Dwarika Prasad Agarwal and Brothers Vs Registrar,Firms,Societies and Chits

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Jan. 21, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 23 Rule 1, Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 â€" Article 136, 21, 226, 227, 32
Hindu Marriage Act, 1955 â€" Section 11, 16, 17, 5
Partnership Act, 1932 â€" Section 18, 19, 21, 22, 25
Penal Code, 1860 (IPC) â€" Section 352, 366, 376
Registration Act, 1908 â€" Section 17(1)

Citation: (2014) 2 ADJ 524

Hon'ble Judges: S.S. Chauhan, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

S.S. Chauhan, J.
The petitioners through this writ petition have challenged the orders dated 8.9.2003, 3.12.2003 and 7.1.2004, contained

in Annexure Nos. 1 to 3 to the writ petition.

The facts giving rise to the present petition, are that firm namely, M/s. Dwarika Prasad Agarwal and Bothers (for short'' the firm'') was constituted

consisting of four members, namely, Dwarika Prasad Agarwal, Bishambhar Dayal, Mahesh Prasad Agarwal and Ramesh Chandra Agarwal on

10.4.1972 and the aforesaid firm was registered with the Assistant Registrar, Firms, Societies and Chits, Jhansi having its registered office at 28

Rani Mahal, Jhansi on 15.11.1976. The said firm was also registered in Form-I under the Indian Partnership Act (for short "the Act'') and

continued to run its business. The firm itself was not doing any business, but in fact the partners of the firm in their individual capacity were running

separate businesses regarding publication of newspaper from different cities owned by different entities in publishing the newspaper in the name

and style ""Dainik Bhaskar."" These firms were known as Bhaskar Publication and Allied Industries, Pvt. Ltd. at Gwalior managed by Sri Ramesh

Chandra Agarwal with majority shares; Bhaskar Graphics, Pvt. Ltd. at Indore managed by Sri Ramesh Chandra Agarwal with majority shares;

Writers and Publishers Pvt. Ltd. at Bhopal managed by Sri Ramesh Chandra Agarwal with majority shares. Sri Bhishambhar Dayal Agarwal was

publishing the newspaper at Jabalpur, whereas Sri Sanjay Agarwal was publishing the newspaper at Jhansi. It appears that there was some

misunderstanding and bickering between the partners, so on 25.11.1987 Mahesh Prasad Agarwal gave a notice u/s 43 of the Act to dissolve the

firm. The said notice was replied by Bishambhar Dayal Agarwal by means of letter dated 11.12.1987 stating therein that his notice to dissolve the

firm shall be taken as a notice for retirement and he shall be deemed to have retired from the said date. But no reply was given by Mahesh Prasad

Agarwal to the aforesaid notice of the Bishambhar Dayal Agarwal. On 28.11.1987 Ramesh Chandra Agarwal filed Civil Suit No. 74A of 1987 in

the Court of Additional District Judge-I, Bhopal as Managing Director of M/s. Writers and Publishers Limited against Dwarika Prasad Agarwal

and Bishambhar Dayal Agarwal for declaration that plaintiff is the sole owner of business and goodwill of printing and publishing of Dainik Bhaskar

from Bhopal and for perpetual injunction restraining the defendants from publishing the newspaper from Jabalpur or any other place. On

30.11.1987 another Civil Suit No. 75A of 1987 was filed by Ramesh Chandra Agarwal in the Court of Additional District Judge-I, Bhopal against

Dwarika Prasad Agarwal, Mahesh Prasad Agarwal and Bishambhar Dayal Agarwal for rendition of accounts and for declaration that the firm

stood dissolved in the year 1985 or be declared that it stood dissolved w.e.f. 25.11.1987 and for appointment of receiver. On 6.2.1988 another

Suit No. 22A of 1988 was filed by Bishambhar Dayal Agarwal in the Court of Additional District Judge-II, Raipur seeking declaration that title

Dainik Bhaskar"" belonged to Firm Dwarika Prasad Agarwal & Bros. in which an order was passed on 15.2.1988 restraining the defendants

therein, including Ramesh Chandra Agarwal and Writers & Publishers Limited, from publishing Dainik Bhaskar from Raipur. On 28.3.1988 Suit

No. 57A of 1988 was filed by Bishambhar Dayal Agarwal in the Court of Additional District Judge-II, Bhopal seeking declaration that agreement

dated 13.3.1985 was null and void. Applications moved under Order XXXIX, Rule-1 and 2 CPC by the Writers & Publishers Limited and

Ramesh Chandra Agarwal in both the suits i.e. 74A of 1987 and 75A of 1987 were rejected by the Civil Court on 24.11.1988. In January, 1990,

Bishambhar Dayal Agarwal wrote a letter to Dwarika Prasad Agarwal expressing his desire to retire from the firm in case he wanted to induct

Hemlata Agarwal as partner he has no objection in that regard and he should be deemed to be separate from the firm from the said date. He also

acknowledged that there was nothing due to him from the firm. On 2.2.1990 a fresh partnership-deed was executed inducting Kishori Devi,

Hemlata and Anil Kaushik as partners and in the said deed, it was narrated that Ramesh Chandra Agarwal, Mahesh Prasad Agarwal and

Bishambhar Dayal Agarwal have parted their ways suiting to their convenience without caring about their duties and obligations to the firm, which

gave rise to multiplicity of litigations leaving behind Dwarika Prasad Agarwal alone, therefore, with a view to continue the business of the aforesaid

firm, the new partners were being inducted. On 10.2.1990 it is alleged that some letter was written by Dwarika Prasad Agarwal to the Assistant

Registrar, Firms, Societies and Chits, Jhansi stating therein the change of three partners in the firm, namely, Kishori Devi, Hemlata Agarwal and

Anil Kaushik. In the year 1992 some dispute arose between the aforesaid owners as Sudhir Agarwal son of Ramesh Chandra Agarwal started

publishing Nav Bhaskar from Jabalpur. Being aggrieved by the said action of Sudhir Agarwal, Bishambhar Dayal Agarwal, who was already

publishing Dainik Bhaskar from Jabalpur moved the Jabalpur High Court by way of Writ Petition No. 802 of 1992. In the writ petition at High

Court level, a settlement was arrived at between the family members of Dwarika Prasad Agarwal, wherein the parties to the settlement divided

between themselves territories from where each of them would be entitled to publish newspaper in the name and style ""Dainik Bhaskar."" It was

also decided to dissolve the firm M/s. Dwarika Prasad Agarwal & Bros., but in all these proceedings, Dwarika Prasad Agarwal was not a party

and neither he was signatory to the compromise. Writ petition filed by Bishambhar Dayal Agarwal was disposed of on 29.6.1992 on the basis of

compromise. As and when Dwarika Prasad Agarwal came to know about the aforesaid order, he filed Review Petition bearing No. 477 of 1992

before the Jabalpur High Court, which was dismissed on 18.11.1992. Against the said order, Dwarika Prasad Agarwal preferred a SLP before

the Hon"ble Supreme Court, which was converted into Civil Appeal being CA No. 4783 of 1996. Apart from it, Bishambhar Dayal Agarwal also

filed Writ Petition (C) No. 527 of 1993 under Article 32 of the Constitution of India before the Apex Court. On 29.3.1993 an interim order was

granted by the Apex Court restraining transfer of property of the firm by the parties. During the pendency of proceedings before the Apex Court,

Dwarika Prasad Agarwal expired on 20.7.1993. Thereafter Kishori Devi and Hemlata Agarwal moved an application for substitution in the

aforesaid SLP being the legal heirs of Dwarika Prasad Agarwal, which was allowed by the Apex Court on 7.1.1994. In the meantime, it is alleged

that one registered Will was executed by Dwarika Prasad Agarwal in favour of Kishori Devi. On 19.10.1993, an application for substitution was

moved by Kishori Devi in Suit Nos. 74A of 1987 and 75A of 1987 and the said suits were got dismissed as withdrawn on 27.10.1993. On

12.9.1995 the firm was reconstituted with the remaining partners, namely, Kishori Devi Agarwal, Hemlata Agarwal and Anil Kaushik. In the said

partnership-deed, it was indicated that partner Dwarika Prasad Agarwal had expired, therefore, he is no more a partner with the firm and on that

assumption and belief, the firm was reconstituted. In the said partnership-deed, it was specifically provided in clause (7) that terms and conditions

of the partnership business as well as the conditions relating to the relations of the partners not provided for hereinabove and not repugnant hereto

shall be the same as are spelled in the partnership-deed dated 10.4.1972 and IInd (2nd) of February, 1990 pertaining to the partners thereof.

Thereafter, the aforesaid partners of the firm presented Form-VII regarding reconstitution of the firm on the same day to the Registrar, Firms,

U.P., Jhansi and the same was accepted by him on 2.3.1996. After induction of the new partners u/s 63 of the Act, nothing came to light as the

new inducted partners who were contesting their claim before the Court, never brought it to the notice of the Apex Court at any point of time after

the death of Dwarika Prasad Agarwal on 20.7.1993 regarding the aforesaid fact. The said induction was never pressed upon and neither executed

or impressed against the other partners of the firm informing them that they have retired or have been ousted from the firm and new members have

been inducted. On 7.7.2003 the Apex Court allowed the civil appeal and quashed the order passed by the Jabalpur High Court, wherein writ

petition filed by Bishambhar Dayal Agarwal was disposed of in terms of the settlement dated 29.6.1992 arrived at between the parties and

relegated the parties to the same position in which they were immediately prior to the passing of the order dated 29.6.1992. On 4.7.2003, an

application was moved by Hemlata Agarwal for change of address of the firm from Jhansi to Ghaziabad before the Deputy Registrar, Jhansi

praying therein that change in address of the firm be affected from 3.7.2003 and the said application was allowed by the Deputy Registrar to the

effect that change in address be affected from 10.7.2003. After change of the address, the jurisdiction of the firm went under the control of the

Deputy Registrar, Meerut. The aforesaid fact came to the knowledge of Mahesh Prasad Agarwal, who was one of the partners of the firm, on the

basis of press conference, which was held by Hemlata Agarwal on 8.7.2003, wherein she claimed herself to be the owner of Dainik Bhaskar Daily

alongwith Smt. Kishori Devi and Anil Kaushik as partners. The said news was published in daily newspaper on 9.7.2003 and Smt. Hemlata

Agarwal also sent information to the District Magistrates, Bhopal, Indore and Gwalior in this regard. On the basis of the aforesaid publication of

news, Mahesh Prasad Agarwal came to know the said fact and applied for inspection of record on 10.7.2003 and obtained the copy of the

relevant documents on the said date. Thereafter he filed an application on 18.7.2003 alleging therein that he continues to be the partner of the firm

and regarding change of partnership, neither there is any publication in newspaper nor in any official gazette as required under law for change of

partners and he has never given any consent for change of address nor that he has retired from the firm. In the said application, it was also stated

that Ramesh Chandra Agarwal also continues to be the partner and the change in address has been fraudulently made behind the back of the

existing partners and no signatures were obtained on Form-VII of the old partners in order to get their consent. It was also stated that provisions

of Section 32(1) and 72 of the Act were violated and without examining the existing records and without confirming that the change was in

conformity with the existing documents, accorded the change in the partnership in Form-VII. The change was obtained fraudulently and, therefore,

it was prayed that the same may be set aside. Mahesh Prasad Agarwal also moved an application before the Deputy Registrar, Firm, Societies and

Chits, Meerut on 18.7.2003 with the similar allegations. On 19.7.2003, an exparte order was passed by the Deputy Registrar, Meerut staying the

operation of reconstitution dated 2.3.1996 and thereafter on 7.8.2003 issued notices to the opposite parties for filing reply with supporting

documents and the next date was fixed as 18.8.2003. Hemlata Agarwal filed an application before the Registrar, Firms, Societies and Chits,

Lucknow praying therein that the entire record of the case be summoned from Meerut to Lucknow and the order dated 19.7.2003 be kept in

abeyance, pursuant to the said application, the Registrar, Lucknow called for the record from the Deputy Registrar, Meerut on 27.8.2003.

Hemlata Agarwal filed a detailed reply to the notice dated 19.7.2003 on 4.9.2003. The Registrar, Lucknow dismissed the application moved by

Hemlata Agarwal on 8.9.2003 holding therein that amendment in the partnership-deed obtained by Hemlata Agarwal by way of Form-VII was

illegal and further directed for enquiry as to how such a defective Form-VII was accepted in violation of Sections 31, 32 and 72 of the Act. On

20.10.2003 Hemlata Agarwal filed review application against the order dated 8.9.2003, in which notices were issued and the case was adjourned

for 45 days and the order dated 8.9.2003 was stayed for 45 days. Thereafter, upon application made by Hemlata Agarwal, the date of hearing

was fixed on 4.1.2004 and an information was sent by the Registrar, Lucknow to Mahesh Prasad Agarwal indicating the next date for hearing as

4.1.2004. On 3.12.2003, the Registrar, Lucknow has also informed that the order dated 20.10.2003 whereby the effect of order dated 8.9.2003

was stayed, is hereby vacated. On 16.12.2003, Hemlata Agarwal moved an application for recall of the order dated 3.12.2003 to the extent of

vacation of stay, upon which the Registrar, Lucknow on 30.12.2003 directed the opposite parries not to do any correspondence on behalf of the

firm. On 7.1.2004, the Registrar, Lucknow dismissed the review application moved by Hemlata Agarwal against the order dated 8.9.2003 and

further directed to initiate proceedings u/s 70 of the Act against Hemlata Agarwal and others for fraudulently holding out themselves as partners of

the firm. Thereafter, Hemlata Agarwal filed Writ Petition bearing C.M.W.P. No. 9099 of 2004 before this Court at Allahabad claiming herself to

be partner of M/s. Dwarika Prasad Agarwal & Bros. against the orders dated 8.9.2003, 3.12.2003 and 7.1.2004. In the said writ petition notices

were issued, but no interim order was granted. During the pendency of the said petition at Allahabad, Kishori Devi, who claims herself to be a

partner of the firm, filed the present writ petition before this Bench at Lucknow against the same orders i.e. 8.9.2003, 3.12.2003 and 7.1.2004, in

which an interim order was grated by this Court on 23.7.2004. Thereafter, counsel for the petitioners stopped appearing in the Court and

ultimately the interim order was vacated on 11.11.2005. In the meantime, Ramesh Chandra Agarwal moved an application for impleadment in the

aforesaid writ petition, on which the Court issued notices. On 28.2.2008 writ petition filed at Allahabad bearing No. 9099 of 2004 was dismissed

for non-prosecution. On 22.4.2008, the present petition was dismissed on the ground that under Chapter XXII Rule 7 of the Allahabad High

Court Rules, no second writ petition for the same cause of action and on the same facts is maintainable. On 21.10.2009, Mahesh Prasad Agarwal,

who used to oppose the illegal and unauthorized actions of Hemlata Agarwal and petitioner No. 2, was won over by Hemlata Agarwal and Kishori

Devi and on their behest he made an application to the Registrar, Lucknow to recall his order dated 8.9.2003 and 7.1.2004, which were passed

purportedly on the complaint of Mahesh Prasad Agarwal earlier. In the said application, Mahesh Prasad Agarwal alleged that the earlier complaint

was filed by him under the undue influence of Ramesh Chandra Agarwal in which false averments were made. He also took totally contrary stand

in comparison to his earlier stand, which was taken before this Court as well as before the Apex Court. On 5.3.2010, the Registrar, Lucknow

dismissed the application moved by Mahesh Prasad Agarwal. On 9.3.2010, petitioner No. 2 filed an application bearing Civil Misc. Application

