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remedy of the plaintiff was not by suit but by way of appeal of official kind. In that case Lord Roche said :—

> "Section 96-B and the rules make careful provision for redress of grievances by administration process and it is to be observed that subsection 5 in conclusion re-affirms the supreme authority of the Secretary of State in Council over the Civil Service. These considerations have irresistibly led their Lordships to the conclusion that no such right of action as is contended for by the appellant exists."

Finding as I do against the plaintiff on issues Nos 1 to 3, I do not think it necessary to decide the point whether the plaintiff had remedy by way of suit.

For the foregoing reasons, I allow the appeal and dismiss the suit leaving the parties to bear their own costs throughout.

Jai Ram asks for leave to appeal to the Supreme Court of India from the judgment in Letters Patent Appeal No. 107 of 1951, which I refuse.

KHOSLA, J. I agree.

APPELLATE CIVIL

Before Falshaw and Kapur, JJ.

JOINT HINDU FAMILY FIRM DES RAJ-PREM CHAND,—*Defendants-Appellants*

versus

REGISTERED FIRM HIRA LAL-KALI RAM,—*Plaintiffs-Respondents*

1952

July 14th

Regular First Appeal No. 77 of 1948.

Indian Partnership Act (IX of 1932)—Section 69—Suit instituted by a Firm before its Registration—Registration after five months of the suit—Effect of.

Held, that the suit was instituted by the firm when it was not a registered firm, and so was not under the terms of section 69 of the Partnership Act entitled to institute the suit. The subsequent registration of that firm during the pendency of the suit could not validate the proceedings and the suit was liable to dismissal.

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First Appeal from the decree of Shri E. F. Barlow, Sub-Judge, 1st Class, Kaithal, District Karnal, dated the 5th June 1948, granting the plaintiff a decree for Rs 5,288 with costs against the defendant.

K. L. GOSAIN and K. S. THAPAR, for Appellants.

F. C. MITTAL and S. C. MITTAL, for Respondents.

JUDGMENT

FALSHAW, J. This is an appeal by a joint Hindu family firm Des Raj-Prem Chand of Kaithal against a decree for Rs 5,288 passed by the Subordinate Judge of Kaithal in favour of another firm of the same place which described itself in the plaint as the registered firm Hira Lal-Kali Ram *alias* Krishna Dehati Store.

The plaintiff's case was that on the 22nd of October 1945, when the defendant firm had to deposit a sum of Rs 8,500 with the Cloth Association at Kaithal in connection with its quota of cloth the defendant firm had only Rs 3,500 available and so borrowed Rs 5,000 from the plaintiff firm. The sum of Rs 8,500 was then deposited with the Cloth Association through its *munim* Ram Sarup, P. W. 2, on the same day. No acknowledgment of the debt was taken from the defendant firm and the main evidence of the plaintiff firm consisted of entries in its own account books. It was alleged that several oral demands were made from the defendant firm for the repayment of the amount; but as these were refused, the present suit was instituted on the 22nd July 1946, admittedly without any written notice of demand having been sent to the defendant firm. The defence was a flat

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denial that any loan of Rs 5,000 had been taken from the plaintiff firm by the defendant, and the plea was also raised that the plaintiff firm was not a registered firm and so could not institute the suit in view of the bar contained in section 69 of the Partnership Act, the suit being liable to dismissal on this ground alone. Issues were framed as follows :—

(1) Whether the plaintiff firm is registered under the Partnership Act. If not, what is its effect ?

(2) Whether Ishwar Chand, one of the partners of the defendant firm, borrowed Rs 5,000 in cash as parol debt on Katik Badi 1, Sambat 2002, equal to the 22nd of October 1945, from the plaintiffs ?

(3) Whether the plaintiffs are entitled to any interest according to usage or by way of damages ? If so, at what rate ?

The lower Court overruled the defendant's contention on the first of these issues, and found, though not without some hesitation, that the loan was proved and that the plaintiff was entitled to interest at the rate claimed by him.

