

(2015) 01 CAL CK 0038
In the Calcutta High Court
Case No : CO 2632 and 3309 of 2013

Arun Chorone Roquitte and Others

APPELLANT

Vs

Oriental Venetian and Others

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Partnership Act, 1932 — Section 69, 69(2)
Specific Relief Act, 1963 — Section 34

Citation : (2015) 3 CHN 371

Hon'ble Judges : Arijit Banerjee, J.

Bench : Single Bench

Advocate : Sabyasachi Chowdhury, Anirban Kar, Saunak Bhattacharjee and Lalratan Mondal, for the Appellant; Saptangshu Basu, Sabyasachi Bhattacharyya, Ranabir Roy Chowdhury, Debjit Mukherjee and Prasun Mukherjee, Advocates for the Respondent

Judgement

Arijit Banerjee, J.—These two revisional applications being CO 2632 of 2013 and CO 3309 of 2013 involve identical questions of law and hence the same are being taken up together for disposal.

CO No. 2632 of 2013

2. This revisional application arises out of an order dated 30th April 2013 passed by the Ld. Judge, 11th Bench, City Civil Court at Calcutta in Title Suit No. 1753 of 2011.

3. The said suit was filed by the opposite party/plaintiff which is an unregistered partnership firm claiming declaration of monthly tenancy under the petitioners/defendants and for injunction restraining the defendants from disturbing the peaceful possession of the plaintiff in respect of the suit property. The plaintiff's case is that originally the suit property was let out to M/s. Oriental Electric and Engineering Co., which was also a partnership firm, as a monthly tenant by the defendant No. 1. In the year 1975 the name of the said partnership firm was

changed from M/s. Oriental Electric and Engineering Co. to the present name i.e. M/s. Oriental Venetian Blinds. Such change of name was intimated to the defendants. However, the plaintiff all along deposited the rent in the name of M/s. Oriental Electric and Engineering Co. and the defendants issued rent receipt in the said name. Alleging that the defendants have been threatening to illegally dispossess the plaintiff from the suit property, the said suit was filed.

4. The defendants entered appearance in the suit and filed an application under Order 7 Rule 11 of the CPC for rejecting the plaint of the suit. In the petition for rejection of the plaint, diverse grounds have been taken including the ground of mis-joinder of parties and that there is no privity of contract between the plaintiff and the defendants. However, the ground on which maximum emphasis was laid is that the plaintiff being an unregistered partnership firm, the suit is hit by Section 69 of the Partnership Act and is not maintainable.

5. The plaintiff contested the said application. The Ld. Trial Judge considered the submissions of both the parties in extenso and dismissed the application for rejection of plaint. The Ld. Trial Judge held that the case of the plaintiff is not based on contract but that the plaintiff has sought relief against the defendant under the common law of the land and, as such, Section 69(2) of the Partnership Act has no application to the present case. The Ld. Trial Judge also rejected the other grounds urged in the petition for rejection of the plaint and held that such grounds can be decided only upon taking evidence at the trial of the suit. Being aggrieved, the defendants are before this Court by way of the instant revisional application.

6. Appearing on behalf of the petitioners/defendants Mr. Sabyasachi Chowdhury, Ld. Advocate forcibly argued that the plaintiff's case in the plaint is that it is a tenant in respect of the suit property. While considering a demurer application the Court will have to proceed on the basis that the averments in the plaint are true and correct. In other words, the Court will have to proceed on the basis that the plaintiff has a tenancy right in respect of the suit property. Such right is necessarily a contractual right as a tenancy is nothing but a contract between the landlord and the tenant. Hence, what the plaintiff is seeking to enforce in the suit is a contractual right and not a statutory right or common law right. Therefore, according to the Ld. Counsel, Section 69(2) of the Partnership Act hits the suit and the suit is barred by law. In this connection, Ld. Counsel relied on the decision of a Ld. Single Judge in the case of Gappulal Gordhandas and Others Vs. Chunilal Shyam Lal and Others, . In that case it was held that a suit by a tenant which is an unregistered firm to get the rent reduced under the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 is a suit to enforce a right arising out of a contract of tenancy and, is, therefore, hit by Section 69 of the Partnership Act.

7. In the alternative Mr. Chowdhury submitted that if the Trial Court found that there was no contract of tenancy between the petitioners and the opposite party, then the opposite party must be a trespasser in respect of the suit premises. In

that event, Section 34 of the Specific Relief Act would render the suit bad and unmaintainable since the opposite party/plaintiff would have no legal character or right in respect of the property regarding which it could claim a declaration.

8. Thus, according to Mr. Chowdhury either way, the suit filed by the opposite party/plaintiff is not maintainable and is liable to be rejected at the threshold.

