

(1987) 07 BOM CK 0066

**Bombay High Court****Case No:** Appeal No. 520 of 1983 in Suit No. 17 of 1973

Gandhi and Co.

APPELLANT

Vs

Krishnan Glass Pvt. Ltd.

RESPONDENT

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**Date of Decision:** July 7, 1987**Acts Referred:**

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

**Citation:** AIR 1987 Bom 348 : (1987) MhLj 885**Hon'ble Judges:** P.S. Shah, J; M.L. Pendse, J**Bench:** Division Bench

**Advocate:** G.K. Munshi, instructed by Thakordas and Madgavkar, for the Appellant; A.N. Mody, Rajeev Kumari, instructed by Bhai Shankar, Kanga and Girdharlal, for the Respondent

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**Judgement**

Shah, J.

This is an appeal preferred by the original plaintiffs against the judgement and order dt/- March 22, 1983, passed by the learned single Judge in suit No. 17 of 1973 (reported in 1983 Mh LJ 1036) dismissing the suit on the preliminary ground that the suit is not maintainable for non-compliance of the provisions of S. 69, sub-sec. (2) of the Partnership Act, 1932. The facts in so far as they are material are not in dispute. In the plaint the appellants are described as a partnership firm registered under the Partnership Act and carrying on business at 90/92, Kazi Syed Street, Bombay-3. In the plaint it is further averred that the plaintiffs are a partnership firm registered under the Partnership Act and that they carry on the business of supply of silica sand, dolomite limestone and other minerals. In para 7 of the plaint it is stated that there was a talk in relation to the suit contract between Rasiklal Narottam Gandhi, a partner of the plaintiff firm and one Dhirubhai Boda who was connected with the respondent-company. The plaint is signed by Rasiklal Gandhi on behalf of the appellants firm. He has also verified the plaintiff as a partner of the plaintiffs-firm

stating inter alia that the contents of para-7 of the plaint are true to the knowledge of the said Rasiklal. It is not in dispute before us that the firm started on Oct. 29, 1962, and was registered on September, 11, 1964. The suit has been filed on Dec. 11, 1964. The suit has been filed on Dec. 11, 1972. In the written statement the respondents did not admit that the appellants are a partnership firm registered under the business of supply of silica sand, dolomite limestone or other minerals as alleged or at all.

2. At the time of the hearing of the suit the appellants produced a xerox copy of the extract from the Register of Firms. This extract bears out that initially the firm was started on Oct. 21, 1962, with five partners and was got registered on Sept. 11, 1964. There were in addition three minors admitted to the benefits of the partnership on different dates and the entries give the respective dates on which the minors would attain the majority. As regards one person by name Bharatkumar, it appears that the necessary dates have not been typed while taking out the extract and may be that he was also a minor admitted to the benefits of the partnership. What is material for our purpose is the entry dt./-Dec. 11, 1973 which shows that two partners viz. Rasiklal Narottamdas Gandhi and Kirikumar Manekchand Gandhi joined the partnership firm and became partners thereof on April 8, 1966. It is this Rasiklal Gandhi whose name is mentioned in para-7 of the plaint as a partner of the appellant-firm and who has declared the plaint as a partner on behalf of the firm. The respondents amended their written statement making clear averment as regards the non-maintainability in the suit on the ground that the name of Rasiklal who is a partner of the appellant-firm has not been shown in the Register of Firms on the date of the filing of the suit as required by the provisions of S. 69(2) of the Partnership Act. It was contended that the suit is not maintainable for non-compliance of the mandatory requirements of S. 69(2) of the Act. The learned single Judge accepted this contention and dismissed the suit on this Register of Firms as partners in the firm" has no application to a suit filed by the firm and the only condition necessary to be established is that the firm is registered on the date of the suit. According to the learned counsel for word "and" should be read disjunctively and not conjunctively and, therefore, the word "and" is used in the sub-section to mean "or". In support of his contention the learned counsel relied on the provisions of O.30 of the civil P. C. It was submitted that the provisions of S. 69(2) have to be read and construed in the light of the provisions of O.30 of the Civil P. C. and any construction of the provisions of S. 69(2) which would produce contrary results should be avoided. The learned counsel placed reliance on a decision of a learned single Judge of the Andhra Pradesh High court in [M.J. Velu Mudaliar and Another Vs. Sri Venkateswara Finance Corporation and Others](#), which decision was followed by the Patna High Court in [J. Purshuttam Das and Co. Vs. R.R. Brothers and Others](#). On the other hand Mr. Mody, the learned counsel, appearing for the respondents contended that the provisions of S. 69(2) had no relation with the procedural provisions of O.30 of the Civil P.C. and there is no reason to depart from

the well settled rule in construing the statutory provisions that the words used therein should be given their plain ordinary meaning. AS regard the construction of S. 69(2) he relied on the view taken by the Gujraat High Court in [Bharat Sarvodaya Mills Co. Ltd. Vs. Mohatta Brothers,](#), and of the Delhi High Court in [Shanker Housing Corporation \(Ext.\) Vs. Mohan Devi and Others,](#).

