

SHIV DEVELOPERS THROUGH ITS PARTNER SUNILBHAI A  
SOMABHAI AJMERI

v.

AKSHARAY DEVELOPERS & ORS.

(Civil Appeal No. 785 of 2022) B

JANUARY 31, 2022

**[DINESH MAHESHWARI AND VIKRAM NATH, JJ.]**

*Partnership Act, 1932 – s.69(2) – Bar under – When not attracted – Held: To attract the bar of s.69(2), the contract in question must be the one entered into by firm with the third-party defendant and must also be the one entered into by the plaintiff firm in the course of its business dealings – s.69(2) is not a bar to a suit filed by an unregistered firm, if the same is for enforcement of a statutory right or a common law right – In the present case, the transaction in question was not the one entered into by the appellant-plaintiff, an unregistered partnership firm during the course of its business (i.e., of building construction), and it was an independent transaction of sale, of the firm's share in the suit property, to the contesting defendants – Thus, the bar of s.69(2) is not attracted in relation to the said sale transaction – Moreover, the subject suit cannot be said to be the one for enforcement of right arising from a contract, rather the subject suit is clearly the one where the plaintiff seeks common law remedies with the allegations of fraud and misrepresentation as also of the statutory rights of injunction and declaration in terms of the provisions of the Specific Relief Act, 1963 as also the Transfer of Property Act, 1882 (while alleging want of the sale consideration) – Therefore, the bar of s.69(2) does not apply to the present case – Trial Court rightly appreciated the facts of the case and rejected the baseless application moved by the contesting respondents – Impugned order of High Court set aside – Trial Court to proceed with trial of the suit in accordance with law – Specific Relief Act, 1963 – Transfer of Property Act, 1882.*

*Umesh Goel v. Himachal Pradesh Co-operative Group Housing Society Ltd: (2016) 11 SCC 313 : [2016] 6 SCR 703; Farooq v. Sandhya Anthraper Kurishingal and Ors. (2018) 12 SCC 580 – held inapplicable.*

- A      *Haldiram Bhujiwala and Anr. v. Anand Kumar Deepak Kumar and Anr.*: (2000) 3 SCC 250 : [2000] 1 SCR 1247; *Raptakos Brett & Co. Ltd. v. Ganesh Property* (1998) 7 SCC 184 : [1998] 1 Suppl. SCR 485; *Purushottam and Anr. v. Shivraj Fine Art Litho Works and Ors.* (2007) 15 SCC 58 : [2006] 8 Suppl. SCR 524 – relied on.

**Case Law Reference**

	[2016] 6 SCR 703	held inapplicable	Para 12.1
C	(2018) 12 SCC 580	held inapplicable	Para 12.1
	[2000] 1 SCR 1247	relied on	Para 11
	[1998] 1 Suppl. SCR 485	relied on	Para 15
	[2006] 8 Suppl. SCR 524	relied on	Para 9.3

D CIVIL APPELLATE JURISDICTION: Civil Appeal No. 785 of 2022.

From the Judgment and Order dated 15.02.2018 of the High Court of Gujarat at Ahmedabad in Civil Revision Application No. 241 of 2017.

Ms. Shreya Jain, Gaurav Tanwar, Sachin Mittal, Advs. for the Appellant.

E Kruthin Joshi, Rajesh Mahale, Purvish Jitendra Malkan, Jitendra Malkan, Ms. Dharita P. Malkan, Ms. Deepa Gorasia, Alok Kumar, Ms. Nandini Chhabra, Ms. Bhavna Sarkar, Advs. for the Respondents.

The Judgment of the Court was delivered by

F      **DINESH MAHESHWARI, J.**

G	Rival Submissions.....	12*
	Section 69 of the Act of 1932 and the relevant principles.....	15*
	Application of the relevant principles to the subject suit.....	21*
	Conclusion.....	23*

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H \* Ed. Note: Pagination is as per the original judgment.

Leave granted.

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2. This appeal, by the plaintiff of a suit for declaration and injunction, is directed against the judgment and order dated 15.02.2018, as passed by the High Court of Gujarat<sup>1</sup>, in Civil Revision Application No. 241 of 2017, whereby the High Court has allowed the revision application filed by the contesting defendants (respondent Nos. 1 to 3 herein) and has reversed the order dated 07.04.2017, as passed by the Court of 9<sup>th</sup> Additional Senior Civil Judge, Vadodara<sup>2</sup> in Special Civil Suit No. 333 of 2015.