No. 22997 of 2010 for recalling the order dated 22.4.2008 after a delay of about two years. On the very next day i.e. on 10.3.2010, Mahesh

Prasad Agarwal filed reply to the recall application admitting all the averments and consenting for recall. Ramesh Chandra Agarwal filed an

application for dismissal of the recall application in April, 2010. A supplementary-affidavit was filed by Kishori Devi Agarwal, wherein she brought

on record two correspondences of the year 1990 to prove the change in partnership. The aforesaid two correspondences were alleged to be

certified copies issued by the office of the Registrar, Firms, Societies and Chits purportedly written by late Dwarika Prasad Agarwal on 10.2.1990

informing the Registrar about the change in the constitution of partnership, whereby Kishori Devi Agarwal, Hemlata Agarwal and Sri Anil Kaushik

were inducted into partnership. However, both the letters have been found to be forged by the Registrar upon examination of record and it was

found that the alleged certified copy issued is also different. This Court while hearing the matter, passed an order on 15.2.2011 directing the then

Registrar, Arvind Narayan Mishra to submit an affidavit as to the genuineness of the certified copies of letter dated 10.2.1990, partnership

agreement of 1990, Form-VII of 1996 filed by the petitioner No. 2 and others with the averment that these documents were duly filed with the

Registrar of Societies, but the same are now missing from the records of the Registrar. On 14.3.2011, Sri Arvind Narayan Mishra filed his affidavit

in compliance of the order of this Court, in which it was categorically stated that the signature shown on the certified copy of letter dated

10.2.1990 is forged and this document is not available in the record of the office. It was also stated that other documents relating to submission of

Form-VII and correspondence relating to change of address is also forged because the seal of society used on the certified copies is different than

the one which was in vogue at the relevant time. Thereafter, judgment was reserved by this Court on 27.5.2011. In the meantime, Kishori Devi

and Hemlata Agarwal filed a Suit bearing No. CS (OS) No. 1663 of 2011 before the Delhi High Court praying for a declaratory relief declaring

them to be partners of the firm alongwith other reliefs. Judgment in this case was delivered by this Court on 21.9.2011 allowing the writ petition

and remanding the matter back to the Registrar to pass afresh order after affording personal hearing to all the parties and further directing the

Registrar to obtain copies of documents from the parties if they are not available in the official file and after examining its genuineness give a clear

cut finding on it. Mahesh Prasad Agarwal also filed supplementary and counter-affidavits on 20.9.2004 and 20.12.2006. Against the judgment of

Hon''ble Single Judge, Special Appeal Nos. 711 of 2011 and 731 of 2011 were preferred by Ramesh Chandra Agarwal and Kishori Devi, which

were allowed vide judgment and order dated 15.11.2011 and the matter was remitted back to the Hon''ble Single Judge for deciding the matter

afresh and the application filed by Ramesh Chandra Agarwal for impleadment moved in the writ petition was also allowed. Hence this petition.

Submission of learned counsel for the petitioners is that the parties will stand relegated to the same position prior to 29.6.1992 in view of the

judgment of the Apex Court dated 7.7.2003. The judgment of the Apex Court dated 7.7.2003 was not brought to the notice of the Registrar while

application was moved for setting aside the order dated 2.3.1996 by means of which Form-VII filed by the petitioners was accepted. He has

further submitted that the Registrar, Firms, Societies & Chits has no power u/s 64 of the Act to adjudicate upon the lis between the partners, which

exclusively falls within the domain of the competent Civil Court. The order passed by the Registrar without affording any opportunity of hearing to

all the concerned parties is not sustainable in the eye of law and the parties cannot choose a particular forum to get their claim adjudicated after the

judgment of the Apex Court and it will amount to violation of the judgment of the Apex Court. It is submitted that Ramesh Chandra Agarwal

happens to be a stranger of the partnership firm, as such he cannot meddle in the affairs of the firm. The order passed by the Registrar is without

jurisdiction and is a nullity being ab initio. It is also submitted that judgment passed by the Apex Court will be binding upon the parties and they are

supposed to act in accordance with the said judgment and any deviation from the same, will render the entire exercise illegal and void. What

cannot be done directly, cannot be allowed to be done indirectly. The proceedings before the Registrar are clear abuse of process of the Court.

Ramesh Chandra Agarwal has not challenged the order passed by the Registrar up till now and the Suit filed by him bearing No. 298-A of 2003

was dismissed for non-prosecution. The parties are supposed to pursue the Suit in stead of getting the matter adjudicated from the Registrar. The

order of the Apex Court was not placed before the Registrar and the agreement dated 29.6.1992 was relied upon and made the basis for passing

the impugned orders.

2. Counsel for the opposite party No. 5, on the other hand, has submitted that petitioners have played fraud upon the Court by filing the present

petition on 20.7.2004 during the pendency of writ petition bearing No. 9099 of 2004 filed at Allahabad by Hemlata Agarwal, daughter of

petitioner No. 2, challenging the same orders, which have been challenged in this petition. Hemlata Agarwal alleges herself to be the partner of the

firm and if she has filed writ petition on behalf of the firm, then it will be binding upon the other partners as well, as contemplated under Sections 21

and 22 of the Act. The writ petition was rightly dismissed in default as it will amount to second writ petition and no whisper has been made

regarding pendency of the writ petition filed at Allahabad when this writ petition was filed here before this Bench, as such present writ petition is

liable to be dismissed with exemplary costs. It is submitted that the petitioners got their name recorded surreptitiously and fraudulently in Form-VII

without obtaining the signatures of the existing partners, which was necessary under law. Apart from it, no publication was made as required u/s 72

of the Act for recording change of partners in the Official Gazette and neither any notice was published in the newspapers in this regard. The

petitioners by committing forgery before the Registrar got their name recorded in Form-VII behind the back of the answering opposite parties. It

has further been submitted that there was no consent in admitting the petitioner No. 2, Hemlata Agarwal and Anil Kaushik as partners of the firm at

the time when alleged partnership-deed dated 2.2.1990 was made. Mahesh Prasad Agarwal colluded with the petitioners and his collusion is

apparent from the fact that when restoration application was moved by petitioner No. 2 on 9.3.2010, he proceeded to file reply to the said

application on the next date i.e. 10.3.2010 admitting the claim of the petitioners and agreeing for restoration. Submission is that Kishori Devi,

Hemlata Agarwal, Mahesh Prasad Agarwal, Sanjay Agarwal son of Mahesh Prasad Agarwal have assigned all their rights, title and interest to

Suresh N. Vijay by way of assignment deed dated 24.2.2010 for a consideration of Rupees One Crore through cheques. He has further submitted

that after this assignment, Mahesh Prasad Agarwal moved an application on 10.3.2010 readily agreeing for restoration of the writ petition. After

the assignment has been made, the petitioners have lost their right to pursue the proceedings and their right has come to an end as contemplated u/s

29 of the Act as the assignee only gets right to receive the profits from the firm in accordance with derived share of the assignor. The writ petition,

therefore, at the behest of Kishori Devi is not maintainable and it is liable to be dismissed. He has further submitted that Kishori Devi happens to be

the second wife of Dwarika Prasad Agarwal and she has no legal status, as according to the partnership-deed dated 10.4.1972 only the legal heirs

can be inducted as a partner in the firm. He has also submitted that when the partnership-deed was executed on 2.2.1990, there was no consent of

Mahesh Prasad Agarwal or Ramesh Chandra Agarwal and even if it is accepted for the sake of arguments that Bishambhar Dayal Agarwal

resigned then he is continuously claiming his right and asserting that he continues to be the partner of the firm, the procedure for retirement has

never been followed as contemplated under Sections 31 and 32 of the Act and, therefore, no partner shall be deemed to have retired. It is also

submitted that Form-VII, which was submitted, did not contain the signatures of the existing partners and the deed dated 2.2.1990 stipulates that

other partners have parted their ways suiting to their convenience, but it was not mentioned as to in what manner they have retired. The firm cannot

be dissolved as according to the terms of the deed dated 10.4.1972, only partners can retire and the Act contemplates the procedure for

retirement and if the said procedure has not been followed, then any of the partner cannot be deemed to have retired. Apart from it, the

partnership-deed dated 2.2.1990 was never brought to light and never brought on record in any litigation either before the Jabalpur High Court or

before the Apex Court or before the Deputy Registrar. Therefore, these documents are forged documents and reliance cannot be placed on them.

Dwarika Prasad Agarwal himself could have said in the proceedings before the Jabalpur High Court or before the Apex Court that new partners

have been inducted and even after the death of Dwarika Prasad Agarwal on 20.7.1993 the aforesaid fact was not brought before the Apex Court

when substitution was moved by Kishori Devi claiming herself to be the wife of Dwarika Prasad Agarwal. Change in constitution of the firm was

made public on 8.7.2003 when press conference was made by Hemlata Agarwal and the said news was published in the daily newspaper on

9.7.2003 and then only it came to the knowledge of Mahesh Prasad Agarwal, who filed an application for cancellation of the said entry, which was

made fraudulently. The aforesaid deed and induction were never made public prior to 9.7.2003 and never pressed upon. Kishori Devi and

Hemlata Agarwal being mother and daughter, were well in the knowledge regarding filing of the writ petition at Allahabad and subsequent writ

petition before this Bench with the same averments, same language and even with the same verbatim or repetition of the same paragraphs, which

leads to the conclusion that it was well within the knowledge of Kishori Devi that writ petition filed at Allahabad was; pending and no interim order

was granted in it, but in spite of that the present writ petition has been filed before this Bench and an interim order was obtained by concealing the

aforesaid fact. Therefore, it amounted to gross abuse of process of the Court and the writ petition filed on behalf of Kishori Devi is not

maintainable at all. After gaining the knowledge, Mahesh Prasad Agarwal moved an application for setting aside the forged entry made in Form-

VII on 2.3.1996 by means of application dated 17.7.2003. He, therefore, submits that even if the judgment of the Apex Court would have been

brought to the notice of the Registrar, the orders of the Registrar could not have changed as the controversy before the Apex Court was in respect

of the compromise entered into between three partners in the Jabalpur High Court on 29.6.1992. The validity of the said compromise was to be

considered by the Apex Court, but there was no dispute with regard to induction of the partners in the firm at the behest of Dwarika Prasad

Agarwal nor he brought it on record nor Kishori Devi, who was substituted as one of the party, asserted that there has been change in the

Constitution of the firm and new partners have been inducted. The procedure prescribed for change of address u/s 60 of the Act was not followed

and, therefore, the change of address made at the behest of petitioner No. 3 and others was with a view to take undue advantage by getting the

firm transferred to the jurisdiction of the Deputy Registrar, Meerut. The procedure for induction of partners as contemplated u/s 31 of the Act has

also not been followed and the consent of the existing partners was not taken at the time when the petitioner No. 2, Smt. Hemlata Agarwal and

Anil Kaushik were inducted as partners. The procedure for retirement has been provided u/s 32 of the Act that with the consent of all the other

partners and in accordance with an express agreement by the partners, or where the partnership is at will, by giving notice in writing to all the other

partners of his intention to retire can retire. None of the procedure was followed even in respect of Bishambhar Dayal Agarwal. At the instance of

Hemlata Agarwal, the proceedings were transferred to the Registrar, Firms, Societies & Chits, Lucknow and the record was summoned from the

Deputy Registrar, Meerut. She filed a detailed reply to the notice dated 17.7.2003 and her objection was rejected as it was found that amendment

in the partnership-deed obtained by Hemlata Agarwal by way of Form-VII was illegal and further directed for enquiry as to how such a detective

Form-VII could have been accepted in violation of Sections 32 and 72 of the Act. The review filed by Hemlata Agarwal was also dismissed.

Learned counsel also submits that fraud vitiates the most solemn decision and the fraud also vitiates everything which has been done in an illegal

manner. In the case in hand, since fraud was committed by the petitioners, therefore, the Registrar was fully justified in proceeding on the basis of

the complaint of Mahesh Prasad Agarwal as contemplated under Rule 7 of the Uttar Pradesh Indian Partnership Rules, 1933 (for short ''U.P.

Rules''). The language employed in the Gujarat Rules and in the U.P. Rules are altogether different. In the U.P. Rules, the right for adjudication has

been given. If it is found by the Registrar, he may in his discretion institute such inquiries or make such investigation in respect of any matter in

which he feels that it is necessary for the proper performance of his duties and the administration of the Act and in particular when a dispute arises

amongst the several partners of a firm, the Registrar may in his discretion call upon any of the partners or all of them to produce any original deed,

document or such other evidence as he thinks fit in order to ascertain the rights of the respective parties. If Section 64 of the Act is read alongwith

Rule 7 of the U.P. Rules, then the action of the Registrar cannot be faulted in any manner as the requirement of Section 64 of the Act is that in

order to bring the entry in the Register of Firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter,

the Registrar shall have power at all times to rectify any mistake. Therefore, such power can be exercised by the Registrar u/s 64 of the Act with a

view to eradicate and rectify the said fraudulent acts, which have been committed by any of the partner, which are not in conformity with the

documents relating to that firm. Form-VII of the petitioners, which was accepted on 2.3.1996, was not at all in conformity with the documents of

the firm and the entry made was a fraudulent entry, which has rightly been set aside by the Registrar by examining the records and giving

opportunity to the petitioners and also making enquiry into the record. The entire exercise by means of which names of the petitioner No. 2 and

others were entered on the basis of Form-VII, was done in a concealed manner and the other remaining partners were never apprised or made

known about the said change in the partnership and without their consent, none of the partner could have been inducted. The then Registrar,

Arvind Narayan Mishra was directed to file his personal affidavit and he has filed an affidavit stating therein that the documents particularly the

certified copies of the letter dated 10.2.1990 are forged and have not been found to be issued by the office of the Registrar as the seal of office of

Registrar used on the certified copies is different than the one which was in vogue at the relevant time and the officer concerned has also certified

that his signatures are not there. Sri Munni Lal, Finance Controller, who was posted at the relevant time, has also certified that the certified copies

do not contain his signature and at the alleged serial number, some other document was issued. He has further submitted that the Registrar does not

have the power of review and, therefore, the application for review has rightly been rejected by him. There is no provision under the Act for

deemed retirement of a partner and the partner can be treated to have retired only in accordance with the provisions of the Act. Hence, a writ of

certiorari cannot be issued in order to revive an illegal order as Form-VII was illegally accepted without following the procedure prescribed under

law and without publication of the same in the Official Gazette. Even if the parties are relegated to the stage prior to 29.6.1992, then in the

meantime, whatever changes have taken place, those cannot be undone. Mahesh Prasad Agarwal and Kishori Devi both have filed suits; one in the

Court of Civil Court, Jhansi and the other in the Delhi High Court and they can seek their declaration as claimed by them in their respective suits.

No case was set up before the Apex Court nor before the Jabalpur High Court by Dwarika Prasad Agarwal to the effect that a change in the

constitution of the firm has taken place. Submission is that by virtue of the order of the High Court the firm stood dissolved and once the firm stood

dissolved, then no Form-VII could have been accepted in respect of a dissolved firm. The Apex Court has only passed an interim order restraining

the parties from alienating the property.