3. In the case of M/s. Shankar Housing Corporation the Delhi High Court pointed out the historical back ground of the provisions of O.30 of the Civil P.C. the Provisions of O.30 were added newly in the civil P.C. of 1908. It was pointed out that normally, when a person wishes to obtain a decree against several persons, or when several persons wish to obtain a decree against a person, all the said persons must be made parties to the suit. Similar when a person makes a promise to more than one person, the right to enforce the promise rests with them all under the Act, so that all of them are necessary parties to a suit to enforce the promise. It was, therefore, held in some decisions under the old Code of 1882 which did not contain any provisions corresponding to the present O.30 that in suits by or against the firms, all the partners of the firm were necessary parties. It was to enable tow or more partners alone to sue or be sued as a kind of exemption to the provisions of S. 45 of the Contract Act, that the present provisions in O.30 were introduced in the Code of 1908.

4. As far as provisions contained in Rules 1 and 2 of O.30 of the Civil P.C. on which reliance is placed by the learned counsel are concerned, it is clear that the provisions Order 30 deals with suits by or agianst firms and persons carrying on business in names other than their own. Sub-rule (1) of R. 1 of O.30 enables any tow or more persons claiming or being liable as partners and carrying on business in India may sue or be sued in the name of the firm of which such persons ar partners at the time of th eaccuring at the cause of action. It is also provided in the said sub-rule that party to a suit may in such case apply to the Lcourt for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm to be furnished by the other party. Sub-rule 92) of R. 1 provides that where persons sue or are sued as partners in the name of their firm under sub-r. (1), it shall, in the case of any pleading or other document required by or under this code to be signed, verified or certified by the plaintiff or the defendatn, suffice if such pleading or other document is signed, verified or certified by any one of such persons. Sub-rule 91) of R. 2 also speaks of the obligation of the plaintiffs viz., where the partners file a suit in the name of the firm to declare in writing the names and other imformation of all the persons constituting the firm on whose behalf the suit is instituted. Reading the tow rules speak fo a suit by or against a firm. Normally, but for the provisions of O.30 the suit would have been required to be filed by each and every one of the partners of the firm of each one of the partners could ..... Compendious procedure these provisons enable suits being filed by or against the firm and it is not necessary that the partners should be added as plaintiffs or

defendants separately. The provision also enables the third party to obtain the information relating to the partners of the firm when the partners sue in the name of the firm. This provision is obviously intended to safeguard the interests of the third party who may or may not know the name of the persons who were partners of the firm at the time of the accruing of the cause of action, so that the third party may take appropriate defences in the suit. Whereas the provisions of Rr. 1 and 2 of the O.30 of the Civil P.C. are procedural in nature; S. 69(2) is a substantive provision. It is a disabling provision which bars a suit unless the provisions thereof are complied with. Section 69(2) refers to a suit "by or on behalf of a firm". A firm is not a legal entity unlike a company or a corporate Body constituted under a statute. Section 4 of the Partnership Act defines "partnership" as the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Section 4 further provides that persons who have entered into partnership with one another are called individually "partners" and collectively "a firm" and the name under which their business is carried on is called the "firm name." Thus the words "partners" or "firm" are clearly interchangeable and mean the same thing. When the expression "suit by or on behalf of the firm" is used, it is therefore, obvious that when a suit is filed by a firm as permitted by the provisions of O.30, rule 1/2 of the Civil P.C. it is the partners of the firm who have filed such a suit. In other words, a suit by a firm is nothing but a suit by the partners of a firm. The provisions of S. 69(2) cannot be construed with the aid of the wording of the Rr. 1 and 2 of O.30 of the Civil P.C. the said procedural provisions only provide a convenient method whereby the partners can file a suit in the name of the firm, but nonetheless the suit is in fact a suit by the partners of the firm. It is also to be noted that the requirements of S. 69(2) must be satisfied first in order that a suit of the nature and it is only then that the provisions of Rr. 1 and 2 of O.30 are attracted as regards the mode or the form in which the suit may be instituted as well as the procedure that may be applicable to such a suit. Reliance was placed by Mr. Munshi on the observations in para 17 of the Andhra Pradesh High Court Judgment in [M.J. Velu Mudaliar and Another Vs. Sri Venkateswara Finance Corporation and Others](#), in support of his contention, which run thus:

"17. In construing the provisions of S. 69(2) one should bear in mind the procedure contemplated by Order 30 for the institution of suits by or against firms. Rule 1 of the O.30 enables a suit to be filed in the name of the firm and any party to a suit may in such a case apply to a court for a statement of the names and addresses of the persons who were at the time of the accruing of the cause of action partners in such firm. If an application in that behalf is made the particulars have to be furnished and verified in such manner as the court may direct. Sub-rule (2) says that where persons sue as partners in the name of the firm, any pleading or other document required by the Court to be signed, verified or certified by the plaintiff or the defendant may be signed, verified or certified by any one of the partners suing in the name of the firm. "The expressions suing as partners" occurring in S. 69(2) of

the Partnership Act, must be read and understood in the light of the provisions of O.30. it is not unreasonable to infer that the requirement contemplated by the later part of sub-sec. 92) of S. 69 was intended to come into play only in cases where a disclosure of the names and particulars is called for in accordance with the provisions of O.30. I am inclined to think that the conjunction "and" in S. 69(2) has to be construed in the disjunctive sense. The context in which the conjunction is used seems to imply that the legislature used it in a disjunctive sense. If sub-section 92) is to be read as prescribing the two pre-conditions in all cases of suit brought in the names of the partnership firm the provisions of O.30 may be rendered nugatory, or in effective. But if the conjunction "and" is construed in a disjunctive sense, and is read as "or" the later part of sub-sec. 92) of S. 69 would come into play only in those cases where a disclosure of the names and particulars is made under O.30 Civil P.C."

5. The learned Judge in that case dissented from the view of the Calcutta High Court in 1962) 66 Cal WN 262 where the contention that the word "and" in S. 69(2) be read as "or" was rejected. As discussed earlier, the scope and ambit of the provisions of Rr. 1 and 2 of O.30 of the Civil P.C. is different from the provisions of S. 69(2) of the Partnership Act. The provisions contained in Rr. 1 and 2 are procedural; whereas the provisions of S. 69(2) are substantive and create a bar at threshold of the filing of suit by or on behalf of a firm, if the conditions mentioned therein are not fulfilled. S. 69(2) says that "no suit shall be instituted..... By or on behalf of a firm..... unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm." on a plain reading of the Section both the conditions laid down in the Section must be fulfilled and that is clear from the fact that the word "and" is used and appears in the Section. We have already indicated that even if a suit is filed in the name of a firm it is in substance a suit by the partners of the firm and the phrase "the persons suing" therefore, will have to be construed as the names of all the partners constituting the firm, at the time of the institution of the suit. In our opinion, the expression "persons suing" can only mean the persons who file the suit on behalf of the firm. If this the construction which requires to be adopted on the said phrase used in the provision it would logically follow that the word "and" cannot be construed disjunctively, as suggested by the learned counsel. It is a well settled rule of construction of a statutory provision that unless there is ambiguity or that two constructions are possible, the normal rule of giving a plain meaning to the words used has to be followed. We find that the provisions of S. 69(2) are clear and unambiguous and there is no scope for giving a different meaning to the word "and". We therefore, reject the argument that if the suit is filed in the name of the firm all that is required to be shown is that the firm is registered on the date of the suit and the second condition relating to the names of the persons being shown as partners in the Register of Firms does not apply to such a suit. The question of the applicability of the provisions of S. 69(2) and not

otherwise. These provisions of the Code, therefore, cannot be of any assistance in interpreting the provisions of S. 69(2).

6. The reasoning in the Andhra Pradesh High Court Judgement proceeds on the basis of the provisions of Rr. 1 and 2 of O.30. With respect, it is not possible to agree with the view taken by the Andhra Pradesh High Court and also by the Patna High Court in the case of [J. Purshuttam Das and Co. Vs. R.R. Brothers and Others](#), which follows the view taken by the Andhra Pradesh High Court.

7. In *Firm Buta Mal Dev. Raj v. Chanan Mal*. AIR 1964 P&h 270, a Division Bench of the Punjab High Court held that the proper interpretation of S. 69(2) is that in order to institute a suit a partnership firm must not only be a registered firm but also all the persons who are partners in the firm at the time of the institution of the suit must be, or have been, shown as such in the Register. The court observed "the persons suing" in S. 69(2) must mean the partners in the firm. The use of the plural "persons;" is obviously deliberate, since while a singular may also mean the plural, the plural can never mean the singular. When a suit is instituted in the name of a firm the suit is on behalf of all the partners and not only such of them as are shown in the Register as such and all the partners must be person suing contemplated in S. 69(2). The Court further held that where a certain person who had been a partner from the beginning of the constitution of the plaintiff partnership and was still a partner at the time of the institution of the suit but had never been shown as such along with two other partners in the Register, the suit by such a firm is incompetent.