9. Appearing on behalf of the opposite party, Mr. Saptangshu Basu, Ld. Senior Counsel, submitted that Section 69(2) of the Partnership Act operates as a bar to a suit filed by an unregistered firm based on a contract only if such contract or the subject-matter of the suit relates to the business of the partnership firm. He submitted that, firstly, it is the petitioners' own case that there is no privity of contract between the petitioners and the opposite party. Hence, the question of bar of Section 69(2) of the Partnership Act being attracted does not arise. Secondly and in the alternative, even assuming that the opposite party's tenancy right in respect of the suit premises stems from a contractual relationship between the parties, such contract of tenancy does not relate to the business dealings of the opposite party. Hence, a suit based on such a contract of tenancy is not hit by Section 69(2) of the Partnership Act. In this connection, Mr. Basu relied on a Division Bench decision of this Court in the case of Humayun Properties Ltd.-vs.-Commonwealth Jewellers reported in 2004 (1) ICC 201. He relied on paragraph 8 of the said judgment which is set out hereunder.

"8. That apart, the contract that is unenforceable by an unregistered partnership firm in terms of Section 69(2) of the Partnership Act is that which relates to its business. It does not include any contract relating to common law right unconnected with the business of the firm. Inasmuch as the contract referred to is to be interpreted in the context in which it has been used. Section 69(2) of the Partnership Act prohibits enforcement of contract by unregistered firm. Therefore, it must be a contract, which is related to the scope with which the statute deals. The statute deals with the rights and liabilities and the regulations of the affairs of the partners and partnership firms. Therefore, such contract is to be a contract having nexus with the scope and ambit of the statute and not otherwise. This was so held in M/s. Haldiram Bhujawala and Another Vs. M/s. Anand Kumar Deepak Kumar and Another, . In that case, it was a suit for permanent injunction from infringing the trademark of the appellant which was held to be a common law right. In the said decision, it was held that the real crux of the question is that the legislature, when it used the words "arising out of a contract under Section 69(2) of the Partnership Act" is referring to a contract entered into in course of business transaction by the un-registered plaintiff firm with its defendant customers and the idea is to protect those in commerce who deal with such partnership firm in business. It was further held that Section 69(2) of the Partnership Act is not attracted to any and every contract referred to in the plaint as the source of title to an asset owned by the firm. If the plaint referred to such a contract, it could never be as a historical fact." 10. As regards Mr. Chowdhury's submission of Section 34 of the Specific Relief Act, Mr. Basu

submitted that nowhere the Trial Court has come to a finding that the plaintiff is a trespasser in respect of the suit premises hence it cannot be said that the plaintiff's prayer for declaration is not maintainable.

11. I have considered the rival contentions of the parties. I am in respectful agreement with the view expressed by the Division Bench of this Court in the case of Humayun Properties (supra) and indeed I am bound by it. Section 69(2) of the Partnership Act does not make any and every type of contract unenforceable at the instance of an unregistered firm. What Section 69(2) bars is a suit to enforce a contract relating to the business dealings and/or business affairs of an unregistered firm. In my view, a suit to enforce a contract of tenancy by claiming a declaration and other consequential reliefs, would not be hit by Section 69(2) of the Partnership Act. I am in respectful disagreement with the decision of the Rajasthan High Court relied upon by Mr. Chowdhury to the extent such decision is to the effect that even a contract of tenancy cannot be enforced by an unregistered firm because of the bar of in Section 69(2) of the Partnership Act.

12. In this connection, it is important to note that on identical facts and between the same parties a revisional application came up for decision by a Ld. Single Judge of this Court in CO 321 of 2014, involving identical issues. In that case also the Ld. Trial Judge had dismissed the defendant's application for rejection of the plaint and the Ld. Single Judge of this Court refused to interfere with the Trial Court's order and dismissed the revisional application. I am in respectful agreement with the views expressed by the Ld. Single Judge in CO 321 of 2014 (Arun Chorone Roquitte and Anr.-vs.-Oriental Venetian Blinds) and judicial comity warrants that I should follow the judgment and order passed in the said revisional application.

13. For the reasons aforesaid I am not inclined to interfere with the judgment and order of the Ld. Trial Court. This revisional application fails and is dismissed. However, it is clarified that the observations made herein are only prima facie for the purpose of deciding whether or not the Ld. Trial Court was right in rejecting the defendant's demurer application. The Ld. Trial Court shall be free to decide Title Suit No. 1753 of 2011 on its own merits.

CO No. 3309 of 2013

14. The judgment passed in CO 2632 of 2013 will govern CO 3309 of 2013. Accordingly CO 3309 of 2013 is also dismissed.