**(1999) 10 KAR CK 0003**

**In the Karnataka High Court**

**Case No :** C.R.P. No. 2396 of 1996

Andavar Finance Corporation APPELLANT

Vs

V. Murthy and Another RESPONDENT

**Date of Decision :** 07-10-1999

**Acts Referred:**
Partnership Act, 1932 — Section 69 (2)

**Citation :** AIR 2000 Kar 236

**Hon'ble Judges :** T.N. Vallinayagam, J

**Bench :** Single Bench

**Advocate :** M.V. Seshachala, for the Appellant; Harikrishna Holla, for the Respondent

**Final Decision :** Allowed

## Judgement

T.N. Vallinayagam, J.—The suit is in respect of a chit transaction out of which payment was made to the defendant and which was evidenced by a promissory note. The said suit was dismissed by the trial Court, and the dismissal is challenged before me in this revision petition.

2. So far as execution of the promissory note is concerned, the trial Court has recorded a finding that the promissory note has been executed and [he defendant had failed to prove that no consideration passed under it. It is further submitted that the question of registration of the firm was not taken in the written statement but still the Court took it as a point, suo motu and held it against the plaintiff.

3. The learned counsel for the respondents relied heavily on the dictum of the Hon''ble Supreme Court in the case of Sriram Finance Corporation v. Yasin Khan reported in AIR 1989 SC 1765 to the following effect:

''In the present case, the suit filed by appellants is hit by Section 69(2) of Partnership Act, as on the date when the suit was filed, 2 of the partners shown as partners as per the relevant entries in the register of firms were not in fact, partners, one new partner had come in and 2 minors had been admitted to the benefit of the partnership firm regarding which no notice was given to the Registrar. The result is that the suit was not maintainable in view of Section 69(2). ..... ...

Reference has been made to some decisions in the judgment of the trial Court. However we do not find it necessary to refer to any of them as the position in law, in our opinion, is clear on a plain reading of Sub-section (2) of Section 69 of the said Partnership Act.''

4. I have heard the respective learned counsels for the parties.

5. The fact that money has been borrowed by the defendant though generally denied in the written statement was found as a fact by the trial Court. The promissory note has been duly executed and proof of the promissory note and presumption arising thereunder was accepted by the trial Court. That is not seriously challenged before, me now. The only question raised is regarding written statement of the defendant. The specific case of the plaintiff is that M/s. Andavar Finance and Chit Funds, K.G.F., is the main firm and one of its activities is carried on under the name ''Andavar Finance Corporation.'' Consequently, placing reliance on the case reported in V. Anjaneya Setty Vs. M.G. Brothers, which is to the following effect, it is submitted that the suit is maintainable:

''Where a registered partnership firm with a particular name and style carried on business in various items like oils, chemical industry, spare parts and so on and it was that partnership firm which had got common partnership account wherein were reflected the entries assets and liabilities with regard to all business transactions in different items, the firm would be competent to maintain a suit in respect of an award given in relation to one of its activities even though that activity was carried on under a slightly different name and style when that name and style did not constitute a separate firm with different partners but was part and parcel of the partnership firm.''

6. I find that the above dictum is directly applicable to the facts of this case. Even otherwise, when a plea is not raised in the written statement, it is not open to the Court to go into the question of maintainability of the suit u/s 69(2) of the Indian Partnership Act. I had occasion to consider the similar point in R.S.A. 919/95 disposed of on 9-3-1998 wherein I have held that as long as the plea is not taken by the defendant in the written statement, it is not open to him to agitate the same at a later stage, nor is it open to the Court to go into that question.

7. In the light of the above dictum, I find that the order passed by the trial Court is not sustainable. Therefore, the same is set aside. In this view, this revision petition is allowed. The suit is decreed with costs as prayed for.

 