8. In [Bharat Sarvodaya Mills Co. Ltd. Vs. Mohatta Brothers](#), a Division Bench of the Gujarat High Court has held that Section 69(2) imposes two mandatory conditions and unless both the conditions are fulfilled there would be a fatal bar to the entire suit and it would be wholly incompetent in a court of law. The court further held that both these conditions are cumulative conditions and both must be satisfied in order to constitute a validly instituted suit. The court was of the view that no separate registration was necessary where there is a reconstitution of a continuing firm, but still in its view the second condition must also be complied with by showing that not only the continuing firm is a registered firm, but that all the partners at the date of the accrual of the cause of action are or have been shown in the Register of Firms as partners.

9. As far as the facts of the case before us are concerned, Rasikalal N. Gandhi was a partner at the date of the accrual of the cause of action and even if Gujarat view that all the partners at the date of the accrual of the cause of action also must be shown in the Register of Firms as partners on the date of the suit, the suit must fail because Rasikalal was not shown as a partner in the Register of Firms on the date when the suit was instituted. In any event admittedly Rasikalal was a partner also on the date of the institution of the suit and, therefore, the bar under S. 69(2) to have been applied.



10. A reference may now be made to the decision of the Delhi High Court in [Shanker Housing Corporation \(Ext.\) Vs. Mohan Devi and Others](#), where also it has been held that the provisions of S. 69(2) are mandatory and both the conditions laid down therein have to be fulfilled. As far as S. 69(2) and Rr. 1 and 2 of O.30 of the Code are concerned, the Court took the view that they deal with different aspects and operate separately. It may, however, be mentioned that the Delhi High Court does not seem to have agreed with the view of the Gujarat High Court in *Bharat Sarvodaya Mills. Co. Ltd. v. M/s. Mohatta Brothers* to the limited extent to which it has been held by the Gujarat High Court that the names of all the partners at the date of the accrual of the cause of action must also have been shown in the Register of Firms as partners in the firm. The Delhi High Court took the view that the language in S. 69(2) which is in the present tense has to be given its plain grammatical meaning, and when so read, it would follow that "persons suing" in S. 69(2) mean all the partners of the firm at the time of the institution of the suit. This controversy does not arise in our case since admittedly Rasiklal N. Gadhgud was a partner at the date of the accrual of the cause of action as also on the date of the institution of the suit.

11. In [Govindmal Gianchand Vs. Kunj Biharilal and Others](#), it has been held that the provisions of S. 69 are mandatory and there is no power in the High Court to grant to the defaulting partnership any relief against the disability imposed by the Section. The suit which has not complied with the provision of S. 69 is bad on its inception and even a consent or waiver by the defendant does not make a suit which was initially bad good.

12. In this connection it would be useful to refer to the observations of the Supreme Court in [The Commissioner of Income Tax, Andhra Pradesh, Hyderabad Vs. Jayalakshmi Rice and Oil Mills Contractor Co.](#), where it has been observed that the registration of a firm takes place only when the necessary entry is made in the register of firms u/s 59 of the Partnership Act by the Registrar and not earlier. It was also pointed out that u/s 69 which deals with the effect of non-registration it has been consistently held that the registration of a firm subsequent to the filing of the suit did not cure the defect. The Supreme Court rejected the contention that the partnership did not cure the defect. The Supreme Court rejected the contention that the partnership should be deemed to have been registered on the date when the application was presented.

13. There is also a decision of the Division Bench of this Court in [Prithvisingh Devising Vs. Hasan Alli Vazirkhan](#), where it has been held that under S. 69(2) unless a partnership firm is registered, the institution of a suit by it is barred, and that initial defect cannot be cured by any subsequent registration of the partnership firm.

14. In the present case it is established that the name of the partner, Rasiklal N. Gandhi had not been shown in the Register of the Firms on the date of the filing of the suit. The suit filed by the partnership firm must, therefore, fail.

15. We are, therefore, in agreement with the view taken by the learned single Judge. In the result, the appeal fails and is dismissed. However, in the circumstances of the case we direct that the parties shall bear their respective costs.

16. Mr. Munshiorally applies for leave to appeal to the Supreme Court. Leave refused.

17. Appeal dismissed.