3. I have heard counsel for the parties and perused the record.

Against the judgment of Hon''ble Single Judge dated 21.9.2011. two special appeals were preferred and in the special appeals the impleadment

application of Ramesh Chandra Agarwal was allowed and the case was remanded by setting aside the order of Hon''ble the Single Judge by

observing that the controversy whether Ramesh Chandra Agarwal is still a partner or not and what is the constitution of the existing partnership

firm, and whether on a notice given under Form-VII, the change of constitution, said to have been made on the application of Ms. Hemlata

Agarwal, was valid or not, and all such facts needed consideration by the learned Single Judge and only thereafter a finding could have been

recorded as to whether the order passed by the Registrar is valid or not.

On the aforesaid finding, this Court is compelled to deal with the following points regarding the induction of new partners, the status of Ramesh

Chandra Agarwal and acceptance of Form-VII, and change in the constitution of firm and all other points which haven argued by the counsel for

the parties.

4. The first point, which falls for consideration is as to whether during the pendency of the first writ petition at Allahabad numbering 9099 of 2004

by one of the main contesting partners, namely, Hemlata Agarwal, the second writ petition, i.e. the present writ petition is maintainable before this

Court. In order to appreciate the controversy, certain averments and documents are required to be taken into consideration.

Counsel for the opposite party No. 5 has filed an affidavit alongwith application for dismissal of the recall application dated 9.3.2010 filed by the

petitioners. In the said affidavit, it has been stated that in the writ petition filed at Allahabad numbering 9099 of 2004, the reliefs claimed were for

quashing of the orders dated 8.9.2003, 3.12.2003 and 7.1.2004. The present writ petition, which was filed here before this Bench was filed

through its alleged partner Smt. Kishori Devi and the affidavit was sworn by Smt. Kishori Devi on behalf of both the petitioners. In the aforesaid

writ petition, an identical prayer has been made for quashing of the same orders i.e. 8.9.2003, 3.12.2003 and 7.1.2004. A further prayer was also

made in this petition that the respondents may be directed to restore and maintain the constitution of the record of the firm M/s. Dwarika Prasad

Agarwal & Brothers as it stood immediately prior to the passing of the impugned orders. After the said writ petition was filed at Allahabad, no

interim order was granted and only notices were issued to the private respondents and ultimately the said writ petition was dismissed for non-

prosecution on 28.2.2008. It is to be noted that Smt. Hemlata Agarwal, who was petitioner in C.M.W.P. No. 9099 of 2004 is the daughter of

Smt. Kishori Devi, petitioner No. 2 in the present writ petition. In a partnership firm, a partner acts as an agent of the firm and in this regard

Section 18 of the Act is relevant to be quoted.

18. Partner to be agent of the firm.-- Subject to the provisions of this Act, a partner is the agent of the firm for the purpose of the business of the

firm.

5. Smt. Hemlata Agarwal described herself to be partner of the petitioner No. 1 hereinabove and while filing the said writ petition, she was acting

as an agent of the partnership firm and the writ petition filed by her shall be presumed to be filed on behalf of all the partners. Section 19 of the Act

stipulates that subject to the provisions of Section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried

on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section, is called his ""implied authority."" For ready

reference Section 19 of the Act is quoted below:

19. Implied authority of the partner as agent of the firm.--(1) subject to the provisions of Section 22, the act of a partner which is done to carry on,

in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his ""implied authority"".

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

(a) submit a dispute relating to the business of the firm, to arbitration,

(b) open a banking account on behalf of the firm in his own name,

(c) compromise or relinquish any claim or portion of a claim by the firm,

(d) withdraw a suit or proceeding filed (sic) behalf of the firm,

(e) admit any liability in a suit or proceeding against the firm,

(f) acquire immovable property on behalf of the firm,

(g) transfer immovable property belonging to the firm, or

(h) enter into partnership on behalf of the firm.

Sections 22 and 25 of the Act also provide as to how the firm is bound by an act of a partner. For the convenience Sections 22 and 25 of the Act

are being quoted below:

22. Mode of doing act to bind firm.-- In order to bind a firm, an act or instrument, done or executed by a partner or other person on behalf of the

firm, shall be done or executed in the firm-name, or in any other manner expressing or implying an intention to bind the firm.

25. Liability of a partner for acts of the firm.--Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm

done while he is a partner.

The aforesaid provisions go to indicate that an act of a partner binds other partners severally or jointly for all acts of the firm. Specifically in the

facts of this case, when one writ petition was filed by Hemlata Agarwal as a partner of the petitioner No. 1, then petitioner No. 2, Kishori Devi is

estopped to file subsequent writ petition seeking the same reliefs as have been sought by Hemlata Agarwal. Kishori Devi and Hemlata Agarwal

happen to be the mother and daughter therefore, it is incomprehensible to presume that Kishori Devi, petitioner No. 2 was having no knowledge of

filing of writ petition at Allahabad by Smt. Hemlata Agarwal, her daughter.

Further, it is to be noted that in the present petition, no mention has been made about the filing of the writ petition at Allahabad, so the petitioners

are also responsible for concealment of facts and during the pendency of the first writ petition, Chapter XXII Rule 7 of the Rules of the Court

provides that no second writ petition would be maintainable for the same cause of action. If the petitioner No. 2 has concealed the fact of filing of

the writ petition at Allahabad by the other alleged partner,. Hemlata Agarwal, then the writ petition filed by petitioner No. 2 is liable to be

dismissed on this score alone.

6. The Apex Court while dealing with the said controversy held in the following cases as under:

In Prestige Lights Ltd. Vs. State Bank of India, the Apex Court held that in exercising power under Article 226 of the Constitution of India, the

High Court is not just a Court of law, but is also a Court of equity and a person who invokes the High Court''s jurisdiction under Article 226 of the

Constitution is duty bound to place all the facts before the Court without any reservation. If there is suppression of material facts or twisted facts

have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under Article 226 of the Constitution. The

Apex Court referred to the judgment of Scrutton, LJ. in R v. Kensington Income Tax Commissioners, and observed:

In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking

such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise-guilty of misleading the Court, then the

Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous

litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct

facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ Courts would become

impossible.

In the case of Welcom Hotel and Others Vs. State of Andhra Pradesh and Others, the Apex Court has held that a party which has misled the

Court in passing an order in its favour is not entitled to be heard on the merits of the case.

In the case of K.D. Sharma v. Steel Authority of India Ltd. and others, the Apex Court has held that the jurisdiction of the Supreme Court under

Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the

petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing

anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the

Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in G. Jayashree and

Others Vs. Bhagwandas S. Patel and Others,

7. In the case of Dalip Singh Vs. State of U.P. and Others, , the Apex Court has held that the making of patently false statement on oath by the

appellant tenure-holders is amazing. The appellants efforts to mislead the authorities and the Courts got transmitted through three generations and

the conduct of the appellant and his son to mislead the High Court and the Supreme Court cannot, but treated as reprehensible.

8. The Apex Court in the case of Kishore Samrite Vs. State of U.P. and Others, , while dealing with the controversy in regard to abuse of process

of the Court, concealment of facts and clean hands, by referring catena of decisions strongly deprecated the said practice by the litigants held as

under:

29. Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011 are guilty of

suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the

facts and circumstances of the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater

precision. The cases of abuse of the process of Court and such allied matters have been arising before the Courts consistently. This Court has had

many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while

approaching the Court for redressal of any grievance and the consequences of abuse of the process of Court. We may recapitulate and state some

of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These

are:

(i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full

disclosure of facts and came to the Courts with "unclean hands". Courts have held that such litigants are neither entitled to be heard on the merits

of the case nor entitled to any relief.

(ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the Court that they would state the whole

case fully and fairly to the Court and where the litigant has broken such faith, the discretion of the Court can not be exercised in favour of such a

litigant.

(iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

(iv) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent

and suppress facts in the Court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values

for small gains.

(v) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief,

interim or final.

(vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the Court, it would be justified even in

insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

(vii) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The

stream of justice should not be allowed to be polluted by unscrupulous litigants.

(vii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of Court and ordinarily meddlesome

bystanders should not be granted ""visa"". Many societal pollutants create new problems of unredressed grievances and the Court should endure to

take cases where the justice of the lis well-justifies it.

[Refer: Dalip Singh Vs. State of U.P. and Others, Amar Singh Vs. Union of India (UOI) and Others, and State of Uttaranchal Vs. Balwant Singh

Chaufal and Others,

30. Access jurisprudence requires Courts to deal with the legitimate litigation whatever be its form but decline to exercise jurisdiction, if such

litigation is an abuse of the process of the Court. In P.S.R. Sadhanantham Vs. Arunachalam and Another, the Court held:

15. The crucial significance of access jurisprudence has been best expressed by Cappelletti:

The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since,

clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover,

is best assured be a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic

requirement the most basic ""human-right" of a system which purports to guarantee legal rights.

16. We are thus satisfied that the bogey of busybodies blackmailing adversaries through frivolous invocation of Article 136 is chimerical. Access to

justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action, probono

proceedings, are. We cannot dwell in the home of processual obsolescence when our Constitution highlights social justice as a goal. We hold that

there is no merit in the contentions of the writ petitioner and dismiss the petition.

31. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and

arguments of the parties, as truth is the basis of the Justice Delivery System.

32. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but

that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end

of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings

and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the Courts to

pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the Courts to ward off unjustified

interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt

with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims

and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass

the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result

of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

33. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the

stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the

Court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of

such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the Court and such a litigant is not

required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to

abuse of the process of the Court. A litigant is bound to make ""full and true disclosure of facts"". (Refer: Tilokchand and Motichand and Others Vs.

H.B. Munshi and Another, A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by

Its President etc., ; Chandra Shashi v. Anil Kumar Verma, (1995) SCC 1 421; Abhyudya Sanstha Vs. Union of India (UOI) and Others, ;

Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another, ; Kalyaneshwari Vs. Union of India (UOI) and Others,

34. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-

fundamentals of judicious litigation. The legal maxim jure naturae aequam est neminem cum alterius detrimento etinjuria fieri locupletiorem, which

means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the

Court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the

litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach

the Court with clean hands.

35. No litigant can play ''hide and seek'' with the Courts or adopt ''pick and choose''. True facts ought to be disclosed as the Court knows law, but

not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the Court with soiled hands. Suppression or

concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge

rule nisi and such applicant is required to be dealt with for contempt of Court for abusing the process of the Court. K.D. Sharma Vs. Steel

Authority of India Ltd. and Others,

36. Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous

petitions. No litigant has a right to unlimited drought upon the Court time and public money in order to get his affairs settled in the manner as he

wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. Dr. Buddhi Kota Subbarao Vs.

K.Parasaran and others,

37. In light of these settled principles, if we examine the facts of the present case, next friends in both the petitions are guilty of suppressing material

facts, approaching the Court with unclean hands, filing petitions with ulterior motive and finally for abusing the process of the Court.

9. The comparison of list of dates and events of both writ petitions are verbatim if the same is compared and it is a sufficient proof of the fact that

petitioner No. 2 was aware of the earlier writ petition filed at Allahabad at the time of filing of this petition. Even the typographical errors in the

earlier writ petition have been repeated in the present petition, namely, Suit No. 75A of 1987 has wrongly been shown as Suit No. 74A in both the

lists of dates and events. Smt. Hemlata Agarwal petitioner at Allahabad has also been referred to as petitioner in this writ petition. In this petition,

list of dates dated 7.8.2003 and last week of August 2003 are relevant to prove the aforesaid fact. Therefore, this writ petition is liable to be

(dismissed on this score alone in view of the judgments rendered by the Apex Court in the cases of S.P. Chengalvaraya Naidu (dead) by L.Rs.

Vs. Jagannath (dead) by L.Rs. and others, and Ram Chandra Singh Vs. Savitri Devi and Others,

10. Hemalata Agarwal and Kishori Devi are pleading the same interest and both the petitions have been filed for and on behalf of the firm. Both the

persons are partners and agents of the firm and the act of one partner binds the others and the firm. The entire pairvi in the case is being done by

Smt. Hemlata Agarwal including the presentation of Form-VII and objection on 19.7.2003, detailed reply on 4.9.2003, review application on

20.10.2003, another application by Hemlata Agarwal on 2.12.2003, application for recall of the order dated 3.12.2003 and ultimately the order

passed by the Registrar dated 30.12.2003 restraining Hemlata Agarwal from representing the firm or have any correspondence on behalf of the

firm. Thereafter, Hemlata Agarwal filed C.M.W.P. No. 9099 of 2004 at Allahabad. Therefore, filing the present writ petition is sheer abuse of

process of the Court at the instance of petitioner No. 2, Kishori Devi, who has abused the process of the Court by not disclosing the fact that

earlier writ petition was pending at Allahabad and having failed to obtain any interim order, the second writ petition was preferred before this

Court. No application for recall of the order dated 28.2.2008 has been moved at Allahabad and neither the said writ petition has been restored,

meaning thereby that the said dismissal has become final and during the pendency of the said writ petition, the present writ petition has been filed

concealing the aforesaid fact.

11. Now, the question which arises for consideration is as to whether petitioner No. 2, Kishori Devi can maintain the present writ petition. Chapter

XXII Rule 7 of the Rules of the Court provides that second writ petition for the same of cause of action would not be maintainable. Apart from it,

if the fraud has been practiced upon the Court and there has been material concealment then also the writ petition would not be maintainable. The

law in this regard has been settled by this Apex Court in the case of Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P.,

Gwalior and Others, In paragraph 9 of the judgment, the Apex Court held as under:

9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the

Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point

the decision in Daryao and Others Vs. The State of U.P. and Others, is of no assistance. But we are of the view that the principle underlying Rule

1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the

ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting

tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court

under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ

petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to

res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of

the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in

holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been

withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered

as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of

habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different

footing altogether. We, however leave this question open.

12. In the case of Mahendra and Others Vs. State of Uttaranchal and Another, the Apex Court while considering the said issue issued guidelines

to the High Court to make provision in the relevant rules. In para 9 of the judgment, the Apex Court held as under:

9. Before we part with the case, it has to be noted that several instances have come to our notice that several writ petitions of similar nature are

being filed without disclosing that earlier a petition had been filed. It would be therefore appropriate for the High Courts to make provision in the

relevant rules that in every petition it shall be clearly stated as to whether any earlier petition had been filed and/or is pending in respect of the same

cause of action. It shall also be indicated as to what was the result of the earlier petition. If this procedure is followed, the confusion of the kind

which has surfaced in this case can be ruled out.

Similar controversy has also been decided by the Apex Court in the following cases:

MSM Sharma v. Shree Krishna Sinha, AIR 1960 SC 1136,

Manubhai J Patel v. Bank of Baroda, 2000(10) SCC 253,

Union of India (UOI) and Others Vs. Ranbir Singh Rathaur and Others etc. etc.,

Ishwar Dutt Vs. Land Acquisition Collector and Another,

Considering the proposition of law propounded by the Apex Court in the aforesaid cases, I hold that the present writ petition filed by petitioner

No. 2, Kishori Devi for quashing of the orders dated 8.9.2003, 3.12.2003 and 7.1.2004 is not maintainable and is liable to be dismissed.