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2.1. By the said order dated 07.04.2017, the Trial Court had rejected the application moved by the contesting defendants under Order VII Rule 11(d), Order XXX Rules 1 and 2 and Section 151 of the Code of Civil Procedure, 1908<sup>3</sup> read with Section 69 of the Indian Partnership Act, 1932<sup>4</sup> for rejection of plaint on the ground that the suit filed by and on behalf of an unregistered partnership firm was barred by law. The Trial Court essentially held that, on its subject-matter relating to the validity of the sale deed in question, the bar of Section 69(2) was not operating against this suit. However, the High Court has taken a contrary view of the matter and has held that the plaintiff, being an unregistered firm, would be barred to enforce a right arising out of the contract in terms of Section 69(2) of the Act of 1932.

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3. We may take note of the factual matrix and the background aspects of the matter, so far relevant for the question calling for determination in this matter, i.e., as to whether the subject suit, filed by an unregistered partnership firm, is covered by the bar created by Section 69(2) of the Act of 1932?

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#### The relevant factual matrix and background

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4. For a proper comprehension of the subject-matter, worthwhile it would be to take note of the status of respective parties before dilating on the pleadings and submissions.

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4.1. The appellant herein is an unregistered partnership firm by the name “Shiv Developers”. It is stated that this firm is engaged in the business of construction of buildings and is comprising of two equal partners, namely, Mr. Sunilbhai Somabhai Ajmeri and Mr. Jignesh

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<sup>1</sup> For short, ‘the High Court’.

<sup>2</sup> For short, ‘the Trial Court’.

<sup>3</sup> For short ‘the Code’.

<sup>4</sup> For short, ‘the Act of 1932’.

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- A Kanubhai Desai. The said Mr. Sunilbhai Somabhai Ajmeri is also referred to as ‘the administrator’ of this firm and has filed the suit on behalf of the firm.
- 4.2. In the suit so filed by the plaintiff-appellant, a partnership firm in the name “Aksharay Developers” has been arrayed as defendant
- B No. 1 (respondent No.1 herein) whereas the defendant Nos. 2 to 4 namely, Dineshbhai Bhailal Bhai Patel, Arjunsinh Narayansinh Rajput, and Ranjitsinh Narayansinh Rajput (respondent Nos.2 to 4 herein) have been joined in their capacity as the partners of the defendant No. 1 firm. As shall be noticed hereafter, the composition of this firm, in the name “Aksharay Developers” with the said persons as partners, is itself a matter of contention in the suit so filed by the plaintiff-appellant. The Municipal Commissioner and the Town Development Officer of Vadodara Municipal Corporation have also been joined as defendant Nos. 5 and 6 in the suit but they are not the contesting parties in relation to the subject-matter of this appeal.
- D 5. Now, we may briefly refer to the relevant aspects of the case of appellant, as emerging from the plaint averments.
- 5.1. The plaintiff-appellant has averred that on 26.11.2013, the appellant and the respondent Nos. 2 and 3 purchased a property (open land)<sup>5</sup> bearing Tika No. 5/3, City Survey No. 104, 105, 132, 106/A in City Survey Vibhag- B, situated on Kalal Pitha Road, Hujaratpaga, Sub-District Vadodara, admeasuring 232.81 square metres, through a registered sale deed. According to the appellant, its share in the suit property was 60% and the respective shares of respondent Nos. 2 and 3 were 20% each.
- F 5.2. It has further been averred that on 22.04.2014, a new partnership by the firm name “Aksharay Developers” was formed with four partners, namely, Sunilbhai Somabhai Ajmeri (also the partner and administrator of the appellant firm) and the respondent Nos. 2, 3 and 4. According to the plaint averments, the said partnership was formed
- G exclusively for the purpose of the project related with the suit property and the tenure of the partnership was confined to the completion of the said project. A Memorandum of Understanding<sup>6</sup> was signed by the partners on the date of incorporation of the firm, i.e., 22.04.2014; and it

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<sup>5</sup> Hereinafter referred to as ‘the suit property’.

