

(1997) 11 AP CK 0009

Andhra Pradesh High Court

Case No: CRP No. 2027 of 1997

Sreeram Finance Corporation,
Ongole

APPELLANT

Vs

K. Devashahayam and Others

RESPONDENT

Date of Decision: Nov. 4, 1997

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 30 Rule 1, 115
- Partnership Act, 1932 - Section 69(2)

Citation: (1998) 2 ALD 274(1) : (1997) 6 ALT 560

Hon'ble Judges: B.K. Somasekhara, J

Bench: Single Bench

Advocate: Mr. K. Ananda Rao, for the Appellant; Mr. Devadas, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The judgment and decree of the learned Addl. District Munsif, Ongole in SC No. 167 of 1995 are challenged. The petitioner is the plaintiff and the respondents are the defendants in the suit. The suit was filed for recovery of Rs.2,547-80 ps. based on a pronote alleged to have been executed by the defendants. The defendants resisted the suit on several grounds. They were all rejected. The learned District Munsif accepted the case of the plaintiff in regard to the execution of suit pronote Ex.A1, passing of consideration and the defendants being liable to pay the amount and also accepted amount outstanding to be paid as pleaded. The excessive payments pleaded by the defendants was also rejected. All these things were covered by Points 1 and 2 which were determined in favour of the plaintiff! However, while determining point No.3 viz., whether the suit is not maintainable in view of non-compliance of Section 69(2) of Indian Partnership Act, the learned District Munsif held in the negative. The reason being that according to sub-section (2) of Section 69 of the Indian Partnership Act, 1932 (Act No.IX of 1932), it is

mandatory for the plaintiff not only to prove that the firm was registered but also that the persons suing are or have been shown in the Register of Firms as partners in the firm. It was pointed out that the plaintiff had failed to prove the second limb of the provision for not producing the necessary document to show that the plaintiffs were shown as partners in the relevant register. Consequently, the suit was dismissed. Aggrieved by that, the revision is filed.

2. Mr. K. Anandarao, learned advocate for the petitioner has pointed out that the learned District Munsif has misconstrued sub-section (2) of Section 69 of the Act in spite of the settled law that both the limbs of the provision need not be complied with as the second limb was only an alternative compliance. Relying upon the pronouncement of this Court in *M.J. Velu Mudaliar v. Sri Venkateswara Finance Corpn.*, he has contended that the expression "and" used in Section 69(2) of the Act should be read as "or" and, therefore, when the plaintiff had complied with either one or both of them, there was no bar for maintenance of the suit in the proceedings. Since the plaintiff had complied with the first part of the provision of sub-section (2) of Section 69, the suit of the plaintiff is maintainable and could not have been dismissed.

3. Mr. Devadas, the learned advocate for the respondents has contended that the learned District Munsif has given sufficient reason as to how Section 69(2) of the Act is mandatory and as to how it prohibited maintainability of the suit for enforcing the right by the plaintiff arising out of a contract filed on behalf of the firm against the defendants who are the third Parties and not partners of the firm as the two limbs that the firm must be a registered one and the persons suing have been shown in the register for firms as partners in the firm have not been established.

4. So far as this Court is concerned, the law is settled and Mr. Anandarao is justified in postulating such a proposition of law. Section 69(2) of the Act reads as follows:

"69(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm."

5. It is true that in order to maintain the suit to enforce a right arising from a contract, it must be mandatorily established that the plaintiff had conformed to the ingredients of the provision. It is true that in view of the expression "and" used in the provision to comply with the two limbs supra, it was a conjunctive parts of speech in the known English grammar and composition, but having due regard to Order 30, Rule 1 of CPC the compliance of which is for a different purpose and having due regard to the true implication of Section 69(2) of the Act, such a conjunction "and" is to be read as a preposition "or". This Court in *M.J.V. Mudaliar v. S. V. Finance Corporation*, (supra) had the occasion to deal with the question quite a long time back and has affirmatively held that conjunction "and" in the provision has to be

read in disjunctive sense and not in conjunctive sense and therefore should be read as ""or"". The above principle laid down by this Court was also fortified with the catena of rulings of various High Courts in Kgpurchand. Bhagaji _V. Laxman Trimbak AIR 1952 Nag. 57, Bdsant Lal v. Union of India, AIR 1956 Pat 426 Firm Butamal v. Chaman Lal, AIR 1954 Punj. 270, [Ram Kumar Ram Chandra Vs. The Dominion of India](#), AIR 1944 37 (Oudh) and Firm Sunkari Yadgiri and Co. v. Union of India AIR 185 Hyd 172, dealing rath the question in the context. The long established rule of interpretation of the provision, fortified by the several High Courts, also requires no departure by Stare Decisis doctrine. This Court should respectfully follow and adopt the same and finds no justification to make a departure.

6. The learned Munsif has applied the law wrongly with incorrect interpretation without reference to such settled law and the precedents. There is a failure of exercise of jurisdiction by the learned District Munsif to enforce the right of the plaintiff although determined and inspite of compliance of Section 69(2) of the Act, thereby warranting interference by this Court u/s 115 CPC and the suit deserves to be decreed. At this stage, the learned advocate for the respondents pleads that some reasonable time may be granted to pay the amount

7. In the result, the petition is allowed with costs. The judgment and decree in SC No. 167/95 on the file of the II Addl. District Munsif, Ongole are set aside and the suit is decreed, however, not to put the decree in execution till the expiry of two months from today.