13. Now, I take up the arguments advanced by the counsel for the petitioners.

The arguments advanced by the counsel for the petitioners is that the parties would be put to their original position and all the pending Civil Suits

will stand revived after the judgment of the Apex Court dated 7.7.2003.

The present dispute arose as a consequence of disclosure of the partnership on the basis of the partnership-deed dated 2.2.1990 and the fresh

partnership-deed 12.9.1995 inducting three new partners, namely Kishori Devi, Hemlata Agarwal and Anil Kaushik. The disclosure came as a

surprise to Mahesh Prasad Agarwal, who disclosed in his application that knowledge was gained by him when a press conference was held by

Hemlata Agarwal on 8.7.2003 asserting therein that she alongwith Smt. Kishori Devi, Anil Kaushik are the partners of the firm. In pursuance to the

said press conference, a news was published in the daily newspapers on 9.7.2003 and an information was also sent by Smt. Hemlata Agarwal to

the District Magistrates Bhopal, Indore and Gwalior in this regard. Upon publication of the said news item, Mahesh Prasad Agarwal came to

know about the aforesaid fact and he immediately moved an application for inspection of records on 10.7.2003 and obtained the copies of the

necessary documents and thereafter preferred an application/objection on 17.7.2003. Before the aforesaid date i.e. 8.7.2003, it was never

disclosed nor made public nor Hemlata Agarwal asserted anything in respect of partnership before any Court of law or before any authority. The

matter was pending in the Apex Court as the SLP was filed in the Apex Court against the judgment of the Jabalpur High Court, by means of which

the writ petition filed by Bishambhar Dayal Agarwal was decided in terms of compromise in which Ramesh Chandra Agarwal and Mahesh Prasad

Agarwal agreed to the terms of the compromise Against the said decision, a review petition was filed by the Dwarika Prasad Agarwal, which too

was dismissed. Thereafter, the said compromise was challenged by Dwarika Prasad Agarwal before the Apex Court and the compromise entered

into between the parties to the exclusion of Dwarika Prasad Agarwal was set aside by the Apex Court and a direction was issued by the Apex

Court that the parties shall be relegated to the same position in which they were immediately prior to the passing of the order dated 29.6.1992.

The Apex Court further held that all the actions taken and all orders passed by the statutory authorities and civil authorities as referred to herein

above shall also stand quashed. This direction of the Apex Court itself is sufficient to presume that the entry of 2.3.1996 automatically came to an

end.

14. If the argument of counsel for the petitioners is accepted that everything has been done in violation of order of the Apex Court dated 7.7.2003,

then it has to be seen as to what was the direction of the Apex Court and what was the controversy before the Apex Court. The controversy in

regard to induction and partnership-deed was never before the Apex Court and neither any argument was advanced before the Apex Court in this

respect. The simple controversy before the Apex Court was as to whether a compromise could have been entered between the other partners to

the exclusion of Dwarika Prasad Agarwal. The said compromise was found to be an illegal compromise as the interest of Dwarika Prasad Agarwal

has been by passed and he has not been able to represent his case and neither he was made party to the compromise.

15. It is to be noted that during the pendency of Civil Appeal No. 4783 of 1993 alongwith Writ Petition (C) No. 527 of 1993, Dwarika Prasad

Agarwal expired on 20.7.1993 and applications were moved by both the wives of Dwarika Prasad Agarwal for substitution of their names in place

of the deceased. Kasturi Devi pressed upon the application and upon consideration of the matter, the Apex Court directed Kasturi Devi to be

impleaded as respondent in the proceedings, whereas the Kishori Devi and her daughters Hemlata Agarwal and Anuradha were directed to be

substituted in place of late Dwarika Prasad Agarwal though an observation was made in the said order that the said question shall be finally

decided at the time of hearing. The Apex Court though observed that a counter-affidavit was filed by Ramesh Chandra Agarwal, in which it has

been alleged that Kishori Devi happens to be the concubine of Dwarika Prasad Agarwal, but looking to the entire nature of the proceedings and

the controversy involved, Kishori Devi alongwith her daughters Hemlata Agarwal and Anuradha were allowed to be substituted.

16. Now, the question arises as to what is the legal status of Kishori Devi when she happens to the second wife of Dwarika Prasad Agarwal.

Counsel for the opposite party No. 5 has placed on record a copy of the SLP to show the status of Kishori Devi. In Writ Petition (Civil) No. 527

of 1993, Mahesh Prasad Agarwal through counter-affidavit filed a copy of the affidavit sworn by one Devidayal alias Kallu S/o Late Shri Mohanlal

by way of Document No. 16 dated 23.3.2003. The said affidavit was sworn by Devidayal alias Kallu, brother of Ramratan and in para five of the

affidavit it has been specifically stated that Smt. Kassa alias Kishori Devi wife of Ramratan lived in the family of deponent till the year 1958 and left

the house in the year 1958 without any intimation or information to any of the members of family. My brother Ramratan lodged a complaint in

Police Station, Konch that Smt. Kassa alias Kishori Devi has been forcibly taken away from the house by Dwarika Prasad Agarwal,

Ramswaroop, Matadin, Puttanlal and Brijandi. On the basis of this, police lodged an FIR under Sections 366, 376 and 352 IPC and a criminal

case bearing No. 185 of 1958 was filed in the Court of Special Magistrate, Konch where Smt. Kassa alias Kishori Devi asserted to live with

Dwarika Prasad Agarwal on her own will and on the basis of said statement, the case was dismissed on 25.8.1958. The aforesaid document filed

in the aforesaid petition goes to indicate that Kishori Devi happens to be the second wife of Dwarika Prasad Agarwal during the life time of his first

wife. Therefore, Smt. Kishori Devi cannot claim herself to be the legally wedded wife of Dwarika Prasad Agarwal as at the relevant time i.e. in the

year 1958 Hindu Marriage Act has come into force.

17. Sections 11 and 17 of the Hindu Marriage Act deal with the void marriages, which states that any marriage solemnized after the

commencement of this Act shall be null & void and may, on a petition presented by either party thereto against the other party, be so declared by a

decree of nullity if it contravenes any one of the conditions specified in clauses (1), (iv) and (v) of Section 5.

18. Section 5 of the Hindu Marriage Act deals with the conditions for a Hindu marriage, which reads as under:

5. Conditions for a Hindu marriage.--A marriage may solemnize between any two Hindus, if the following conditions are fulfilled, namely:

(I) neither party has a spouse living at the time of the marriage.

It is to be noted that at the time of elopement of Kishori Devi, first wife of Darika Prasad Agarwal i.e. Kasturi Devi was alive. It has not come in

evidence nor it has been proved that Kishori Devi was ever married to Dwarika Prasad Agarwal. In absence of any evidence of marriage and that

too during the time first wife of Dwarika Prasad Agarwal was alive, the marriage as claimed by Kishori Devi would be a nullity in view of the

provisions contained in Section 11 of the Hindu Marriage Act. Further, it is noted that Kishori Devi has not sought any divorce from her earlier

husband and the criminal case lodged from the side of the husband was dismissed on the basis of statement given by Kishori Devi before the

Magistrate concerned, but she has not been conferred any status of legally wedded wife and, therefore, the claim raised by Kishori Devi as a wife,

is belied and is not substantiated under law. In view of the provisions contained in Section 11 of the Hindu Marriage Act, living together would be

a void marriage, as claimed by Kishori Devi and neither any evidence has been placed on record to show as to in what manner Kishori Devi

happens to be the legally wedded wife of Dwarika Prasad Agarwal during the period first wife was alive at the time of elopement and uptil now.

Thus, marriage of Kishori Devi cannot be said to be a valid marriage in view of the rigger placed in Section 11 of the Hindu Marriage Act, which

contemplates marriage to be void if there is violation of any condition specified in clauses (1), (iv) and (v) of Sections 5 of the Hindu Marriage Act.

The case of Kishori Devi is covered under clause (1) of Section 5 of the Hindu Marriage Act. Therefore, in the opinion of the Court, Kishori Devi

cannot claim any right as she cannot be termed to be a legally wedded wife and by virtue of that partner of the firm.

19. But so far the legitimacy of the children Smt. Hemlata Agarwal and Anuradha is concerned, it is not in dispute and neither it has been denied

that they have not born of the wedlock of Dwarika Prasad Agarwal and Kishori Devi. Section 16 of the Hindu Marriage Act stipulates that such a

child, who is born after the second marriage has got right in respect of the property of his/her parents, may be that Kishori Devi is not entitled to

any right as the partnership-deed dated 10.4.1972 stipulates that legal heirs will be inducted as partners. In absence of any evidence to the

contrary brought on record by the petitioner No. 2, the legitimacy of marriage of Kasturi Devi cannot be accepted on the basis of the admitted

facts of the present case.

Clause (12) of the partition deed dated 10.4.1972 provides that upon the death of any of the partner firm shall not dissolve ipso facto. It shall be

continued by the remaining partners with his legal heir or heirs of the deceased partner and the share of the deceased partner shall be given to his

legal heirs. If the legal heir or heirs of the deceased partner do not join the firm or if they are physically or mentally unfit to be taken as partner or

partners of the firm, then the share of the deceased partner shall be divided among the remaining partners in proportion to their shares existing at

that time.

20. The said provision in the partition deed itself goes to indicate that Hemlata Agarwal and Anuradha in view of the provisions contained u/s 16 of

the Marriage Act can claim their right to be partners of the firm, but by a valid process as contemplated under law and they cannot be excluded

from the firm unless and until they refuse. The question still remains to be considered as to what was decided by the Apex Court and what was the

dispute before the Apex Court and whether the action of the Registrar can be said to be an illegal action in view of the judgment of the Apex Court

dated 7.7.2003 as it was not brought to the notice of the Registrar by Mahesh Prasad Agarwal when complaint was moved by him on 17.7.2003.

The controversy before the Apex Court was never in respect of Form-VII and induction of the new partners in the firm and neither Dwarika

Prasad Agarwal disclosed anything in regard to the deed dated 2.2.1990 when he moved a review petition before the Jabalpur High Court. He

even did not disclose anything about the said deed dated 2.2.1990 before the Apex Court till he was alive and even after his death, when Kishori

Devi and Hemlata Agarwal were substituted, they also did not bring on record anything to say that there has been a major change in the

constitution of the firm and they are the partners of the firm, therefore, they have every right to contest the proceedings instead of being substituted

as heirs of Dwarika Prasad Agarwal. But that is not the end of the matter. The Apex Court did not grant any interim order against the judgment of

the Jabalpur High Court and only stayed the transfer of the property. This itself goes to indicate that the firm stood dissolved by the judgment of the

Jabalpur High Court. Now, when the firm stood dissolved, then how and in what manner the fresh partnership-deed dated 12.9.1995 could have

been prepared and submitted and on that basis Form-VII could have been accepted on 2.3.1996 as no induction was possible in a dissolved firm.

The firm has revived only after the judgment of the Apex Court i.e. 7.7.2003 as prior to the judgment, the firm was not in existence. The conduct

of the petitioner No. 2 itself goes to indicate that she has acted in a surreptitious manner. Whether the deed dated 2.2.1990 could have been

entered with Hemlata Agarwal, Kishori Devi and Anil Kaushik by Dwarika Prasad Agarwal without the consent of other partners. For this

purpose, one has to advert to the provisions of the Indian Partnership Act and also the provisions of clause (8) and (9) of the partnership-deed

dated 10.4.1972. Clause (8) of the partnership-deed dated 10.4.1972 says that the partnership-deed is at will. No period is fixed for the

partnership business. It shall be continued as long as there is good-will and mutual confidence among the partners, whereas clause (9) says that no

partner shall be entitled to press for the dissolution of the firm. If at any time any partner shall desire to retire from the partnership business then he

shall be allowed to withdraw his capital and the accumulated profit, if any with the firm but he shall not be entitled to any compensation for the

good-will of the partnership business.

21. The procedure for retirement of a partner is prescribed u/s 32 of the Act, which reads as under:

32. Retirement of a partner.--(1) A partner may retire-

(a) with a consent of all the partners,

(b) in accordance with an express agreement by the partners, or

(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

In the present case, clause (c) is applicable because the partnership-deed provides that the partnership is at will. If the partnership is at will, then a

notice of his intention to retire is to be given to all the remaining partners.

22. An argument has been raised by the learned counsel for the petitioners that Mahesh Prasad Agarwal served a notice for dissolution of the firm

on 25.11.1987 indicating therein that the partnership is at will and he has decided to dissolve the firm w.e.f. 25.11.1987. Therefore, the argument

is that by virtue of the said notice, Mahesh Prasad Agarwal stood retired from the firm.

23. Whether a notice for dissolution can amount to a notice for retirement. Section 43 of the Act provides that where the partnership is at will, the

firm can be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

If the argument of the counsel for the petitioners is accepted, then the firm stood dissolved with the said letter as clause (9) of the partnership-deed

dated 10.4.1972 provides that the partnership is at will, but one of the conditions stipulated in Section 43 of the Act is that notice has to be given in

writing to all the other partners. The aforesaid notice itself, on the face of it, is a notice for dissolution according to the language used in it and it is

not a notice for retirement. Therefore, argument of the counsel for the petitioners that Mahesh Prasad Agarwal stood retired by virtue of

letter/notice dated 25.11.1987 cannot be accepted. Clause (9) of the partnership-deed dated 10.4.1972 further stipulates that no partner shall be

entitled to press for the dissolution of the firm. If at any time any partner shall desire to retire from the partnership business then he shall be allowed

to withdraw his capital and the accumulated profit, if any with the firm but he shall not be entitled to any compensation for the good-will of the

partnership business. For ready reference, clause (9) of the partnership-deed dated 10.4.1972 is quoted as under:

9. That no partner shall be entitle to press or the dissolution of the firm. If at any time any partner shall desire to retire from the partnership business

then he shall be allowed to withdraw his capital and the accumulated profit, if any with the firm but he shall not be entitled to any compensation for

the good-will of the partnership business.

24. The specific stipulation contained in the partnership-deed does not empower any of the partners to dissolve the firm and they have got only

right to retire from the firm. Therefore, argument of the counsel for the petitioners that Mahesh Prasad Agarwal stood retired from the firm by

virtue of the aforesaid notice, cannot be accepted as the procedure for retirement from the firm has been provided u/s 32 of the Act as indicted

herein above. From the record, it is evident that no notice was given by Mahesh Prasad Agarwal of his intention to retire to all the partners, but

only a notice was given in respect of dissolution of the firm. If there is no intention of retirement nor any whisper in that regard except mentioning

about the dissolution of the firm, then on the basis of the said notice Mahesh Prasad Agarwal cannot be deemed to be a retired partner and neither

there was any consent of all the partners nor there was any express agreement by the partners, as provided for retirement in the partnership-deed

dated 10.4.1972. If a provision has been made for retirement, then the process as contemplated u/s 32 of the Act for retirement has to be

followed. The agreement in the partnership-deed is only permitting for retirement of a partner from the partnership business. Since the partnership

is at will, therefore, a notice in writing to all the partners of his intention to retire is a condition precedent, but here in the present case, there was no

notice, but there was only a notice for dissolution of the firm. In view of the aforesaid legal position, the argument of counsel for the petitioners

cannot be accepted and it is held that Mahesh Prasad Agarwal never stood retired from the firm. The reply to the notice dated 25.11.1987 was

given on 11.12.1987 by Bishambhar Dayal Agarwal and in the said reply, it was stated that his notice for dissolution will be treated as notice of

retirement and he shall be deemed to have retired from the firm, but by way of reply nothing could have been imposed upon Mahesh Prasad

Agarwal as his request to retire cannot be fastened upon by Bishambhar Dayal Agarwal except that the request has to be made voluntarily with

free-will to retire. Therefore, the argument of the petitioners cannot be accepted in view of the above legal position. In January, 1990 Bishambhar

Dayal Agarwal issued a notice to Dwarika Prasad Agarwal expressing his desire to retire from the firm, but this notice was only given to Dwarika

Prasad Agarwal and it was, never given to other partners. Sub-section (1)(c) of the Section 32 of the Act Provides that if the partnership is at will,

notice has to be given in writing to all the other partners of his intention to retire or with the consent of all the other partners as contemplated in sub-

section (1)(a) of the Section 32 of the Act. Since the deed is silent in respect of procedure of retirement as observed above, therefore, the

retirement procedure as prescribed u/s 32 of the Act has to be adhered to. Since in the case in hand, notice was only given to Dwarika Prasad

Agarwal though it was necessary that notice ought to have given to all the partners of his intention to retire. Therefore, the argument of the counsel

for the petitioners that Bishambhar Dayal Agarwal stood retired from the firm on the basis of the aforesaid notice does not find support from the

partnership-deed as well as the provisions of the Act, as such, Bishambhar Dayal Agarwal continued to be a partner of the firm.

