1932 (for brevity, '1932 Act'). The learned Civil Judge has placed reliance for this view on a judgment of the Supreme Court in **Raptakos Brett & Co. Ltd. versus Ganesh Property (1)**. Wherein it has been held that subsequent registration would cure the initial defect unless it is shown that the suit would be hit by the bar of limitation contemplated by Limitation Act, 1963.

(2) Brief facts of the case are that M/s Uday Singh Jeet Ram plaintiff-respondent 1 filed Civil Suit No. 453 of 1998 on 14th October, 1998 seeking a declaration to the effect that the partnership deed and agreement dated 26th October, 1992 is illegal, null, void and not binding on plaintiff-respondent 1. A consequential relief of permanent injunction has also been sought. The case of plaintiff-respondent 1 as per pleadings in the suit is that the partnership deed and agreement dated 26th October, 1992 have never been signed by Uday Singh nor any dissolution deed was ever executed between the partners of the plaintiff-firm. The aforementioned partnership deed and agreement dated 26th October, 1992 is alleged to be fake and fictitious and that the name of plaintiff-respondent 1 has been wrongly entered into the records of the defendant-petitioners as M/s Uday Singh Ajit Singh instead of M/s Uday Singh Jeet Ram. Further relief of restraining the defendant-petitioners from stopping the supply of petroleum products and high speed diesel to M/s Uday Singh Ajit Singh by way of permanent injunction has also been prayed. It is pertinent to mention that defendant-petitioner, namely, M/s I.B.P. Company is the supplier of petroleum products and high speed diesel to the firm constituted as M/s Uday Singh Ajit Singh. Ajit Singh who is alleged to have interpolated his name by replacing the name of Jeet Ram has been joined as defendant-respondent 7.

(3) The defendant-petitioners in their written statement raised a preliminary objection and requested for treating the same as a preliminary issue under Order XIV Rule 2(2) of the Code by submitting that plaintiff-respondent 1 is not a registered firm which is a mandatory requirement under Section 69(2) of 1932 Act and therefore, the suit is liable to be dismissed. The aforementioned stance taken by the defendant-petitioners has been contested by plaintiff-respondent 1 stating that the suit was filed on 14th October, 1998 when the firm was not registered. However, on 27th January, 1999, the firm had been registered. On the basis of aforementioned facts it was submitted that the initial defect in the filing of the suit in view of Section 69(2) of 1932 Act stood cured by subsequent registration. Moreover, it was argued that since the suit is for a declaration that the partnership deed and agreement dated 26th October, 1992 is illegal, null, void and not binding on plaintiff-respondent 1 with consequential relief of permanent injunction, no right was sought to be enforced against defendant-petitioner which may flow from Section 69(2) of 1932 Act. In other words, it was contended that no right arising from a subsisting contract between defendant-petitioners and plaintiff-respondent 1 is sought to be enforced against the defendant-petitioners which is a third party.

(4) The learned Civil Judge placing reliance on **Raptakos Brett and Co.'s case (supra)** held the suit to be maintainable and recorded the following findings :—

“In the written statement though the defendants alleged that only after a letter dated 27th May, 1998 or M/s Uday Singh, one of the partners of the firm, the defendant reconstituted the partnership firm as M/s Uday Singh Ajit Singh instead of M/s Uday Singh, Jeet Ram but under what circumstances, the name of plaintiff-firm was reconstituted in the record of defendants is to be considered later-on while deciding the suit on merits. Further though during the course of arguments, it was submitted by learned counsel for the defendants that keeping in view the second part of relief i.e. relief of permanent injunction sought by plaintiffs, it can be stated that as the plaintiff-firm is seeking to enforce its right arising out of contract of supply of Petroleum products between plaintiff-firm and defendants, the plaintiff-firm being unregistered, the present suit is

