(2003) 11 AP CK 0010

In the Andhra Pradesh High Court

Case No : CRP No. 3086 of 2000

J.K. Finance and Chit Funds APPELLANT

Vs

R. Surya Kumar and Another RESPONDENT

Date of Decision : 07-11-2003

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

Citation : AIR 2004 AP 190 : (2004) 1 ALD 847 : (2004) 2 BC 558

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : T.C. Krishnan, for the Appellant; B. Viswanatha Reddy, for the Respondent

Final Decision : Allowed

Judgement

G. Yethirajulu, J.—This revision petition is filed by the plaintiff in Small Cause Suit No. 82 of 1998 on the file of the Principal Junior Civil Judge, Chittoor. The plaintiff, a registered firm, represented by one of its partners, filed the suit for recovery of money on the basis of a promissory note from the respondents. The suit was dismissed by the lower Court by observing that the defendant is liable to pay only interest due under the promissory note, that the plaintiff failed to explain why he could not file the registered copy of the partnership deed and why he filed only an unregistered partnership deed. The Court further observed that PW.1 did not take steps to sammon the copy of the partnership deed registered with the Registrar of Firms. The lower Court further observed that in view of the ratio laid down in Bhaskar Finance and Commercial Syndicate''s case (1993 (2) APLJ 449, the suit cannot be maintained. The plaintiff being aggrieved by the judgment and decree of the lower Court dated 28.1.2000 preferred this revision petition questioning the validity and legality of the decree and judgment of the lower Court.

2. The learned Counsel for the revision petitioner submitted that the plaintiff filed a certificate to indicate that the suit firm was a registered one and also filed a

copy of the partnership deed to show that one of the partners, who represented the firm for filing the suit was a partner of the firm. He further submitted that when once the firm is a registered one, the requirement u/s 69(2) of the Indian Partnership Act, 1932 (for short "the Act") is complied with. Therefore, there is no need for registration of the partnership deed of a registered firm. Therefore, the order of the lower Court has to be set aside by holding that the suit is maintainable under the law.

3. The learned Counsel for the revision petitioner relied on a judgment of this Court in Sri Laxmi Cloth Stores, Vijayawada Krishna Dist. Vs. Ratna and Co., Machilipatnam, , wherein a Single Judge of this High Court held that the proof of registration of a firm is sufficient to overcome the hurdle imposed by Section 69(2) of the Act

4. Section 69(2) of the Indian Partnership Act, 1932 reads as follows:

(2) No suits to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

5. In M.J.V. Muralidhar v. S.V. Finance Corporation 1971 (1) An.WR 287 and in K. Jhothi Prasad Vs. United India Insurance Co. Ltd. and Others, , this High Court held:

"Where the plaintiff had filed a certificate of registration of the firm and the defendants merely took the plea in the written statement that the pre-requisite condition was not observed, but did not join issue with the plaintiff nor did they press for inclusion of it in issue, nor called upon plaintiff who discloses the names of the partners, the suit cannot be dismissed on the ground that prerequisite conditions to Section 69(2) of the Act were not complied with."

6. The principle laid down in the above decision of this Court clearly indicate that the registration of the firm is sufficient to maintain the suit against any third party. The only requisite u/s 69(2) of the Act is that a registered firm can only file a suit against third party and the persons suing have been in the Register of Firms as partners in the firm. Ex.A2, Partnership Deed contains the name of the partner, who represented the firm in filing the suit. Therefore, the plaintiff complied with the requirements of Section 69(2) of the Act and the learned Counsel for the defendant could not point out the non-compliance of any of the requirements of Section 69(2) of the Act.

7. The learned Counsel for the respondents/defendants contended that the mere registration of the firm is not sufficient. The partnership deed shall also be registered to enable the firm to file a suit against third party. The learned Counsel for the respondents in support of his contention relied on a judgment of the High Court in Bhaskar Finance and Comercial Syndicate, Amalapur v. B. Laxminarayana Reddy 1993 (2) APLJ 449, wherein a Single Judge of this Court

held that if the names of the persons who represents the firm, which filed the suit for recovery of money, are not shown as partners in the Register of Firms, the suit cannot be maintained. But in the present suit there is no such problem and Ex.A2 copy of the partnership deed is a clear indication that the person representing the firm is shown as one of the partners and the said factum was also intimated to the Registrar of Firms. .

8. In the light of the above factual position, I do not find any force in the contention raised by the learned Counsel for the respondents. The lower Court though held that the plaintiff is entitled only for interest on the principal amount, dismissed the suit on the technical ground as mentioned above.

9. In the light of the above circumstances, I find sufficient force in the contention of the revision petitioner and therefore inclined to set aside the decree and judgment of the lower Court.

10. In the result, the revision petition is allowed. The judgment and decree of the lower Court dated 28-1-2000 in S.C. No. 82 of 1998 is set aside. The S.C. No. 82 of 1998 is decreed in favour of the revision petitioner regarding the interest payable under the suit promissory note with costs. Each party to bear its own costs.