25. It is to be noted that Dwarika Prasad Agarwal never communicated to Bishambhar Dayal Agarwal and other partners at any point of time that

they stood retired from the partnership firm and consequently a change was sought in Form-VII with the Registrar, Firms, Societies and Chits. This

conduct of Dwarika Prasad Agarwal and other partners itself goes to indicate that both of them have continuously been treated as partners of the

firm. It appears that there was some misunderstanding between them, as such certain letters were written, but they were not acted upon and

ultimately those letters were dropped with the understanding of the partners.

26. The next question arises in regard to induction of Kishori Devi, Hemlata Agarwal and Anil Kaushik as partners of the firm by means of

partnership-deed dated 2.2.1990. It is stated on behalf of the petitioners that the aforesaid partners were inducted by Dwarika Prasad Agarwal as

the deed dated 2.2.1990 itself says that other partners parted their ways suiting their convenience without caring about their duties and obligations

to the Firm which gave rise to multiplicity of litigations leaving behind Shri D.P. Agarwal alone. But it has not been stated in the aforesaid deed by

Dwarika Prasad Agarwal that other persons have retired or they have been ousted from the firm and an impression has been given that they have

parted their ways suiting to their convenience. If there was any retirement, then the same could have been specifically mentioned in this deed, but

there is not a single whisper in this deed about the retirement of the Bishambhar Dayal Agarwal and Mahesh Prasad Agarwal. Nothing has been

said about the retirement of Ramesh Chandra Agarwal except for the aforesaid reason. What does the phrase ""parted with their ways"" means and

whether it can be termed as retirement from the firm. Obviously, the answer would be in negative as on the basis of the aforesaid phrase, it cannot

be presumed that other three partners stood retired. If the other three partners were continuing, except retirement no other intention can be inferred

from the partnership-deed dated 2.2.1990. The procedure for retirement of a partner was never given effect to and neither on the basis of the said

procedure, any retirement took place. There was no consent of all the partners to retire from the firm. The ex parte assumption drawn by Dwarika

Prasad Agarwal that they have retired from the firm, cannot be legally accepted and that too with a view to create a new partnership with certain

new partners.

27. For induction of a partner, the procedure has been provided u/s 31 of the Act which provides that subject to contract between the partners

and to the provisions of Section 30, no person shall be introduced as partner into a firm without the consent of all the existing partners. Therefore,

the essential requirement u/s 31 of the Act is that consent of all the existing partners is a condition precedent for induction of any partner into the

firm. Since there was no consent of other three existing partners for induction of Kishori Devi, Hemlata Agarwal, Anil Kaushik as Bishambhar

Dayal Agarwal by means of letter dated January, 1990 has agreed for induction of Hemlata Agarwal only as a partner, but his consent will not

alone be the consent of all the existing partners, which is necessary for admitting a partner in the firm. Ramesh Chandra Agarwal as well as Mahesh

Prasad Agarwal have never consented for induction of Kishori Devi, Hemlata Agarwal and Anil Kaushik as partners in the firm. Therefore, the

statutory requirement as contemplated u/s 31 of the Act for induction of a new partner was not completed and neither fulfilled. The ex parte

induction of certain new partners by means of deed dated 2.2.1990 without the consent of other existing partners would be a nullity in the eye of

law and neither the same can be termed to be a valid exercise under law nor on the basis of the said deed Kishori Devi, Hemlata Agarwal and Anil

Kaushik can be termed to be valid partners of the firm.

28. A Division Bench of the Madras High Court in the case of Meenakshi Achi and Another Vs. P.S.M. Subramanian Chettiar and Others, while

dealing with the controversy in regard to requirement of consent of all partners for induction of a new partner held as under:

In the absence of a contract to the contrary, no person shall be introduced as a new partner into a firm without the consent of all the existing

partners: see Section 31(1). The general idea is that the consent of all the existing partners is required to the introduction of a new partner so that

the firm may work harmoniously. Lindley, pp 435-436; Love-grove v. Nelson, (1834) 1 My & K 1(20) Byrne v. Reid. (1902) 2 Ch. 735.

Now, on the basis of the deed dated 2.2.1990 the induction in pursuance thereof being not valid, then whether the aforesaid newly inducted

persons can themselves claim to be partners of the firm. The partnership-deed dated 2.2.1990 was never brought to light at any point of time till

Dwarika Prasad Agarwal was alive and after his death on 20.7.1993 a fresh deed is alleged to have been entered between three persons, namely,

Kishori Devi, Hemlata Agarwal and Anil Kaushik on 12.9.1995. In the said deed, it has been simply said that Dwarika Prasad Agarwal had

expired and he is no more a partner with the firm and, therefore, the First, Second & Third part of the Firm represented by or survived agree to

run the business of the aforesaid Firm. Clause (7) of the said deed provides that the terms and conditions of the partnership business as well as the

conditions relating to the relations of the partners not provided for herein above and not repugnant, hereto shall be the same as are spelled in the

partnership-deed dated 10th of April, 1972 and IInd (2nd) of February 1990 pertaining to the partners thereof.

29. It is to be noted that when the induction of partners on the basis of partnership-deed dated 2.2.1990 has found to be an illegal induction as

held herein above, the subsequent deed dated 12.9.1995 cannot be termed to be a valid deed in the eye of law and neither the partnership-deed

entered at the behest of Kishori Devi, Hemlata Agarwal and Anil Kaushik cannot be said to be a deed conferring any right in favour of the

aforesaid persons. If the deed dated 10.4.1972 has been relied upon and the terms and conditions have been accepted, then as indicated

hereinabove, the induction of Kishori Devi, Hemlata Agarwal and Anil Kaushik itself is against law. Upon the death of Dwarika Prasad Agarwal if

a fresh deed has been executed without authority of law and the partners not vested with any right to enter into any agreement, the consequent

partnership-deed dated 12.9.1995 will confer no right in favour of the aforesaid three newly inducted partners. It was not the sweet will of

Dwarika Prasad Agarwal to induct any partner without the consent of all the other existing partners. No consent of any other partner has been

brought on record except the consent of Bishambhar Dayal Agarwal, who agreed for induction of Smt. Hemlata Agarwal only and no other

person, but his consent alone was altogether inconsequential and having no weight in the eye of law. On 12.9.1995 Form-VII was presented for

induction at the behest of Kishori Devi, Hemlata Agarwal and Anil Kaushik for reconstitution of the firm as contemplated u/s 63(1) of the Act and

the same was accepted on 2.3.1996 by the Assistant Registrar. Petitioner No. 2 has placed on record letters dated 10.2.1990 and on the basis of

the said letter it has been asserted by the counsel for the petitioners that change in the constitution of the Firm, Dwarika Prasad Agarwal and Bros,

was prayed for by Dwarika Prasad Agarwal. The aforesaid two letters of even date i.e. 10.2.1990 are alleged to be presented by Dwarika Prasad

Agarwal to the Registrar and to the Deputy Registrar, Firms and Societies, Jhansi regarding the change in the constitution of the Firm and both

have been written on the same day, but they are on different letter-heads and they have been signed differently by the same person. The change in

the constitution of the firm was pleaded by the petitioner No. 2 on the basis of these two letters. This Court vide order dated 15.2.2011 directed

the then Registrar Shri Arvind Narain Mishra to inquire about the genuineness of the copies of the letters dated 10.2.1990, partnership agreement

and Form-VII of 1996 filed by the petitioner No. 2 with the averment that these documents were duly filed with the Registrar earlier, but the same

are now missing from the office of the Society. In compliance of the order of this Court, Shir Arvind Narain Misra filed his affidavit on 14.3.2011,

in which he categorically stated that the signature shown on the certified copy of letter dated 10.2.1990 is forged and this document is not available

in the record of the office. It has also been stated that other documents relating to submission of Form-VII and correspondence relating to change

of address is also forged because the seal of society used on the certified copies is different than the one which was in vogue at the relevant time.

Date of issuance of the certified copy has been mentioned as 1.8.1996 and at the relevant time Sri Munni Lal was holding the post of Assistant

Registrar, Jhansi and he was asked by means of letter and a copy of the order was also sent to him to ascertain that as to whether the said copy

was a genuine copy or not, to which he categorically replied that it is not his signature and the signature is forged one. He further stated that in the

register which is meant for issuance of certified copy regarding Dwarika Prasad Agarwal and Brothers on 1.8.1996, certified copy of File No. I-

3147 had been issued of Form-I and in the remark column of the said register, he has made his signature and that is the correct signature. He sent

a letter to the Registrar on 10.3.2011 mentioning therein that the signature, which has been shown in the certified copy of 1.8.1996 is forged one.

The said documents dated 10.2.1990 were never presented in the office of the Deputy Registrar, Jhansi nor any certified copy in that regard was

issued to them. The petitioner No. 2 proceeded to set-up a claim on the basis of the certified copies of the aforesaid letters. Once the falsity of the

said copies is established, the grounds set-up by the petitioner No. 2 for change in the constitution of the Firm on the basis of the deed dated

2.2.1990 cannot be accepted. Even if for the sake of argument it is accepted that it was presented, then there was no consent of all the partners

and neither there were signatures of all the partners on the said deed. The claim of the petitioner No. 2 that the deed was presented and a change

in the constitution of the Firm was prayed for before the Registrar, is only baseless and without any substance and there is no document available

on record to support the contention of the petitioners. Hence the argument in this regard by the counsel for the petitioners is rejected.

30. Signatures of Dwarika Prasad Agarwal dated 30.6.1959 and 8.11.1976 on page numbers 477 and 479 of paper book on Form-I go to

indicate that signatures of Dwarika Prasad Agarwal are altogether different than the signatures appended on letters dated 10.2.1990, which have

been relied upon by the petitioner No. 2 filed by way of supplementary-affidavit to impress upon that information was given to the Registrar by

Dwarika Prasad Agarwal. Since Dwarika Prasad Agarwal had expired and the relevant documents submitted by Dwarika Prasad Agarwal have

been found to be missing from the record, therefore, an order for criminal prosecution is registered to be passed at the moment. However, this

Court declines to pass any such order as the Registrar has already passed an order to initiate proceedings u/s 70 of the Act against erring persons.

Smt. Hemlata Agarwal presented a notice in Form-VII for change in the constitution u/s 63(1) of the Act before the Registrar, Firms, Societies &

Chits, Jhansi on 12.9.1995 informing that one of the partners of the firm, namely, Dwarika Prasad Agarwal had expired on 20.7.1993 and by

another letter of the same date it was informed that on the basis of the partnership-deed dated 2.2.1990, Kishori Devi, Hemlata Agarwal and Anil

Kaushik have been inducted as partners and the remaining three partners, namely, Mahesh Prasad Agarwal, Bishambhar Dayal Agarwal and

Ramesh Chandra Agarwal have retired w.e.f. 1990. On the basis of the above two letters, Form-VII was submitted for change of partners and the

Assistant Registrar, Jhansi accepted the said change on 2.3.1996 in the constitution of the firm to the exclusion of Mahesh Prasad Agarwal,

Bishambhar Dayal Agarwal and Ramesh Chandra Agarwal.

31. Now the question which arises for consideration is as to what is the procedure provided for reconstitution of a firm as contemplated u/s 63 of

the Act.

Section 63(1) of the Act provides the procedure for recording of changes in and dissolution of a firm and Section 72 of the Act provides the

modes of giving public notice. For ready reference, the aforesaid two sections are quoted below:

63. Recording of changes in and dissolution of a firm.--(1) When a change occurs in the constitution of a registered firm any incoming, continuing

or outgoing partner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any

such partner or person specially authorised in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof,

and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice alongwith the

statement relating to the firm filed u/s 59.

72. Mode of giving public notice.--A public notice under this Act is given-

(a) where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to

become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership,

by notice to the Registrar of Firms u/s 63, and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the

district where the firm to which it relates has its place or principal place of business, and

(b) in any other case, by publication in the Official Gazette, and in at least one vernacular newspaper circulating in the district where the firm to

which it relates has its place or principal place of business.

Section 72 of the Act requires that where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a

registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a

minor to the benefits of partnership, by notice to the Registrar of Firms u/s 63, and by publication in the Official Gazette and in at least one

vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business and in any other case,

by publication in the Official Gazette, and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its

place or principal place of business. But no such procedure as contemplated u/s 72 of the Act was followed and only one portion of the

requirement was followed by giving a notice to the Registrar u/s 63 of the Act, but it was never followed by publication in any Official Gazette or in

any one vernacular newspaper of the district. The requirement of publication in Official Gazette is a mandatory requirement and if the same has not

been done, then the entire exercise will be invalid and illegal in view of the law settled by the Apex Court in the following cases:

Harla Vs. The State of Rajasthan,

State of Maharashtra Vs. Hans George,

B.K. Srinivasan and Others Vs. State of Karnataka and Others,

I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others,

T. Narasimhulu and Others Vs. State of A.P. and Others,

The Apex Court while considering the controversy in regard to mode of publication held in the following cases as under:

In the case of B.K. Srinivasan (supra) the Apex Court held as under:

But unlike Parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a

Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take

subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or

promulgation is prescribed by he parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent

statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate

legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does

not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only

when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication.

In the case of Bhadrachalam Paperboards (supra), the Apex Court while relying upon various cases held as under:

The above decisions of this Court make it clear that where the parent statute prescribes the mode of publication or promulgation that mode has to

be followed and that such a requirement is imperative and cannot be dispensed with.

In a recent judgment, the Apex Court in the case of T. Narasimhulu and others (supra) considered the controversy in regard to mode of

publication and while relying upon several cases held as under:

In Harla Vs. The State of Rajasthan, this Court held:

Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some civilized 11

way so that all men may know what it is or, at the very least, there must be some special rule or regulation or customary channel by or through

which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret

recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can

normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a Resolution without anything more is

abhorrent to 11 civilized man. It shocks his conscience. In the absence therefore of any law, rule, regulation or custom, we hold that a law cannot

come into being in this way. Promulgation or publication of some reasonable sort is essential.

