

(2008) 12 DEL CK 0135

Delhi High Court

Case No: Regular First Appeal No. 643 of 2004

Kuamr Associates and Others

APPELLANT

Vs

Sohan Pal

RESPONDENT

Date of Decision: Dec. 5, 2008

Acts Referred:

- Partnership Act, 1932 - Section 69

Hon'ble Judges: Pradeep Nandrajog, J; J.R. Midha, J

Bench: Division Bench

Advocate: Anujay Tiwari, for the Appellant; None, for the Respondent

Final Decision: Allowed

Judgement

Pradeep Nandrajog, J.

On 11.09.2008 following order was passed:

CM No. 15997/2004

1. First appellant, stated to be a registered partnership firm of which appellants No. 2 and 3 are claimed to be the partners filed a suit for recovery under a contract.
2. A defence was predicated in the written statement that the partnership firm being not registered the suit was not maintainable being hit by the bar of Section 69 of the Partnership Act. Authority of the person suing on behalf of appellant No. 1 was also questioned.
3. No issue was struck by the learned Trial Judge pertaining to the defence u/s 69 of the Partnership Act. An issue was however struck pertaining to the authority of the person instituting the suit on behalf of the partnership firm.
4. Holding that a partner of a firm is always entitled to sue on behalf of the firm, the issue pertaining to the authority of the person suing on behalf of the firm has been decided by dove-tailing the same on the plea raised in the written statement that

being an unregistered firm the suit was not maintainable.

5. By and under CM No. 15997/2004 it is stated that inadvertently evidence pertaining to the firm being a registered firm with the Registrar of Firms and that appellants No. 2 and 3 were its partners was not led. It is urged by learned Counsel for the appellants that since no issue was struck on the defence pleaded relatable to Section 69 of the Partnership Act, appellants remained under the impression that the defendant had given up said defence. Counsel urges that since the learned Trial Judge has dove-tailed the plea relating to Section 69 of the Partnership Act, on the issue of authority of the partner of the firm, suing on behalf of the firm, appellant be permitted to lead additional evidence and prove the factum of the firm being registered and the names of its partners.

6. We note that the appellants have succeeded on all issues and have lost the battle on account of the afore-noted technical defence.

7. We additionally note that the respondent has chosen to remain ex-parte before us by not entering appearance in spite of being served.

8. We allow the application. The appellant is permitted to lead additional evidence and prove that the appellant No. 1 is a firm registered with the Registrar of Firms and that the appellants No. 2 and 3 are its partners.

RFA 643/2004

1. List before the Registrar on 6.11.2008 for recording evidence.

2. The appellant No. 1 shall summon the officer concerned from the office of the Registrar of Firms and lead evidence to prove what is intended to be proved by way of CM No. 15997/2004.

3. The appeal would be listed in Court on 5.12.2008.

2. The witness from the office of Registrar of Firms was examined on 04.12.2008. Form B pertaining to M/s. Kumar Associates being a firm duly registered with the Registrar of Firms vide registration No. 826/2003 dated 1st May, 2003 has been proved as Ex.PW2/A.

3. Form A showing that Shri Vijay Kumar and Shri Jitender Singh were its partners has been proved as Ex.PW2/B. An application submitting for the firm to be registered and disclosing therewith the name of its two partners dated 24.04.2003 has been proved as Ex.PW2/C.

4. We note that the suit was instituted after the firm was registered.

5. For the reason recorded in our order dated 11th September, 2008 and noting that the appellants have otherwise succeeded on all issues save and except the technical issue pertaining to the authority of the person suing on behalf of the partnership firm and noting that the appellant No. 1 is a partnership firm duly registered with

the Registrar Firms and that appellant Nos.2 and 3 are registered partners thereof, we allow the appeal and reverse the finding returned against the appellant pertaining to issue No. 3.

6. We hold that the appellant No. 1 has successfully established of being a duly registered firm and that appellant Nos.2 and 3 are its partners duly showing as such in the record of the Registrar Firm.

7. Since in all other issues the appellants have succeeded and noting that there is no cross-objection, we decree the suit filed by the appellant in favour of the appellant and against the respondent in sum of Rs. 8,25,000/- (in conformity with the finding of the Learned Trial Judge on issue No. 5) together with interest @ 12% per annum with effect from 24.07.2003 till realization.

8. The appellant is entitled to cost in the appeal.