

(2012) 09 AHC CK 0115

Allahabad High Court

Case No: Writ A. No. 62296 of 2011

New Sarkar Beedi Factory,
Amroha and Others

APPELLANT

Vs

Sabir Ali and Others

RESPONDENT

Date of Decision: Sept. 3, 2012**Acts Referred:**

- Partnership Act, 1932 - Section 69
- Provincial Small Cause Courts Act, 1887 - Section 18, 25

Hon'ble Judges: Sudhir Agarwal, J**Final Decision:** Dismissed

Judgement

Sudhir Agarwal, J.

The petitioners filed S.C.C. Suit No. 8 of 1997 in the Court of Civil Judge (Senior Division), Badaun/Judge Small Cause Court for ejectment of defendantsrespondents and recovery of arrears of rent. The suit was dismissed by Trial Court vide judgment dated 25.09.2001 on various grounds, namely, the firm is not registered hence has no right to file suit; and, that the notice sent to tenant determining vacancy was invalid and that there is no default in payment of rent on the part of tenants. The aforesaid judgment has been confirmed in Revision No. 76 of 2001 which was dismissed by Revisional Court vide judgment dated 29.07.2011.

2. The facts, in brief, are that the petitioners filed Small Cause Suit No. 8 of 1997 against the defendant, Sabir Ali son of Zafar Ali for his ejectment and recovery of rent/damages. The dispute relates to a building, i.e., a shop situated at Mohalla Sarai Chaudhary, Badaun. The property in dispute was purchased vide registered sale deed dated 10.11.1995 and 14.11.1995 by Sri Adil Parvez and Sri Sajid Parvez in the capacity of partners of M/s New Sarkar Beedi Factory (claimed to be a registered partnership firm), i.e., petitioner no. 1 from its erstwhile owner Sri Shakil Ahmad son of Sri Asghar. The respondents were tenants in the aforesaid building but it is alleged that they have not paid rent to petitionerslandlords since 15.11.1995 despite

demand. A notice dated 21.07.1997 sent to respondentstenants by registered post demanding arrears of rent of last twenty months and terminating their tenancy after 30 days of receipt of notice which was replied by respondentstenants vide reply dated 20/22.08.1997, hence the suit for ejectment was filed.

3. It was contested by defendantstenants contending that plaintiff no. 1, i.e., petitioner no. 2 is not a registered firm, has no right to file suit and it is not maintainable; the respondentstenants were never tenants of petitioner no. 1, the monthly rent of shop was Rs. 20/; and the petitioners have illegally claimed it to be Rs. 150/ per month; the rent was paid earlier to Sri Asghar and after his death to his son Sri Shakil; no notice ever served by petitioners upon tenants regarding purchase of building in question and there is no default on their part.

4. The court below has decided the suit vide judgement dated 25.09.2001. It formulated five issues to be considered in the aforesaid matter.

5. The first issue related to right of plaintiff no. 1, i.e., petitioner no. 1 hereat for filing suit. It has found that the firm is unregistered, and, therefore, by way of abundant precaution the two partners were also impleaded as plaintiffs no. 2 and 3 separately to maintain the above suit. It has also referred to a sale deed by which the property in dispute was purchased by petitioners no. 2 and 3 representing themselves as partners of M/s New Sarkar Beedi Factory. No document showing registration of firm was placed before the court below and, therefore, the Trial Court has held that so far as plaintiff no. 1 is concerned, being an unregistered firm it had no right to file suit as it was barred by Section 69 of Partnership Act, 1932 (hereinafter referred to as the "Act, 1932") and the suit could have been prosecuted further by plaintiffs no. 2 and 3 in their individual capacity and not otherwise. Having said so it has proceeded to consider issue no. 2 as to the rate of monthly rent of shop in question. Here also the court below has found that tenant was paying rent of shop in question at the rate of Rs. 20/ per month to the erstwhile owner Sri Shakil Ahmad which was proved by receipts, adduced in evidence by defendantstenants. After appreciation of evidence in this regard the Trial Court disbelieved petitioners' contention that monthly rent was Rs. 150/ since it was not proved by adducing adequate evidence. This issue has also been answered by Trial Court against petitioners. Besides the fact that defendantstenants denied default in payment of any rent, the court below has found that on the first date of hearing the tenants filed application/tender for payment of entire rent and deposited Rs. 620/ on 13.11.1997. The court below, after considering various tenders whereby rent and other amount was deposited by tenants has found that there was no default in deposit of entire amount considering the rate of rent at Rs. 20/ per month. Then coming to next question regarding validity of notice, the court below has found that once there is no default in payment of rent, the issue of validity of notice has no importance for the reason that in absence of any default on the part of tenant, the question of termination of tenancy does not arise.