State of Maharashtra Vs. Hans George, this Court held:

Where there is a statutory requirement as to the mode or form of publication and they are such that, in the circumstances, the Court holds to be

mandatory, a failure to comply with those requirements might result in there being no effective order the contravention of which could be the

subject of prosecution but where there is no statutory requirement we conceive the rule to be that it is necessary that it should be published in the

usual form i.e. by publication within the country in such media as generally adopted to notify to all the persons concerned the making of rules.

It will be clear from the law laid down by this Court that where the law prescribes the mode of publication of the law to become operative, the law

must be published in that mode only, but where the mode of publication of the law is not prescribed by the law, such law should be published in

some usual or recognized mode to bring it to the knowledge of all persons concerned. In the present case, the contention of the appellants before

the Tribunal or the High Court was not that the Government Order in G.O.Ms. Nos. 35 and 51 that the amendment to Rule 2 of the Forest

Service Rules would have retrospective effect from 8.4.1986 was never made known by any reasonable mode, but that it was not published in the

Official Gazette. This contention of the appellants, as we have seen, has no merit.

32. Apart from it, no amount of evidence has been brought on record to indicate that any publication was made at least in one vernacular

newspaper. The entire exercise was done in a concealed manner and the Registrar acted very hastily to the exclusion of the remaining partners to

induct Kishori Devi (petitioner No. 2), Hemlata Agarwal and Anil Kaushik as the partners of the firm upon the death of Dwarika Prasad Agarwal.

Notice u/s 63 of the Act and the exercise lying therein is subject to Section 72 of the Act. It is clear from the record, that the Registrar even did not

care to look whether the requirements of Sections 59 and 63 of the Act were complied or not. Section 59 of the Act says that when the Registrar

is satisfied that the provisions of Section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register

of Firms and shall file the statement. Requirement u/s 58 of the Act is that the statement shall be signed by all the partners, or by their agents

specially authorised in this behalf and each person signing the statement shall also verify it in the manner prescribed. Petitioner No. 2 and other two

partners presented Form-VII as if there was no other existing partner except Dwarika Prasad Agarwal, who had expired and on that basis

fraudulently got their name registered in Form-VII and no signatures of other partners of the firm were obtained. Even the signatures of other

existing partners of the firm as relied upon by Hemlata Agarwal were also not there and only Hemlata Agarwal has singed on Form-VII. The said

entry, therefore, was not an entry in accordance with law and has been made without any notice to Mahesh Prasad Agarwal, Bishambhar Dayal

Agarwal and Ramesh Chandra Agarwal. Thus, such entry cannot be termed to-be a valid entry in the eye of law in Form-VII and rather it can be

termed to be a fraudulent exercise on the part of the Deputy Registrar in allowing the said entry to be incorporated. The Deputy Registrar was

required to look into the same.

33. Section 64 of the Act provides for rectification of mistakes and when an application is made to the Registrar, then he shall have all the powers

to rectify the same in order to bring the entry in the register of Firms relating to any firm into conformity with the documents relating to that firm filed

under this Chapter. For sake of convenience, Section 64 of the Act is quoted below:

64. Rectification of mistakes.--(1) The Registrar shall have power at all times to rectify any mistake in order to bring the entry in the register of

Firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter.

The aforesaid provision goes to indicate that the Registrar has power at all times to rectify any mistake in order to bring the entry in the register of

Firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter. Section 64 of the Act has to be read

alongwith Rule 7 of the U.P. Rules. For sake of convenience, Rule 7 of the U.P. Rules is quoted below:

7. Procedure to be adopted by the Registrar when dispute arises.--The Registrar may in his discretion institute such inquiries or make such

investigation in respect of any matter as may in his opinion be necessary for the proper performance of his duties and the administration of the Act,

in particular when a dispute arises amongst the several partners of a firm, the Registrar may in his discretion call upon any of the partners or all of

them to produce any original deed, document or such other evidence as he thinks fit in order to ascertain the rights of the respective parties.

Rule 7 of the U.P. Rules deals with the power of the Registrar when dispute arises amongst other partners of the firm, then he may call upon any of

the partners or all of them to produce any original deed, document or such other evidence as he thinks fit in order to ascertain the rights of the

respective parties. The Registrar received a compliant of Mahesh Prasad Agarwal on 17.7.2003, wherein he has stated that the entry in Form-VII

dated 2.3.1996 was made in a fraudulent manner and there was no consent of all the other partners except Dwarika Prasad Agarwal. He has also

stated that there were total four partners of the firm and the firm was registered on Form-I alongwith the signatures of all the four partners, namely,

Dwarika Prasad Agarwal, Bishambhar Dayal Agarwal, Mahesh Prasad Agarwal and Ramesh Chandra Agarwal, in which one of the partners,

namely, Dwarika Prasad Agarwal had expired on 20.7.1993 and Bishambhar Dayal Agarwal expired on 21.4.2001 and the remaining two living

partners at the moment are Mahesh Prasad Agarwal and Ramesh Chandra Agarwal. Smt. Hemlata Agarwal was never inducted as a partner in the

firm by all the partners and she has never claimed herself to be the partner of the firm. She submitted a notice in Form-VII u/s 63(1) of the Act in

which she claimed herself to be a newly inducted partner alongwith Kishori Devi and Anil Kaushik on the basis of alleged deed dated 2.2.1990

and in the said deed, Mahesh Prasad Agarwal and Bishambhar Dayal Agarwal and Ramesh Chandra Agarwal have been shown to have parted

their ways. Hemlata Agarwal submitted Form-VII on 12.9.1995 and on the same day, a fresh partnership-deed was entered into by Kishori Devi,

Hemlata Agarwal and Anil Kaushik showing as partners of the firm and the said change was made in Form-VII on 2.3.1996. He has further stated

that provisions of Section 32 of the Act have not been followed as the consent of all the three partners was required for induction of new partners

and if the partnership is at will, then notice was required to be given by retiring partners to all the other partners. Apart from it, no public notice was

given as provided u/s 72 of the Act and there was no publication in the Official Gazette and there was no publication in the newspapers and the

entry was made surreptitiously, fraudulently, therefore, the same was liable to be expunged. After the complaint was moved, it came to the

knowledge of Mahesh Prasad Agarwal that the registered office of the firm has been changed from Jhansi to Ghaziabad at the behest of Smt.

Hemlata Agarwal, who purportedly filed Form-VII before the Deputy Registrar, Jhansi for changing the registered office of the firm. It was also

prayed that change u/s 63 of the Act was fraudulent and in violation of provisions of Section 70 of Act, for which Hemlata Agarwal and others

were liable to be prosecuted. It was further prayed that suitable action be taken against Hemlata Agarwal and others for furnishing false

information. It has also been stated that as to how knowledge was gained by him and thereafter the complaint was moved on 18.7.2003. Hemlata

Agarwal moved an application for change of address on 4.7.2003 praying therein that the address of the firm may be changed from Jhansi to

Ghaziabad and gave information on Form-III for change of address from Jhansi to Ghaziabad endorsing therein all the partners of the firm have

agreed for change of address the firm, namely, Kishori Devi and Anil Kaushik. The said notice of Form-III was duly accepted by the Registrar on

10.7.2003 assuming that these were only three partners and they have consented for change of address. Mahesh Prasad Agarwal when came to

know about the change in address, moved an application for interim relief on 17.7.2003 to the Assistant Registrar, Jhansi, but as soon as he gained

knowledge regarding the transfer of the address from the office of Assistant Registrar, Jhansi, he filed an affidavit before the Deputy Registrar,

Meerut stating therein that forgery has been committed by Hemlata Agarwal by making change in Form-III. He has also stated that there were no

signatures on Form-III of old and new partners and she was also not a partner at the time of registration of the firm. There was no publication in

the newspapers nor other procedures were adopted and so the entry made in Form-III on 2.3.1996 may be cancelled. On the aforesaid affidavit,

the effect of the entry dated 2.3.1996 was stayed by the Deputy Registrar by means of order dated 19.7.2003 and a notice was issued to Hemlata

Agarwal for appearing before the Deputy Registrar, Meerut on 5.8.2003 alongwith relevant documents sought to be relied upon in her defence.

Since Hemlata Agarwal did not put in appearance nor did she file any objection, the next date was fixed as 7.8.2003 and notice was again issued

to Hemlata Agarwal for filing reply with supporting documents on the next date i.e. 18.8.2003. Hemlata Agarwal filed an application before the

Registrar, Firms, Socialites and Chits, Lucknow praying therein that the entire record may be summoned from Meerut to Lucknow and the case

may be heard by the Registrar himself and the order dated 19.7.2003 be kept in abeyance.

34. On the application of Hemlata Agarwal, the Registrar, Lucknow called for the record from the Deputy Registrar, Meerut on 18.7.2003 and on

4.9.2003 Hemlata Agarwal filed a detailed reply to the notice dated 19.7.2003. Considering the reply and the documents filed by Hemlata

Agarwal, Registrar, Lucknow dismissed the application of Hemlata Agarwal for vacating the interim order dated 19.7.2003 and it was further held

that the manner in which the partnership was made by way of Form-VII by Hemlata Agarwal was illegal and further directed for enquiry as to how

such a change could have been made in Form-VII in violation of statutory provisions. Against the order dated 8.9.2003, Hemlata Agarwal moved

an application for review of the said order, in which the order dated 8.9.2003 was stayed for a period of 45 days. Since during this period, serious

efforts were not made by the parties to get the proceedings expedited, therefore, interim order dated 19.7.2003 was vacated by sending notice to

Mahesh Prasad Agarwal on 3.12.2003 fixing 4.1.2004 for hearing. Hemlata Agarwal when came to know about the said vacation of the interim

order, she filed an application before the Registrar on 10.12.2003 for recalling the order dated 3.12.2003 to the extent of vacation of the interim

order. On 30.12.2003, the Registrar passed an order restraining the opposite parties not to do any correspondence on behalf of the firm, M/s.

Dwarika Prasad Agarwal & Bros. Thereafter, the Registrar proceeded to dismiss the review application moved by Hemlata Agarwal against the

order dated 8.9.2003 on 7.1.2004 with the further direction to initiate proceedings against Hemlata Agarwal and others u/s 70 of the Act for

fraudulently getting themselves inducted as partners in the firm. Thereafter, Hemlata Agarwal preferred C.M.W.P. No. 9099 of 2004 before this

Court at Allahabad challenging the aforesaid orders. Rest of the facts have already been stated in the earlier part of the judgment, therefore, it will

be only a repetition if the same are reiterated and further arguments are considered herein below.

35. An argument has been advanced with vehemence by the counsel for the petitioners that u/s 64 of the Act, only rectification is permissible and if

any dispute of serious nature arises, then it cannot be adjudicated upon and it is beyond the competence of the Registrar to adjudicate any serious

dispute arising between the partners and the remedy is only way of suit before the Civil Court.

36. In order to appreciate the aforesaid argument, I have indicated herein above that Section 64 of the Act has to be read alongwith Rule 7 of the

U.P. Rules and if both the provisions are read together, then it is incumbent upon the Registrar to see that entry in the Register of firms relating to

any firm is in conformity with the documents relating to that firm filed under that Chapter. If the said entry is not in accordance with the documents

relating to that firm filed under that Chapter, then the duty is cast upon the Registrar to rectify the aforesaid mistake and make the entry in

accordance with the documents of the firm. At the time of making entry in Form-VII on 2.3.1996, the Registrar never ensured that the said entry

was being affected in conformity with the documents relating to that firm. The deed dated 2.2.1990 was never placed before the Registrar. When

the notice for change of partners was given, a reference was made in respect of the partnership-deed dated 2.2.1990, but no such reference was

made in respect of the deed dated 12.9.1995 though Form-VII was presented on 12.9.1995 and the corresponding change was affected in Form-

VII on 2.3.1996. It appears that on the same day i.e. 12.9.1995 a fresh partnership-deed was entered into by the aforesaid three persons.

Therefore, argument of the counsel for the petitioners that the said Form-VII could not have been cancelled under the garb of rectification, cannot

be accepted as Form-VII was presented fraudulently on the basis of deed dated 2.2.1990. The deed dated 2.2.1990 was never brought on

record and the certified copy of letter dated 1.8.1996, regarding which an affidavit has also been filed by the then Registrar in pursuance to the

direction of this Court has been found to be forged and entry is in respect of Form-I in the dispatch register. Once the aforesaid copy has been

found to be forged one, the very basis for induction of new partners is belied from the record and appears to be a fraudulent exercise on the part

of the newly inducted partners, namely, Kishori Devi, Hemlata Agarwal and Anil Kaushik. Thus, it was incumbent upon the Registrar when an

application was moved u/s 64(1) of the Act to verify as to whether the entry made in the Register of Firms was in conformity with the documents

relating to that firm filed under that Chapter. The Registrar did nothing to make the entry in conformity with the documents of the firm. Rule 7 of the

U.P. Rules is very clear and specific in this regard and it casts a duty upon the Registrar to institute such inquiries or make such investigation in

respect of any matter for the proper performance and the administration of the Act and special care has been taken in the rules while using the

word ""in particular."" When a dispute arises amongst the several partners of a firm, then the Registrar in his discretion shall call upon any of the

partners or all of them to produce any original deed, document or such other evidence. The Registrar has called upon Hemlata Agarwal to produce

the original deed and other documents, who has claimed change in the constitution of the firm on the basis of Form-VII, but she could not justify

nor produce any document to substantiate her claim. Even if the argument of the counsel for the petitioners is accepted that there was a deed dated

2.2.1990, then immediate change ought to have been prayed for, which was never done. Entry in Form-VII ought to have been made in

accordance with the procedure prescribed u/s 63 of the Act and after following the provisions of Section 72 of the Act. Both the requirements

were given a go-by by the Registrar while passing the order dated 2.3.1996.

37. Counsel for the petitioners has placed reliance upon a judgment rendered by the Gujarat High Court in Special Civil Application No. 2847 of

2011, Supreme Tech Engineering through Partner Reji P. Mathew v. Registrar of Firms (Vadodara Circle) and 1 respondent, decided on

28.2.2012, to contend that the Registrar cannot adjudicate any dispute which arises among the partners of the firm.

In the aforesaid case, Hon''ble Single Judge has held that Rule 7 prevailing therein was only for the purposes of rectifying the mistake. While

rectifying the mistake, statute does not lay down any elaborate scope of enquiry which would render justification to exercise of enquiring the

disputed claims, as the administrative authority was not empowered to adjudicate the disputed claims. Further, it has been held that even if it is

assumed and presumed that authority is exercising quasi-judicial power, then also the said authority cannot be presumed to have the power to

adjudicate the disputes.

