

(2010) 10 DEL CK 0023

In the Delhi High Court

Case No : CRP No. 150 of 2010 and C.M. No. 14598 of 2010

Shri Kewal Kishan through his Attorney Sh. Devinder Pal	APPELLANT
Vs	
Khurana Kaj House (Now Known as Khurana Traders)	RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 115
Partnership Act, 1932 — Section 69, 69(1), 69(2)

Citation : (2010) 173 DLT 425 : (2011) 1 ILR Delhi 543

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Sanjay Goswami, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—Present revision petition u/s 115 of the CPC 1908 (for short as "Code") has been filed by petitioner against order dated 12th May, 2010, passed by Senior Civil Judge, New Delhi, vide which application of petitioner under Order 7 Rule 11 of the Code was dismissed.

2. Brief facts of this case are that, respondent (plaintiff in the trial court) is a partnership firm with Mr. Ravinder Pal Singh and Mr. Paramjeet Singh as its partner. Respondent's firm had taken the suit property on rent from the father of petitioner in 1976-1977. Petitioner has been threatening to raise construction over the roof of the suit property which form part of respondent's tenancy. Accordingly, respondent filed a suit for permanent and mandatory injunction against petitioner and Municipal Corporation of Delhi.

3. Petitioner in its written statement took the plea that respondent is an illegal and unauthorized sub-tenant in the suit shop and he never accepted respondent's firm as its tenant.

4. After filing of the written statement, later on petitioner filed an application under Order 7 Rule 11 of the Code, stating that as apparent from the plaint,

respondent's firm has not been registered with the Registrar of Firms and as such suit filed by it is barred u/s 69 of The Indian Partnership Act (for short as "Act") and petition is liable to be dismissed.

5. In reply, it is stated by respondent that, suit filed by them is for injunction, which is not arising out of any contract between the parties and as such Section 69(2) of the Act has no application.

6. It is contended by learned Counsel for petitioner that Section 69 of the Act, clearly mandates that an unregistered partnership firm cannot file a suit against any third party on a cause of action arising out of a contract entered into by the partnership firm. Since, entire basis of the suit is that the contractual tenancy of respondent as regard the suit shop also included the roof rights, as such present suit is not maintainable in the absence of necessary registration of the respondent's firm under the Act.

7. Other contention is that, inspite of filing of the written statement and not taking any specific defence with regard to the registration of the respondent's firm under the Act, application under Order 7 Rule 11 of the Code is maintainable. In support, learned Counsel has relied upon the following judgments:

(i) Saleem Bhai and Others Vs. State of Maharashtra and Others,

(ii) Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others, and

(iii) M/s. Raptakos Brett and Co. Ltd. Vs. Ganesh Property,

8. Section 69 (1) and (2) of the Act, relevant for deciding the present controversy read as under;

69. Effect of non-registration-

(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit 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.

(3) xxx xxx xxx

9. Respondent has filed the suit for injunction against petitioner on the allegations that he (petitioner) is threatening to raise construction over the roof which forms part of his tenancy.

10. On the other hand, as per written statement filed by petitioner its stand is that respondent is an illegal and unauthorized sub-tenant in the suit property. Petitioner never accepted respondent's firm as its tenant.

11. Thus, as per petitioner's own case there is no privity of contract between him and the respondent's firm. Moreover, petitioner never took any specific plea in the written statement that suit is barred u/s 69 of the Act.

12. Since, the suit of respondent is not for enforcement of any right arising from any contract, the trial court rightly relied upon M/s. Haldiram Bhujawala and Another Vs. M/s. Anand Kumar Deepak Kumar and Another, in which it was observed;

The above Report and provisions of the English Acts, in our view, make it clear that the purpose behind Section 69(2) was to impose a disability on the unregistered firm or its partners to enforce rights arising out of the contracts entered into by the plaintiff firm with third party-defendant in the course of the firm's business transactions.

13. The words used by Supreme Court in Halidram Bhujjiawala (Supra) are that "in the course of firm's business transactions".

14. Since, petitioner never accepted respondent's firm as its tenant and as such, there is no contract between petitioner and respondent's firm. Under these circumstances, provisions of Section 69 (1) and (2) of the Act, are not applicable to the facts of the present case.

15. Various judgments cited as above by learned Counsel for petitioner are not applicable to the facts of the present case.

16. It is well settled that those litigants who are in the habit of challenging each and every order of the trial court, even if the same is based on sound reasoning, simply waste the time of the courts by filing frivolous petitions. No mercy should be shown to such type of litigants. Since, there is no infirmity, illegality or error in the impugned order passed by the trial court, present petition being frivolous one and which has been filed just to delay the proceedings pending before the trial court, is hereby dismissed with costs of Rs. 20,000/- (Rupees Twenty Thousand Only).

17. Petitioner is directed to deposit the costs by way of cross cheque with Registrar General of this Court, within four weeks from today.

CM No. 14598/2010 (stay)

18. Dismissed.

19. List for compliance on 8th November, 2010.