6. The aforesaid judgement of Trial Court has been confirmed by Additional District Judge Court No.1, Badaun by dismissing petitioners' revision vide order dated 29.07.2007.
7. Sri B.D. Mandhyan, learned Senior Counsel for petitioners submitted that even if a firm is unregistered, the suit would not be barred since registration of firms is optional and has placed reliance on Apex Court's decision in *Purushottam and another Vs. Shivraj Fine Arts Litho Works and others*, 2007(15) SCC 58.
8. The submission is thoroughly misconceived in the manner it has been advanced and judgement relied does not support petitioners.
9. It is no doubt true that registration of a firm is optional and not compulsory but the statutory provisions under Partnership Act, 1932 would demonstrate that an unregistered firm suffers so many disadvantages which practically render it almost necessary to have a firm registered otherwise it would have to face a whole gamut of practical and commercial problems at every stage. The whole concept of partnership is to embark upon a joint venture and in furtherance of that objective to bring in as capital, money or other property including immoveable property in a joint venture. Once the property is so placed, the individuals own that property cease to be the exclusive owner thereof and it becomes part and parcel of joint property in which the partners have equal rights, responsibilities, obligations etc. It would be the trading asset of firm in which all the partners would have interest in proportion to their share. An unregistered firm is barred from bringing a suit for enforcing its rights arising from contract against a third party.
10. In the present case the petitioner no. 1 sought to enforce its contract allegedly to that of landlord and tenant with respondent tenants and contending that by committing default in payment of rent such contract has been breached. It sought to enforce its consequential right of ejectment by filing suit under Section 20 of Act No. 13 of 1972. It is not the enforcement of statutory right as such which was sought to be enforced by petitioner no. 1 but here alleging that its contract of tenancy has been breached by respondents by not paying rent, its consequence that tenants have become liable for ejectment, has been sought to be enforced by filing suit in question. Thus here is an attempt to enforce a contractual right. The judgment, therefore, sought to be relied by petitioner in *Purushottam (supra)* has no application where the Court found that suit by unregistered firm seeking enforcement of a statutory right or a common law right is not barred by Section 69(2) and not otherwise. There the Court held that action being a common law action based on tort, and not on contract, hence Section 69(2) would not apply. Therein reliefs of permanent injunction and damages were claimed on the basis of infringement of registered trade mark. Thus the suit was held to be one based on statutory right under the Trade Marks Act. Hence held not barred by Section 69(2) following earlier decision in *Raptakos Brett & Co. Ltd. Vs. Ganesh Property*, 1998(7) SCC 184.

11. However, the Court in *Haldiram Bhujawala Vs. Anand Kumar Deepak Kumar*, 2000(3) SCC 250 observed that any firm which was not registered will be unable to enforce its claim against third parties in the civil court and any partner of a firm not registered will be unable to enforce his claims either against third party or against fellow partners. This decision has been referred and followed in para 20 and 21 of the judgment in *Purushottam (supra)* where the Apex Court said:

"21. It would thus appear that registration of a firm was conceived as a protection to third parties dealing with a partnership firm. Registration ensured the certainty of existence of the firm and its membership, so that later an unsuspecting third party contracting with the firm may not run the risk of being defeated on discovery that neither the partnership firm nor its partners existed in fact. On the other hand, an unregistered firm could not bring a suit for enforcing its right arising from a contract."

12. The above observations, therefore, instead of helping petitioners, in my view, supports the view taken by courts below in the present case that suit on behalf of petitioner no. 1 was not maintainable. Since petitioners no. 2 and 3 did not claim themselves to be the sole owner and landlord, as is evident from para 3 of their plaint, even otherwise the suit, at their instance, for ejectment of respondentstenants, was not maintainable.

13. However, I need not to go further on this aspect for the reason that both the courts below have found that there was no default in payment of rent by respondents. That being so, question of ejectment would not arise. These findings have not been touched or assailed before this Court by learned counsel for the petitioners and despite repeated opportunity, he could not advance any submission in respect to findings of courts below regarding the issue of rate of rent and alleged default. The findings on these two issues being concurrent, and have not been shown perverse or contrary to record before this Court, warrant no interference. The scope of judicial review in the matter under Article 226/227 is very limited and narrow as discussed in detail by this court in *Writ Petition No. 11365 of 1998 (Jalil Ahmad Vs. 16th Additional District Judge, Kanpur Nagar and others)*, decided on 30.07.2012. There is nothing which may justify judicial review of orders impugned in this writ petition in the light of exposition of law, as discussed in the above judgment.

14. I, therefore, find no merit in the writ petition. Dismissed.