

(1936) 05 CAL CK 0039

Calcutta High Court

Case No: Civil Rev. 1396 of 1935

Ram Sundar Bhowmick
and Another

APPELLANT

Vs

Madhu Sudhan Deb
Nath

RESPONDENT

Date of Decision: May 12, 1936

Citation: (1936) 05 CAL CK 0039

Judgement

R.C. Mitter, J.

This Rule has been obtained by the Plaintiff, a firm carrying on business under the name of Ram Sundar Ram Chandra Bhowmick. The suit is based on a mabalagbandi or settlement of accounts between the Plaintiff and the Defendant in respect of transactions between them, before the Partnership Act of 1932 came into force. The suit has been dismissed on the ground that the firm has not been registered, the learned Small Cause Court Judge holding that sec. 69 (2) of the Partnership Act makes the suit a bad one. The learned Advocate for the Petitioners before me contends that inasmuch as the obligations had been incurred by the Defendant before the Act came into force, it is not incumbent that the firm should be registered--because he says that cl. (b) of sec. 74 preserves the legal proceedings or remedy which the firm had in respect of any right acquired by it, or obligation incurred by the Defendant, before the Partnership Act came into force. In my judgment this argument is not sound. Cl. (a) of sec. 74 preserves intact the right, title, interest, obligation or liability, acquired or incurred before the commencement of this Act. Sec. 69 of the Partnership Act lays down, in my judgment, the procedure by which the rights, which have accrued in favour of a firm, are to be enforced. Those rights may have accrued to the firm after the commencement of the Act or before; the same disability is imposed, and that no suit by a firm against a third party to enforce a right arising out of a contract would lie, unless the firm has been registered in accordance with the provisions of the Act. Cl. (b) of sec. 74, in my judgment, only deals with legal proceedings already commenced before the Partnership Act came into force. That is the only saving that is made in the Partnership Act. If a suit is instituted or proceedings taken after the

commencement of the said Act by a firm against a third party, the provisions of sec. 69 must be complied with, that is to say, the suit would not be maintainable by the firm, unless the firm has been registered in accordance with the provisions of the Partnership Act. This view has been taken by a Division Bench of this Court in the case of Surendranath De v. Monohar De 39 C.W.N. 67 (1934) which case has been followed by a single Judge in the case of Basanta Kumar Pal v. Late Durgadas Akrur Chandra 39 C.W.N. 1080 (1935). I respectfully agree with the aforesaid decisions.

2. In this view of the matter I do hold that the learned Small Cause Court Judge has rightly construed the relevant portions of the Indian Partnership Act.

3. I accordingly discharge the Rule with costs, one gold mohur. Let the counter-affidavit be kept with the record.