From the brief manner in which the first issue has been dealt with by the learned Subordinate Judge it would appear that the main point involved was not considered at all. The plaintiff apparently produced the certificate, Exh. P. 4, in proof of the registration of the firm, and the lower court thought that it was enough to settle the matter although the date of the certificate of registration, Exh. P. 4, is the 18th of December 1946, i.e., some five months after the suit was instituted and two months after issues had been framed in the suit. From this it is quite clear that when the suit was instituted the plaintiff firm was not a registered firm and so was not under the terms of section 69 of the Partnership Act, entitled to institute the suit, and the question whether the subsequent registration of the firm during the pendency of the

suit could validate the proceedings has not been considered at all. On this point there are decisions of most of the High Courts in India to the effect that subsequent registration of the plaintiff firm *pendente lite* could not validate the proceedings and that a suit filed by an unregistered partnership firm was liable to dismissal on this ground alone. The only three decisions in which a contrary view has been expressed, A. I. R. 1937 Mad. 767, A. I. R. 1939 Nag. 301, and 41 C. W. N. 534, all appear to have been overruled by the subsequent decisions of the same High Courts. In particular the decision in A. I. R. 1937 Mad. 767 was considered in I. L. R. 1942 Mad. 355 by the learned Chief Justice Sir Lionel Leach and Happell, J., who held that registration of the firm subsequent to the date of institution of the suit cannot remedy the defect and that the Court is bound to dismiss it. Among the reasons given is a decision of their Lordships of the Privy Council in *Bhagchand Dagadusa* v. *Secretary of State for India* (1), in which section 80 of the Code of Civil Procedure was under consideration, the operative words of this section being similar to those of section 69 of the Partnership Act. Other cases in which a similar view is taken are I. L. R. 1939 Pat. 114, I. L. R. 58 All. 495, A. I. R. 1951 Nag. 81, I. L. R. 1951 Bom. 101 and I. L. R. 17 Lah. 275, the latter being a case decided by Dalip Singh and Bhide, JJ. All that the learned counsel for the respondent could rely on this point was certain observations made by Ram Lall, J., in *Nazir Ahmed etc.* v. *Peoples Bank of Northern India Ltd., (in liquidation)* (2). In that case it was decided by a Full Bench that when a plaintiff institutes a suit against a Company in Liquidation without the leave of the Court as required by section 171 of the Indian Companies Act, but applies for such leave within the period of limitation of the suit, and if leave is granted, but only after the period of limitation has expired, the suit should not be dismissed and the limitation should

(1) I.L.R. (1927) 51 Bom. 725.
(2) I.L.R. (1942) 23 Lah. 517.

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be calculated in the same way as if the suit had been originally instituted with the leave of the Court. There is no doubt that at page 542 Ram Lall, J., has on the strength of A.I.R. 1937 Mad. 767 and 41 C.W.N. 534 made certain observations which appear to indicate that in his view a suit filed by an unregistered partnership firm could be validated by registration of the firm *pendente lite*, but since a different matter was under consideration by the Full Bench these remarks must be regarded simply as *obiter* and they have not been endorsed by either of the other two learned Judges who constituted the Bench. Beckett, J., delivered a separate judgment in which he did not consider the matter at all, but confined himself to section 171 of the Companies Act and Tek Chand, J., merely said that he agreed in the answer proposed by his learned brethren. The weight of authority, and in fact all the reported cases on the point which deserve to be taken into consideration, are clearly to the effect that subsequent registration will not validate the suit, and with this view I am in respectful agreement. I, therefore, consider that the plaintiff's suit was liable to dismissal on this ground alone.

At the same time I do not consider that a correct finding has been given by the learned Subordinate Judge on the merits of the suit. The plaintiff's evidence in support of the debt consisted of entries in his own account books supported principally by his own statement, the statement of the *munim* of the Cloth Association, and the statements of two witnesses who alleged that in their presence Ishwar Chand of the defendant firm had admitted the liability. On the other hand the defendant relied on his own account books which were completely silent regarding the debt, and which contradicted the account books of the Cloth Association by showing the payment of Rs 8,500 as having been made on the 24th and not on the 22nd of October. The date of the payment alleged by the defendant is supported by a receipt, dated the 24th of October, which was admittedly given to him in acknowledgment of the payment. The learned Subordinate Judge evidently did not think much of the plaintiff's

evidence apart from his own account books, since he has observed that the intimate connections between the Cloth Association of Kaithal and the plaintiff firm were obvious, and that the affair was not free from suspicion. He thought, however, that reliance should be placed simply on the plaintiff's account books, and it was on this account alone that he decreed the suit. Obviously the defendant's account books in this case are just as good as those of the plaintiff and there does not seem to have been any justification for preferring the plaintiff's accounts to such an extent as to grant him a decree. I would accordingly accept the appeal, set aside the decree of the lower Court and dismiss the plaintiff's suit with costs throughout.

KAPUR, J. I agree with the conclusions and the reasons therefor and cannot usefully add anything.

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