The particular facts of the said case were that the petitioner in that case was a partnership firm and all the partners were real brothers. It was stated

by the petitioner in the memo of writ petition that one of the partners of the partnership firm i.e. respondent No. 2 tendered his resignation vide

letter dated 12.12.2009 sent by Registered Post AD to the partners and also to Registrar of Firms. The Firm received the said letter on

12.12.2009. On 15.12.2009,. the resignation letter was accepted by the partners. The factum of acceptance of the resignation was communicated

to the outgoing partner vide letter dated 24.2.2010, which was also sent by Registered Post AD and hand delivery with signature of the

acceptance as well as Under Certificate of Posting. In response to that outgoing partner demanded 25% of the profit of the firm, as its legitimate

share as an outgoing partner of the firm. The change in the constitution of firm was accordingly invited indicating that the outgoing partner has

resigned. The said change was to register, but on account of objection by the outgoing partner the Registrar while exercising the power conferred

u/s 64 of the Act came to the conclusion that the objection of the outgoing partner was correct and hence passed the order dated 18.12.2012,

holding that the outgoing partner be considered as continuing partner of the firm and his representation was accepted and it decided to cancel the

effect from the original side and the amendment which has already been effected by means of order dated 16.4.2010 retiring the outgoing partner

was set aside and his name was restored in the form as continuing partner. In the wake of those special facts, it was held that the adjudicatory

power was not vested u/s 64 of the Act read with Rules 7 and 8 and 16.

38. Counsel for the opposite party No. 5 has submitted that the said case law was not applicable to the facts of the present case as no forgery was

involved in the said case and more over the procedure prescribed under the Act was not followed for effecting the change. The language employed

in Rule 7 of the Gujarat Partnership Rules and the U.P. Rules is altogether different. Under the U.P. Rules adjudicatory power has been given to

the Registrar and Section 64 of the Act casts a duty upon the Registrar to correct the entry in accordance with documents of the firm filed u/s 58 of

the Act. In the case of Supreme Tech Engineering (supra) the Registrar proceeded to recall its own order, which was passed on the objection of

the outgoing partner.

Any interpretation of a statute which renders the provision otiose or redundant cannot be adopted and neither the said interpretation shall be a valid

interpretation in the eye of law. Interpretation, which sub-serves the object and purpose of the Act is to be adopted.

If the argument of counsel for the petitioners is accepted, then any fraudulent entry made at the behest of any partner or at the behest of any

fraudulent exercise cannot be corrected and a partner would be able to perpetuate his fraud. There is some purpose and intention of the legislature

in introducing the aforesaid rule. For the sake of convenience, Rule 7 of both the Rules are quoted below:

Rule 7 of Gujarat Partnership Rules

Rule 7: Amendment of register.-- When an entry made in the register is to be amended, the amendment shall be made by drawing a red line

through the entry and making a new entry at the end of the existing entries. A reference in red ink to the serial number of the new entry shall be

made against the amended entry.

Rule 8: Procedure on dispute.--If any person wishes to dispute any entry in the Register, such person shall give the Registrar notice in writing that

he disputes the said entry and the Registrar shall make remark to effect at the end of the then existing entries and shall also make a remark in red

ink in the remarks column against the entry so disputed.

The Registrar shall then as soon as may be, send an intimation of such notice to all the partners of the firm concerned and if the person giving such

notice is one of the partners, to the remaining partners of such firm, as the case may be.

Rule 7 of the U.P. Rules 7. Procedure to be adopted by the Registrar when dispute arises.--The Registrar may in his discretion institute such

inquiries or make such investigation in respect of any matter as may in his opinion be necessary for the proper performance of his duties and the

administration of the Act, in particular when a dispute arises amongst the several partners of a firm, the Registrar may in his discretion call upon any

of the partners or all of them to produce any original deed, document or such other evidence as he thinks fit in order to ascertain the rights of the

respective parties. Rule 7 of U.P. Rules itself goes to indicate that there is sea-change in the language of both the Rules and the power given

therein. In Rule 8 of the Gujarat Rules, duty is cast upon the Registrar to send information of notice to all the existing partners regarding dispute.

Under Rule 7 of the Gujarat Rules power has been given for amendment, but in the U.P. Rules power has been given to the Registrar for deciding

the dispute. Therefore, the power has been given to the Registrar to adjudicate the dispute, whereas under the Gujarat Rules, power has been

given to the Registrar for affecting the amendment.

39. In the case of Supreme Tech Engineering (supra), the Registrar exceeded his jurisdiction in setting aside a valid amendment, which was made

in accordance with law after following the procedure as contemplated under the Act. In the present case, the procedure as contemplated under the

Act has been given a go-by for making change in the partnership by way of Form-VII. The Registrar did not verify at any point of time as to

whether there was a proper induction and whether the deed dated 2.2.1990 was on record or not and why Form-VII has been moved such a

belated stage i.e. after six years. Why after the death of Dwarika Prasad Agarwal, the change in constitution of the firm was not sought and why it

was not claimed by the petitioner No. 2, Hemlata Agarwal and Anil Kaushik that they are the existing partners only.

40. In the case of Sri Lakha Granites Vs. Eklavya Singh and Another, the Registrar while exercising power u/s 64 of the At declared the

partnership-deed null and void. In the said case, it was found that rectification of mistake at the instance of one of the partners of the firm, who had

retired after constitution of partnership was not a valid exercise of power by the Registrar u/s 64 of the Act. In the said case, it was held that if a

notice was not given to all the existing partners of the firm, then exercise of power u/s 64 of the Act would be invalid. In para 20 of the said

judgment, it has been held that if the alteration recorded in the register of the firms is in conformity with the statement made and documents

produced in terms of the provisions of Section 63 of the Act, no proceedings for cancelling or deleting the entries already made can be initiated by

the Registrar in purported exercise of power u/s 64 of the Act. In the said case, it was also found that the proceedings were initiated at the behest

of a person, who had already retired after re-constitution of the partnership firm.

As indicated herein above, the facts of the said case are altogether different as in this case there is no evidence of retirement on record and neither

any evidence of induction is on record. On the aforesaid reasoning, the cases of Supreme Tech Engineering (supra) and M/s. Sri Lakha Granites

(supra) are not applicable and neither come to the rescue of the petitioners.

41. To answer the argument of counsel for the petitioners, learned counsel for the opposite party No. 5 has relied upon a judgment of a Division

Bench of the Calcutta High Court rendered in the case of Durga Prosad Sarawagi and Others Vs. Registrar of Firms and Another, wherein an

identical question was involved and the dispute in that case was that in a partnership, one of the partners, namely, Manickchand Sarawagi sent a

notice to the Registrar dated 30.8.1961 u/s 63(1) of the Act. On the basis of notice of Manickchand Sarawagi an order was passed by the

Registrar that the firm stood dissolved. Feeling aggrieved against the said order, the remaining partners filed writ petition, which was dismissed.

Thereafter, an appeal was filed. In the appeal, the question arose as to whether the said exercise of power by the Registrar was a valid exercise of

power as contemplated u/s 64(1) of the Act. The remaining partners made a request on 2.2.1962 through their solicitor and made a request to the

Registrar u/s 64(1) of the Act to rectify the mistake and correct the discrepancy and cancel the said notice of dissolution and entry made in respect

thereof at the instance of Manickchand Sarawagi. No reply was received from the side of the Registrar, then a reminder was sent on 17.6.1962

and then the Registrar filed his reply on 23/24.2.1962 asserting his power. Rule 8 of the Calcutta Partnership Rules are in pari materia with Rule 7

of the U.P. Rules. The language of Rule 8 of the Calcutta Rules is analogous to the language of the U.P. Rules, whereas the language employed in

Rule 7 of the Gujarat Rules is altogether different and is in respect of amendment. In the aforesaid case, the Division Bench held as under:

9. If the respondent Registrar of Firms had applied his common sense or mind then apart from the technicalities of the Partnership Act he could

have been that this notice of dissolution was a curious notice alleged to be coming from a partner in 1961 stating a fact that seven years before that

date the partnership had been dissolved on the 11th April, 1954. Anyone would have acted with caution on receiving such a notice trying to notify

a seven-year old fact of dissolution which was ever contradicted by the entries of the Registrar himself in his own Register of Firms. Without notice

to the existing partners as shown on his own Register, the Registrar of the Firms acted ex parte without intimation to (1) Durga Prasad (2)

Parameswar and (3) Champalal who were recorded in his own Register as partners carrying on business. If there was any violation of principles of

natural justice here it is. The Registrar of Firms not only violated the language or word of Section 63(1) of the Act but also all principles of natural

justice by condemning the petitioners unheard and making an entry without any notice and without hearing them. He, therefore, have no hesitation

to set aside this entry of dissolution made by the respondent Registrar of Firms.

10. But then even this is not the end of the matter. The petitioners appellants protested through their solicitor on the 2nd February, 1962 and made

a request to the Registrar that u/s 64(1) of the Act he had the power to rectify mistake and correct the discrepancy and cancel the said notice of

dissolution and entry made in respect thereof at the instance of Manickchand Sarawagi. No reply was at first sent by the Registrar. The Registrar

had to be reminded by the Solicitor again on the 17th February, 1962. Whereupon the Registrar replied on the 23/24th February, 1962 in the

following terms:

I have to inform you that the notice of dissolution relating to the above noted firm has already been noted and the same cannot be rectified by the

undersigned at this stage.

11. Now let us examine the statement of the Registrar and his refusal to rectify his record u/s 64(1) of the Act. Section 64(1) of the Act provides

as follows:

The Registrar shall have power at all times to rectify any mistake in order to bring the entry in the Register of Firms relating to any firm into

conformity with the documents relating to that firm under this Chapter.

Obviously the Registrar should have acted under this section because it was not only a case of rectification of mistakes but it was one to bring the

entry in the Register to be in conformity with the document relating to that firm filed under this Chapter. Mr. Ginwalla appearing for respondent

Manickchand Sarawagi advanced an argument on the expression conformity with the document relating to that firm filed under this Chapter used in

Section 64(1) of the Act. He tried to suggest therefore that the Registrar of Firms" power of rectification was not a wide and general power but a

limited power to rectify only to bring the entry in conformity with the document filed under this Chapter. No doubt we accept that submission of

Mr. Ginwalla. The reason why we accept that submission is that the language of Section 64(1) says so but then the whole point is, does it or does

it not in this case relate to documents filed under this Chapter. The Chapter in which Section 64 of the Act occurs is Chapter VII of the Indian

Partnership Act dealing with the subject ""Registration of Firms"". The documents filed under this Chapter include amongst others (1) the documents

u/s 58(1) of the Partnership Act, (2) documents regarding the alteration in the firm"s name and place of business on the basis of ""statement"" sent

u/s 60 and (3) the document u/s 62 of the Act noting changes in the names and addresses of the partners contained in ""intimation sent to the

Registrar"". These are documents filed under this Chapter. Therefore, the Registrar should have consulted the statement u/s 60 as well as u/s 62 and

if he had done that he could have seen that his alleged entry of dissolution is inconsistent with documents on which entries under Sections 60 and

62 of the Partnership Act regarding the alteration of names and addresses of the partners and of the firms had already been made. If he had looked

at his own entry that there are three partners in 1958 including the partner Manickchand alleged to be giving the notice to notify that a dissolution

had taken place as early as in 1954 then he would have found full and ample power u/s 64(1) of the Partnership Act to rectify the mistake that he

had committed and should have rectified the mistake to bring the entry into conformity with the document relating to that firm filed under this

Chapter VII of the Partnership Act.

The Registrars refusal, therefore, to act u/s 64(1) was unjustified and unlawful. We feel that he must rectify and he should have rectified his entries

about dissolution.

14. Then Rule 8 provides:

The Registrar may in his discretion institute such enquiries or make such investigation in respect of any matter as may in his opinion be necessary

for the proper performance of his duties and administration of the Act, especially when a dispute arises amongst the several partners of a firm. The

Registrar may in his discretion call upon any of the partners or all of them to produce any original deed, document or such other evidence as he

thinks fit."" This Rule appears to indicate that a discretion is given to the Registrar to make enquiries. It also makes it clear that in enquiring the

Registrar acts in quasi-judicial manner in the sense that he should call for the original deeds and documents or other evidence as he thinks fit. The

Registrar did nothing of the kind in this case. He did nothing at the stage before he made the impugned entry ""dissolved"" nor did he make the

enquiries when he was called upon by the appellant to rectify his mistakes. He has powers under Rule 8 which not only are powers to be exercised

in his own discretion but are powers to make such enquiries or such investigation as he may in his discretion think necessary for the proper

performance of his duty and in the administration of the Act and especially when the dispute is among the several partners. That test is more than

satisfied here on the ground of proper administration of the Act, dispute among partners and not to contradict his own Register and the other

entries contained therein. He should have called for an investigation. He did not.

The Division Bench after quoting Rule 8 of the Rules, was of the view that in inquiring the Registrar acts in quasi-judicial manner in the sense that he

should call for the original deeds and documents or other evidence as he thinks fit. The Division Bench further held that Rule 8 confers power on

the Registrar not only discretionary in nature, but also empowers to make such inquiries and such investigation as he may in his discretion think

necessary for the proper performance of his duty and in the administration of the Act and especially when the dispute is among the several

partners. The said condition is fulfilled in the present dispute.

42. I am in full agreement with the law propounded by the Division Bench of the Calcutta High Court as that is the only interpretation, which is to

be given to the Rules. If the said interpretation is not given, then any party practicing fraud or obtaining an entry and record in collusion with the

Registrar will be at liberty to enter into the firm without any authority or may also meddle with the affairs of the firm without any lawful authority.

Therefore, it was incumbent upon the Registrar to look into his own entry and record to ascertain as to in what manner the three partners have

gone out, but without verifying the records and the documents relating to the firm, abruptly entry was made on Form-VII in spite of the fact that the

deed dated 2.2.1990 was not on record.

43. The next point, which has been argued by the counsel for the petitioners is that no power of review was vested with the Registrar and the order

of the Registrar making entry in Form-VII on 2.3.1996 became final and the order dated 8.9.2003 amounted to review of the said order. In

support of his contention, counsel for the petitioners has placed reliance upon the decision of the Delhi High Court rendered in the case of Mr.

Lokesh Dhawan Vs. Union of India (UOI) and Others, and has elaborated his argument by saying that the Registrar happens to be a quasi-judicial

authority and since no power is vested under the Act, therefore, he cannot exercise the inherent power of review as conferred upon any competent

Court or Tribunal.

44. The aforesaid argument of the counsel for the petitioners has been appreciated by the Court and it has been found that the said aspect of the

matter has been answered by the Apex Court in the case of The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others, wherein in

paragraph 15 of the judgment, it has been held as under:

15. There is hardly any doubt that the modification of the reservation made in favour of the appellant would have had serious repercussions on the

working of the appellant''s mill. I was bound to affect its interests adversely. Hence it is not possible to accept the conclusion of the High Court that

the proceeding before the Cane Commissioner was not a quasi-judicial proceeding.

45. Since the very basis of the order which was passed, was found to have been issued on the basis of the order passed by the Chief Minister, the

Apex Court found that even if the proceedings were quasi-judicial in nature, it was not necessary to decide whether the impugned orders could

have been validly made in an administrative proceedings, Therefore, the argument raised was dismissed. In para 23 of the said judgment, the Apex

Court held as under:

23. In view of our finding that the proceeding which resulted in the making of the impugned orders was a quasi-judicial proceeding, it is

unnecessary to decide whether the impugned orders could have been validly made in an administrative proceeding. We see no merit in the

contention advanced on behalf of the 5th respondent that the Cane Commissioner was not competent to reserve the area in question for the

appellant as its mill is in U.P. The reserved area is in Bihar. The Cane Commissioner of Bihar had power to reserve that area for any sugar mill

whether situated in Bihar or not.

