

C.R.No.74/2016**09.11.2016**

Shri Brijesh Garg, learned Counsel for the applicant.

Shri Chetan Jain, learned Counsel for the respondent.

Heard finally at the motion stage.

This civil revision has been preferred against the order dt. 2.9.2015 passed by Additional Judge to the court of First Additional Civil Judge Class-I Ratlam, in Civil Suit No.1-B/14 by which the learned Judge has rejected the application filed by the applicant under Section 114 read with Order 47 Rule 14.

The facts of the case in brief are that, applicant has filed an application under Order 7 Rule 11 for rejecting the plaint which was dismissed by the learned Judge on 2.9.2015. Thereafter on 3.10.2015 the applicant has filed application under Section 114 read with order 47 and Section 151 of CPC for review of the order dt. 2.9.2015 which was also dismissed by impugned order on 3.10.2015 hence, this revision petition filed by the applicant.

The impugned order passed by the Trial Court for rejecting the application under Order 7 Rule 11 CPC has been challenged on the ground that the prayer made in the plaint clearly indicated that the dispute is pertaining to the business of partnership firm.

In the instant case, it is an admitted fact between

the parties that the partnership firm is unregistered. Hence, it is submitted by the learned Counsel for the applicant that the suit by the member of an unregistered partnership firm is not maintainable against the other partner in the light of Section 69(1) of Indian Partnership Act, 1932 (in short Partnership Act). Further it has been submitted that the averments in the plaint indicate that the cause of action for filing the suit is breach of stipulation under the partnership deed which provides that the defendant shall pay an amount on monthly basis to the plaintiff as the plaintiff has contributed capital of the partnership firm. This averment in the plaint leaves no iota of doubt that the basis of suit is the partnership deed consequently, the learned Court below ought to have allowed the application under order 7 Rule 11 of CPC by holding the suit barred by law.

On the contrary, the learned Counsel for the respondent submits that the suit filed by the plaintiff falls in the exception under Section 69(3) of Indian Partnership Act, 1932 and, therefore, is maintainable. According to him, the present respondent realizing its property i.e. has capital contribution after dissolving the firm, therefore, the submissions made by the applicant cannot be accepted. In support of this contention, the reliance is placed on the judgment of this Court in ***Prakash Rajmalji Jain and others vs. Vijay Saxena and another*** 2001(1) M.P.L.J. Page 148.

I have carefully examined the submission advanced by both the parties and have perused the documents brought on record.

The contention of the applicant regarding the basis of suit being breach of condition in the partnership deed though looks attractive in the first brush but on wholistic consideration of the plaint and provision of Section 69 of the Partnership Act, the contention deserves to be repealed because in the plaint it has specifically been pleaded that the partnership firm has been dissolved by plaintiff by publication in the news-paper and the suit is filed for realizing his contribution as well as compensation for the loss suffered by him due to the act of the defendant. For this scenario the Parliament has provided for contingencies under sub-section (3) of Section 69 of the Partnership Act, 1932 in which the provision under Section 69 (1) and (2) will not be attracted.

For ready reference Section 69 of Partnership Act is reproduced hereinbelow:-

“69. Effect on rights of partner in suit
 (1) Where a partner in a firm has been dissolved by the firm or by the court, he shall not be entitled to sue or be sued by the firm or by the other partners in the firm in respect of any business of the firm done or to be done after the date of dissolution of the firm or of his being so dissolved, but he shall continue to be liable in respect of any business of the firm done or to be done before that date.

(2) Where a partner in a firm has been dissolved by the firm or by the court, he shall not be entitled to sue or be sued by the firm or by the other partners in the firm in respect of any business of the firm done or to be done after the date of dissolution of the firm or of his being so dissolved, but he shall continue to be liable in respect of any business of the firm done or to be done before that date.

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A plain reading of Section 69(3) of the Partnership Act in the context of the facts of the case clearly indicated that the suit is not barred under Section 69(1) of the Partnership Act. Since the dissolution of the partnership firm has taken place and the suit has been filed for realization of the property contributed by the plaintiff. The Hon'ble Supreme Court in the case of ***Mukund Balkrishna Kulkarni vs. Kulkarni Powder Metallurgical Industries and***

therefore, post dissolution of a firm the suit for recovery of its capital with profit earned by partnership firm has been filed.

Consequently, the present civil revision is, hereby, dismissed. The parties to bear their own costs.

(S.K.Awasthi)
Judge

M.Jilla.