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not maintainable under Section 69(2) of Partnership Act, but it can be stated that the entire relief being claimed by plaintiff is to be considered in toto and the relief of permanent injunction being sought by plaintiff is only subsequent to the main relief being sought by plaintiff, which is to the effect that the partnership deed and agreement deed dated 26th October, 1992 is illegal, null and void, it can be stated that the authority *M/s Shreeram Finance Corporation versus Yasin Khan and others (supra)* on which learned counsel for the defendants relied upon is not applicable to the facts and circumstances of the present case. Learned counsel for the plaintiff also placed reliance upon *M/s Raptakos Brett and Company Limited versus Ganesh Property case (supra)* wherein Hon'ble Apex Court considered the effect of an unregistered firm getting registered during the pendency of the suit filed against a third party for enforcement of contract and in the said authority Hon'ble Apex Court also distinguished and discussed in detail the authority *M/s Shreeram Finance Corporation versus Yasin Khan and others case* relied upon by learned counsel for the defendant and Hon'ble Apex Court was of view that the suit by unregistered firm against third party for enforcement of contract should be allowed to revive from date of registration and that would avoid proliferation of litigation. In view of above discussion, I am of the opinion that the present suit is not barred under Section 69(2) of Indian Partnership Act. At the same time as admittedly the plaintiff-firm has been registered during the pendency of the suit i.e. on 27th January, 1999, keeping in view the authority *M/s Raptakos Brett and Company Limited versus Ganesh Property (supra)* on which learned counsel for the plaintiff relied upon the suit of the plaintiff shall be deemed to be filed from the date of registration i.e. 27th January, 1999."

(5) Mr. S. C. Kapoor, learned counsel for the petitioners has vehemently argued that judgment of the Supreme Court in the case of **Shreeram Finance Corporation versus Yasin Khan (2)** could not be ignored by the Court below especially when the same has

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not been referred to a larger Bench or set aside. According to the learned counsel, all the Courts below are bound by the dicta laid down in **Shreeram Finance Corporation's case** (supra) as well as the subsequent judgment in the case of **Delhi Development Authority versus Kochhar Construction Works (3)**. The learned counsel has maintained that the suit would be void *ab initio* and cannot proceed unless it is filed afresh after the registration has been effected.

(6) Having heard the learned counsel at a considerable length and perusing the impugned order, I am of the considered opinion that this petition is liable to be dismissed because no right is sought to be enforced arising from a contract against a third party like the defendant-petitioners. It is appropriate to mention that the defendant-petitioners are supplying the petroleum products and highspeed diesel to the firm. The dispute is whether the firm is M/s Udev Singh Ajit Singh or it is M/s Uday Singh, Jeet Singh or it is M/s Uday Singh, Jeet Ram. Obviously, no right to be enforced arising from a contract by institution of the suit by plaintiff-respondent 1. Moreover, in **Raptakos Brett and Company's case** (supra) the Supreme Court has taken the view that when the cause of action is inter-twined, namely, one cause of action brings the suit within the prohibition and the other one taken it out of it, then the Court should tilt towards the maintainability of the suit especially when no right arising out of a contract is sought to be enforced against the defendant-petitioners. The observations of their lordships in this regard read as under :—

“.....On the facts of the present case it has to be held that there is no further *locus poenitentiae* given to the tenant to continue to remain in possession after the determination of the lease by the efflux of time on the basis of any such contrary express term in the lease. Consequently, it is the legal obligation flowing from Section 108(q) of the Act which would get squarely attracted on the facts of the present case and once the suit is also for enforcement of such a legal right under the law of the land available to the landlord, it cannot be said that the enforcement of such right arises out of any of the express terms of the contract which would in turn get visited by the bar of Section 69 sub-section (2) of the Partnership

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Act. Consequently it has to be held that when para 2 of the plaint in addition made a reference to the right of the plaintiff to get possession under the law of the land, the plaintiff was seeking enforcement of its legal right to possession against the erstwhile lessee flowing from the provisions of Section 108(q) read with Section 111(a) of the Property Act which in turn also sought to enforce the corresponding statutory obligation of the defendant under the very same statutory provisions. So, far as this part of the cause of action is concerned, it stands completely outside the sweep of Section 69 sub-section (2) of the Partnership Act. The net result of this discussion is that the present suit can be said to be partly barred by Section 69 sub-section (2) so far as it sought to enforce the obligation of the defendant under clauses 14 and 17 of the contract of lease read with the relevant recitals in this connection as found in para 2 of the plaint. But it was partly not barred by Section 69 sub-section (2) insofar as the plaintiff based a part of its cause of action also on the law of the land, namely, the Transfer of Property Act whereunder the plaintiff had sought to enforce its statutory right under Section 108(q) read with Section 111(a) of the Property Act. Enforcement of that right had nothing to do with the earlier contract which had stood determined by the efflux of time. The first point for determination, therefore, has accordingly to be held partly in favour of the plaintiff and partly in favour of the defendant. As the decree for possession is passed on the basis of both parts of causes of action, even if it is not supportable on the first part, it will remain well sustained on the second part of the very same cause of action."