H <sup>6</sup> For short, ‘MOU’.

was agreed in the MOU that from the income which may accrue from the project, a fixed sum of Rs 1,00,00,000 (Rs. One Crore) would be paid to Sunilbhai Somabhai Ajmeri along with 5-10% on the profit accruing upon the completion of project. According to the appellant, the said MOU clearly acknowledged the fact that all the parties to the MOU were the partners of the firm "Aksharay Developers" and the MOU was being entered by virtue of the same.

5.3. The grievance of the appellant has been stated in the manner that in new turn of events, on 23.02.2015, the respondent Nos. 2 and 3 constituted another firm under the same name and style as "Aksharay Developers" but without including Sunilbhai Somabhai Ajmeri and respondent No. 4 as partners. This firm, as constituted on 23.02.2015, is the respondent No. 1 herein and it is alleged that the same has been constituted and got registered by the respondent Nos. 2 and 3 clandestinely and fraudulently. It is further alleged that on the very next day of constituting the respondent No. 1 firm, i.e., on 24.02.2015, the respondent Nos. 2 and 3 got executed a sale deed, whereby 60% share of the appellant in the suit property was purchased by this firm Aksharay Developers from Sunilbhai Somabhai Ajmeri, acting on behalf of the appellant firm Shiv Developers. It has yet further been alleged that the cheques issued in favour the appellants towards sale consideration were dishonoured.

5.4. As per the appellant, Sunilbhai Somabhai Ajmeri (acting on behalf of the appellant firm) was oblivious to the fact that on 23.02.2015, the respondent Nos. 2 and 3 got registered a partnership firm under the name "Aksharay Developers" without any mention of himself and the respondent No. 4; and that Sunilbhai Somabhai Ajmeri was throughout under the bona fide belief that the suit property of appellant firm was being sold to that firm wherein he was also a partner as per the partnership deed and MOU dated 22.04.2014.

5.5. With the aforesaid assertions, the appellant has alleged that the respondent Nos. 2 and 3 have obtained the suit property through a well-hatched conspiracy and without even discharging the sale consideration; and as per the terms agreed upon in the sale deed dated 24.02.2015, if the cheques issued towards sale consideration were not honoured, the sale deed shall be deemed to be null and void. Accordingly, the appellant has instituted the subject suit seeking perpetual injunction and declaration of the sale deed dated 24.02.2015 as null and void.

**A        The application seeking rejection of plaint: divergent views of the Trial Court and the High Court**

6. In the suit so filed by the appellant, the respondent Nos. 1 to 3 appeared in response to the summonses and moved an application for rejection of plaint with reference to the provisions of the Act of 1932.
- B        6.1. The contesting respondents submitted in the said application that the plaintiff-appellant had neither produced any documentary evidence to show that the suitor firm was a registered partnership firm nor any averment was taken in that regard in the plaint. It was further submitted that the sale deed in question (marked 4/4) was a registered document and the same was executed by Sunilbhai Somabhai Ajmeri as administrator-partner of the firm Shiv Developers. The respondents thus contended that the suit for declaration against the registered sale document, when the plaintiff had not shown to be a registered firm, was barred by Section 69 of the Act of 1932. In other words, contention of the respondents had been that as per the mandate of Section 69 of the Act of 1932, the plaintiff, being an unregistered partnership firm, was barred to file a suit regarding the rights arising from any agreement/contract. It was also submitted that as per Order XXX CPC, a suit could be filed on behalf of the firm by any person who is a partner of the firm but the person filing the plaint had not produced any evidence to show that he was a partner in the said firm.
- 6.2. The application so moved for rejection of plaint was opposed by the plaintiff-appellant with the submissions, *inter alia*, that Section 69 of the Act of 1932 was not applicable in the case of fraud. It was further submitted that the plaintiff has been a partner of the firm Aksharay Developers and there was no evidence to show that the said partnership firm Aksharay Developers had been dissolved. It was also submitted that the subject-matter of the suit was to get the sale document quashed on account of fraud and cheating; and the suit of this nature was not barred by Section 69 of the Act of 1932. Thus, the primary contention on behalf of the plaintiff-appellant had been that the bar of Section 69 of the Act of 1932 was not attracted because the subject suit was not for enforcement of any right arising from the contract pertaining to the business of the firm but was for enforcement of statutory rights of the plaintiff. It was also submitted that there was no bar of Order XXX CPC to the present suit inasmuch as there was no dispute by the defendants as regards the partnership firm and they had also not prayed

for declaring the names of the partners. It has also been the contention A on behalf of the plaintiff- appellant that the necessary evidence was required to be led in relation to the pleas sought to be raised by the defendants and, as such, the application was not maintainable at the given stage.

