

## Gandhi and Co. Vs Krishnan Glass Pvt. Ltd.

**Court:** Bombay High Court

**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

### 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 the 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 two 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 against firms and persons carrying on business in names other than their own. Sub-rule (1)

of R. 1 of O.30 enables any two 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 are partners at the time of the accruing of 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 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 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 defendant, 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 information of all the persons constituting the firm on whose behalf the suit is instituted. Reading the two

rules speak of 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

provisions 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 runs 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 expressionsuing 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 the 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

well settled rule of construed disjunctively, as suggested by the learned counsel. It is 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 the at is erequired to be shown is that the firm is register don 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 arises only if the suit itself is validly instituted in compliance with the professions of S. 69(2) and not

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

6. The reasoning in the Andhra Pradesh High Court Judgement proceeds on the basis of the lprovisions 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, Rasiklal 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 Rasiklal was not shown as a partner in the Register of Firms on the date when the suit was instituted.

In any event admittedly Rasiklal 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. Gandhi 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 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 Ali 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. Munshi orally applies for leave to appeal to the Supreme Court. Leave refused.

17. Appeal dismissed.