(7) It is in these circumstances that contention of the plaintiff was upheld by holding that the initial defect of non registration would stand cured if he puts its use in order and gets itself registered. The objection of lack of registration, then would not survive. The aforementioned observations have been made by their Lordships despite the earlier judgment of the Supreme Court in

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**Shreeram Finance Corporation's case (*supra*)** It would be appropriate to make a reference to the relevant observations made by their Lordships in **Raptakos Brett and Company's case (*supra*)** which read as under :—

“We, *prima facie*, find substance in what is contended by Dr. Singhvi for the respondent. It is obvious that even if the suit is filed by an unregistered partnership firm against a third party and is treated to be incompetent as per Section 69, sub-section (2) of the Partnership Act, if pending the suit before a decree is obtained, the plaintiff puts its house in order and gets itself registered, the defect in the earlier filing which even though may result in treating the original suit as stillborn, would no longer survive if the suit is treated to be deemed to be instituted on the date on which registration is obtained. If such an approach is adopted, no real harm would be caused to either side. As rightly submitted by Dr. Singhvi, Order 7 Rule 13 of the CPC would permit the filing of a fresh suit on the same cause of action and if the earlier suit is permitted to be continued, it would continue in the old number and the parties to the litigation would be able to get their claim adjudicated on merits earlier while on the other hand, if such subsequent registration is not held to be of any avail, all that would happen is that a fresh suit can be filed immediately after such registration, and then it will bear a new number of a subsequent year. That would further delay the adjudicatory process of the court as such a new suit would take years before it gets ready for trial and the parties will be further deprived of an opportunity to get their disputes adjudicated on merits at the earliest and the arrears of cases pending in the court would go on mounting. It is axiomatic to say that as a result of protracted litigation spread over tiers and tiers of court proceedings in the hierarchy, the ultimate result before the highest court would leave both the parties completely frustrated and financially drained off. In borrow the analogy from an English poem with the caption “death the leveller” with

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appropriate modifications, the situation emerging in such cases can be visualised as under : “upon final court’s purple altar see how victor victim bleed.” All these considerations in an appropriate case may require a relook at the decision of the two-member Bench of this Court in **Shreeram Finance**. However, as we have noted earlier, on the facts of the present case, it is not necessary for us to express any final opinion on this question or to direct reference to a larger Bench for reconsidering the aforesaid decision. With these observations, we bring down the curtains on this controversy. Point 2, therefore, is answered by observing that it is not necessary on the facts of the present case in the light of our decision on the first point to decide this point one way or the other. Point 2 is, therefore, left undecided as not surviving for consideration.”

(8) It is pertinent to mention that defendant-respondent 7 who is alleged to have committed interpolation by incorporating his name with the name of Udev Singh has not raised any objection of the bar created by Section 69(2) of 1932 Act which is the real contesting party to the suit filed by plaintiff-respondent 1. In pith and substance, Section 69(2) of 1932 Act would not come in play because the plaintiff-respondent 1 is not seeking to enforce any right arising from a contract subsisting between the defendant-petitioners and plaintiff-respondent 1. It is true that the defendant-petitioners are necessary party because they are to supply the petroleum products and high speed diesel to either of the two firms, namely plaintiff-respondent 1 or the firm M/s Udav Singh, Ajit Singh. Therefore, the ratio of the judgment in **Raptakos Brett and Co.’s case (supra)** is fully applicable to the instant case and the judgment in **Shreeram Finance Corporation’s case (supra)** and **Delhi Development Authority’s case (supra)** would not be attracted to the facts of the present case. Therefore, the instant petition is liable to be dismissed.

(9) For the reasons recorded above, this petition fails and the same is dismissed.

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**R.N.R.**