46. In the said case, the argument advanced that no power of review was vested with the quasi-judicial authority on the administrative side, was

negatived by the Apex Court on the reasoning that initial order of the Cane Commissioner was passed reserving certain centres at the behest of the

order of the Chief Minister was not found to be a valid order in the eye of law. Therefore, an order to revive an illegal order cannot be passed. If

the argument of counsel for the petitioners is accepted, then it will amount to reviving of an illegal order. The principle of law in this regard is settled

and the Apex Court in the case of Manohar Lal (D) by Lrs. Vs. Ugrasen (D) by Lrs. and Others,

48. The present appellants had also not disclosed that land allotted to them falls in commercial area. When a person approaches a Court of equity

in exercise of its extraordinary jurisdiction under Articles 226/227 of the Constitution, he should approach the Court not only with clean hands but

also with clean mind, clean heart and clean objective. ""Equally, the judicial process should never become an instrument of oppression of abuse or a

means in the process of the Court to subvert justice."" Who seeks equity must do equity. The legal maxim ""Jure naturae aequum est neminem cum

alterius detrimento et injuria fieri locupletiorem"", means that it is a law of nature that one should not be enriched by the loss or injury to another.

(Vide The Ramjas Foundation and Others Vs. Union of India and Others, K.R. Srinivas Vs. R.M. Premchand and Others, , and Noorduddin Vs.

Dr K.L. Anand,

47. In the aforesaid case, The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others, case has been relied upon. The initial order

passed in this case is per se illegal and has been obtained on the basis of fraud. Therefore, if the Registrar has proceeded to rectify the aforesaid

mistake exercising power u/s 64 of the Act read with Rule 7 of the Rules, then the order is perfectly justified and valid in the eye of law and it does

not require interference by this Court.

48. Counsel for the opposite party No. 5 has vehemently argued that Kishori Devi, Hemlata Agarwal and Anil Kaushik, Sanjay Agarwal S/o of

Mahesh Prasad Agarwal have executed an assignment deed assigning their right, title and interest to one Suresh N. Vijay, who is also in

newspaper business on 24.2.2010 for a consideration of Rupees One Crore, which was paid to them by way of cheques. He has further submitted

that Mahesh Prasad Agarwal was won over by petitioner No. 2 and others after the deed of assignment was entered. Therefore, it is wholly false

and baseless to say that there was a change of heart of Mahesh Prasad Agarwal and with a view to resolve the dispute amongst the family

members, he has taken a forward step. If this was the position, then he could have invited Dwarika Prasad Agarwal to join in the compromise,

which was entered before the Jabalpur High Court on 29.6.1992, but he entered into compromise with Bishambhar Dayal Agarwal and Ramesh

Chandra Agarwal to the exclusion of Dwarika Prasad Agarwal. The change of heart as pleaded by petitioner No. 2 appears to be only for the

reason that Mahesh Prasad Agarwal and his son received Rs. 50 lacs in pursuance to the assignment deed executed on 24.2.2010 and even after

assignment, Mahesh Prasad Agarwal, who is contesting the proceedings before this Court, has filed Regular Suit No. 646 of 2012 in the Court of

Civil judge (Senior Division), Jhansi, praying therein that the defendants in the suit i.e. opposite party No. 5 and others, who derive income from

advertisements may be declared the income of the firm and he may be given 30% of that income according to the partnership-deed.

49. However, it is to be noted that Mahesh Prasad Agarwal also signed Form-VII i.e. notice for change in the constitution of the registered firm u/s

63 of the Act. The said document was duly signed by Mahesh Prasad Agarwal and presented on 10.1.2004 and as alleged by Mahesh Prasad

Agarwal if it is to be accepted that the papers singed by him were misused by Ramesh Chandra Agarwal, then in what manner this document dated

10.1.2004 was signed by Mahesh Prasad Agarwal is better known to him. The signing of the aforesaid document also goes to prove that whatever

action was done, was done by Mahesh Prasad Agarwal with full knowledge and only after, deed of assignment he has taken a somersault.

50. The next point which falls for consideration is as to whether the Firm could have been registered as HUF Firm by means of Form-VII on

10.1.2004 at the behest of Ramesh Chandra Agarwal, Karta of Dwarika Prasad Agarwal HUF, Mahesh Prasad Agarwal, Karta of Mahesh

Prasad Agarwal HUF being the partner in M/s. Dwarika Prasad Agarwal & Brothers, Man Mohan Agarwal, Karta of Bishambhar Dayal Agarwal

HUF and Ramesh Chandra Agarwal, Karta of Ramesh Chandra Agarwal HUF being the partner in M/s. Dwarika Prasad Agarwal & Brothers.

The said Form-VII was presented on the basis of the deed dated 10.4.1972. The letter of the Assistant Registrar, Jhansi dated 12.12.2003 goes

to indicate that the said deed of 10.4.1972 was presented by Advocate of Ramesh Chandra Agarwal in which it was mentioned that the partners

happen to be the members of HUF. The aforesaid letter specifically indicates that the original deed was not on record. Therefore, the same may be

considered and looked into at the level of the Registrar, who was proceeding with the hearing of the matter. The review application was pending

before the Registrar and it was decided on 7.1.2004. After examining the matter and after going through the partnership-deed dated 10.4.1972

and Form-I registered on 15.11.1976 it goes to indicate that the firm was registered as ""Are not the member of H.U.F."" The said character of the

firm could have been changed if it was permitted under the terms of the partnership-deed. But the terms of the partnership-deed do not talk

anything about the HUF and Non-HUF character of the firm. It only says that the partnership is at will and no partner shall be entitled to press for

the dissolution of the firm. The deed itself goes to indicate that owing to differences and dissensions between the members of the Joint Hindu

Family and to avoid friction and for smooth running of the business, Dwarika Prasad Agarwal, the Karta of the family requested his brothers to

effect partial partition of the Joint Hindu Family property to which they readily agreed. Considering the aforesaid request, the members of a Joint

Hindu Family have come out and decided to constitute a Non-HUF Firm. Once the Non-HUF firm was constituted, then the character of the

same could have been changed only after the dispute would have come to an end. It appears that Ramesh Chandra Agarwal took the benefit of the

order dated 7.1.2004 by means of which the review application of Hemlata Agarwal was rejected and he immediately presented Form-VII for

change of the character of the firm. The character of the firm could not have been changed from Non-HUF to HUF and that too on the basis of the

deed 10.4.1972 as there being no such provision in the said deed, which was made the basis for entry as HUF Firm. The registration of the firm as

member of HUF cannot be said to be a valid exercise of law. It has been presumed that petitioner No. 2, Hemlata Agarwal and Anil Kaushik have

been ousted from the firm and, therefore, they were at liberty to change the character of the firm. To change the character of the firm, consent of all

the partners was a must and moreover when the deed dated 10.4.1972 has been made the basis, then the said deed should authorize Ramesh

Chandra Agarwal and others to change the character of the firm which the deed dated 10.4.1972 does not authorize. During the continuance of

the dispute, the change in the character of the firm from Non-HUF to HUF was not permissible under law and, therefore, it is held that the said

change made by the Registrar at the behest of Ramesh Chandra Agarwal, Mahesh Prasad Agarwal and Man Mohan Agarwal was illegal. That is

not the end of the matter. Kishori Devi and Hemlata Agarwal also filed Civil Suit bearing C.S. (O.S.) No. 1663 of 2011 before the Delhi High

Court for declaring them to be the partners of the firm i.e. M/s. Dwarika Prasad Agarwal and Bros alongwith other reliefs. In the wake of the

existing assignment, in what capacity the suits have been filed by Mahesh Prasad Agarwal, Kishori Devi and Hemlata Agarwal is better known to

them. All these facts are being stated to show the conduct of Mahesh Prasad Agarwal, Kishori Devi after the deed of assignment. Once the deed

of assignment has been executed, then the persons in whose favour assignment has been made, becomes partner of the firm to the limited extent of

receiving profits. Section 29 of the Act provides that if a transfer is made by a partner of his interest in the firm, either absolute or mortgage, or by

the creation by him of a charge on such interest-, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the

business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring

partner and it is incumbent upon the transferee to accept the accounts of profits agreed by the partners. The nature of assignment deed goes to

indicate that Kishori Devi, Hemlata Agarwal, Anil Kaushik, Sanjay Agarwal S/o of Mahesh Prasad Agarwal have assigned their rights, title and

interest in the name of Suresh N. Vijay. The nature of assignment deed also goes to indicate that now the petitioner No. 2 and others cannot inter-

meddle with the functioning of the firm and rather the contingency provided u/s 29 of the Act is to prevail. In the present case, transfer of interest in

the firm is absolute and it is not by way of mortgage. If the transfer is absolute, then it is for the assignee to receive his profits.

Section 29 of the Act came to be considered in the case of S. Venkataratnam Vs. Y. Venkataratnam, and strong reliance has been placed on the

aforesaid case by the counsel for the petitioner.

51. Two issues were framed in the said suit filed by the plaintiff. One was that the agreement between the plaintiff and defendant No. 1 was invalid

as being illegal and opposed to public policy and that the plaintiff could not enforce any rights under the agreement. The second was that the

agreement was enforceable if at all then only in respect of the rights under Ex. 1 and therefore, no claim could be made in respect of the rights

conferred under the lease deed, Ex. 2. These issues were tried and the District Munsif dismissed the suit upholding the contention of defendant No.

1. Thereafter appeal was filed before the District Judge, who found that the agreement was valid and legal and was enforceable and the contract

must be construed to relate to the subsequent lease under Ex. 2 also. He, therefore, allowed the appeal and remanded the suit for disposal on the

other issues. Feeling aggrieved against the said order, an appeal was filed before the Madras High Court and the two issues indicated herein above

were considered and it was held that the assignee was having no right except a right to receive a share of the profits of the transferring partner. He

has no right to interfere with the conduct of the business or even to inspect the accounts of the firm. Here in the case, the assignee has not come

forward and it is the assignor, who has forward and, therefore, in the said case, the right of assignor was never considered. The right of assignee

was thus held to be a limited right. In the said case, the respondents were entitled to be included to be a partner with the approval of the

Commissioner. There was no such approval from the Commissioner in respect of defendant No. 1 and the agreement contained as one of the

conditions in clause (1) of the lease deed. The Court found that the order of the District Judge was valid and the appeal was dismissed.

52. Another case relied upon by the counsel for the petitioners is the case of Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and

Others, to emphasize that by virtue of the assignment, the right of the petitioner No. 2 and others will not come to an end and in this regard reliance

has been placed on page 407 of the aforesaid judgment, which reads as under:

It is pointed out by Lindley that this principle is carried to its extreme limit by Vice-Chancellor Wigram in Dale v. Hamilton (1). Even so, it is

pointed out that it must be treated as a binding authority in the absence of any decision of the Court of Appeal to the contrary. It seems to us that

looking to the scheme of the Indian Act no other view can reasonably be taken.

The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including

immovable property. Once that is done whatever is brought in would cease to be the trading asset of the person who brought it in. It would be the

trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of

partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has

brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business

of the partnership. As already stated, his right during the subsistence of the partnership is to get his share of profits from time to time as may be

agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the

net, partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges. It is true that even during the

subsistence of the partnership a partner may assign his share to another. In that case what the assignee would get would be only that which is

permitted by s. 29(1), that is to say, the right to receive the share of profits of the assignor and accept the account of profits agreed to by the

partners. There are not many decisions of the High Courts on the point, in the few that there are the preponderating view is in support of the

position which we have stated. In Joharmal v. Tejrani Jagrup (1) which was decided by Jardine and Telang JJ., the latter took the view that though

a partner"s share does not include any specific part of any specific item of partnership property, still where the partnership is entitled to immovable

property, such share does include an interest in immovable property and, therefore, every instrument operating to create or transfer a right to such

share requires to be registered under the Registration Act. In coming to this conclusion he mainly purported to rely upon an observation contained

in the fifth edition of Lindley on Partnership at p. 347. This observation is not to be found in the present edition of Lindley''s Partnership nor in the

9th or 10th editions which were brought to our notice. The 5th edition, however, is not available. The learned Judge after quoting an earlier

statement which is that the ""doctrine merely amounts to this that on the death of a partner his share in the partnership property is to be treated as

money, not as land"" says: ""This obviously would not affect matters either during the lifetime of a partner-Lindley, L.J."", says in so many words that

it has no practical operation till his death (p. 348)-or as against parties strangers to the partnership, e.g., the firm''s debtors."" While it is true that the

position so far as third persons are concerned would be different it may be pointed out that in Forbes v. Steven(2) James V.C., has, as quoted by

the learned Judge, said: ""It has long been the settled law of this Court that real estate bought or acquired by a partnership for partnership purposes

(in the absence of some controlling agreement or direction to the contrary), is, as between the partners and as between the real and personal

representatives of a partner deceased personal property, and devolves and is distributable and applicable as personal estate and as legal assets.

Telang J., seems to have overlooked, and we say so with great respect, the words ""as between the partners"" which precede the words ""and as

between the real and personal representative of the partner deceased"" and to have confined his attention solely to the'' latter. We have not found in

any of the editions of Lindley''s Partnership an adverse criticism of the view of the Vice-Chancellor, But, on the contrary, as already stated, the

view expressed is in full accord with these observations. Jardine J., has discussed the English authorities at length and after referring to the

documents upon which reliance was placed on behalf of the defendant stated his opinion thus

To lay down that the three letters in question, which deal generally with the assets, movable and immovable, without specifying any particular

mortgage or other interest in real property require registration, would, incline to think, in the present state of the authorities, go, (1) ILR 17 Bom.

235. (2) L.R. 10 Eq. 178 too fit. It way be argued that such letters are not ''Instruments of-gift of immovable property'' but ''rather disposals of a

share in a'' partnership of which the business, is money lending, and the mortgage securities merely incidental thereto.

53. The question involved in the said appeal before the Apex Court was in respect of interest of a partner in partnership assets comprising of

movable as well as immovable property should be treated as movable property or immovable property for the purposes of Section 17(1) of the

Registration Act. So reliance placed by the counsel for the petitioners on page 407 of the said report is beside the point decided in the said appeal.

In the said appeal the said observation was made as an obiter that during the subsistence of the partnership, the assignee has got his right of share

of profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from

partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior

charges. Therefore, looking to the controversy in the said appeal, the aforesaid case law does not help to the petitioners at all. I have considered

the rival submissions of the parties and upon consideration of the entire facts and the record, which has been perused by me after summoning from

the Registrar, I find that the orders, which have been passed by the Registrar, have been passed to achieve the ends of justice and to set the record

right in accordance with the documents of the firm as contemplated u/s 64 of the Act read with Rule 7 of the U.P. Rules. The Registrar has

proceeded to give opportunity to the parties as well and after considering their reply and evidence on record, passed the impugned orders. The

Registrar has set the record right in accordance with the requirement of Section 64 of the Act.

The Registrar is required u/s 64 of the Act to bring the entry in conformity with the documents relating to that firm filed under that Chapter, which

he has done. The partnership-deed dated 2.2.1990 was never brought on record and neither there was any publication as required u/s 72 of the

Act, so induction of Kishori Devi, Hemlata Agarwal and Anil Kaushik without following the procedure prescribed under Sections 31 and 32 of the

Act for induction and retirement cannot be said to be a legal action. The entire exercise done by the Registrar in the year 1996 was an illegal

exercise and was an exercise not permissible under law. The Registrar, therefore, has committed no illegality in passing the impugned orders.

Writ petition is devoid of merit. It is accordingly dismissed.