7. In its order dated 07.04.2017, the Trial Court took note of the B rival submissions and examined the provisions contained in Section 69 of the Act of 1932 as also the decisions cited on behalf of the parties. After taking note of the principles of law enunciated by this Court and the factual aspects of the case at hand, the Trial Court rejected the contentions urged on behalf of the respondents, *inter alia*, for the reason C that it was not *prima facie* borne out that the sale document (marked 4/ 4) was pertaining to an agreement/contract relating to the business of the partnership by the name “Shiv Developers”. The Trial Court further noticed the case of the plaintiff that the amount of sale consideration had not been received and opined that the suit would not be barred by the provisions of Section 69 of the Act of 1932 because of non-receipt D of amount of sale consideration by the partners of the firm which had sold the property by a registered document and had the legal right of receiving the amount of sale consideration. The Trial Court further observed that dismissal of the suit was not envisaged by the provisions contained in Order XXX CPC. Therefore, the application as moved by E the respondents was rejected by the Trial Court.

8. The contesting defendants (respondent Nos. 1 to 3 herein) F challenged the orders so passed by the Trial Court by way of a revision application before the High Court. This revision application has been allowed by the High Court by the impugned judgment and order dated 15.02.2018.

8.1. It was contended on behalf of the contesting defendants/ G revisionists before the High Court that the appellant firm being an unregistered partnership firm, the subject suit by this firm for enforcement of a right arising out of the contract of sale was squarely within the ambit of Section 69 of the Act of 1932 and the Trial Court had erred in disallowing the application for rejection of the plaint while proceeding contrary to the applicable provisions of law as also the settled principles enunciated in the binding decisions.

8.2. *Per contra*, it was argued on behalf of the plaintiff-appellant H that specific fraud has been alleged in the present case; that Sunilbhai

- A Somabhai Ajmeri and the defendant Nos. 2 and 3 entered into the contract in independent capacity, which later on, as a part of design of the said defendants, was converted into a registered sale deed. It was contended that the issues raised in the plaint need to be adjudicated after trial and the plaint cannot be rejected under Order VII Rule 11(d) CPC.
- B 9. Having taken note of rival submissions, the High Court summarised the findings of the Trial Court, including its conclusion based upon the sale document, that the transaction in question was an independent one and the claim made in the suit was not arising out of any business transaction of the firm or the contract relating to or arising out of business transactions. The High Court also took note of the prayers in the plaint for declaring the sale deed as being fraudulent, illegal and void and the respondents having no right to float any scheme on the suit land.
- C 9.1. The High Court thereafter referred to the submissions of the respondents with reference to Order XXX Rules 1 and 2 CPC read with Section 69 of the Act of 1932 and, before reproducing the said Section 69, recorded its endorsement of one of the relevant findings of the Trial Court in the following terms: -
- E “23.....On a bare reading of this provision it appears that the learned trial judge has rightly observed that the transaction in question is not arising out of the business of plaintiff firm nor claim is generated from the plaintiff firm.....”
- F 9.2. Thereafter, The High Court, in the context of Section 69(2), held that the transaction under challenge was a sale document dated 24.02.2015, entered into by the plaintiff, an unregistered firm, with the respondents who were third-parties; and held that, by the effect of non-registration of the firm, the suit appeared to be not maintainable. The said findings read as follows: -
- G “ 24....The relevant provisions which is to be construed on the case on hand is Sub Section 2 of Section 69 which indicates that 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. Here is the case in which the transaction which is under challenge is a sale dated 24.02.2015 is a document entered in to by the plaintiff
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firm against the defendants who are third party and undisputedly A the plaintiff firm is an unregistered firm, and therefore, by effect of non- registration, the suit appears to be not maintainable ”

9.3. The High Court, thereafter, referred to various decisions cited at the Bar including that in the case of *Purushottam and Anr. v. Shivraj Fine Art Litho Works and Ors.*, as reported in (2007) 2 G.L.H. 406[= B (2007) 15 SCC 58] and in that regard, observed as under<sup>7</sup> : -

“33. Another decision which has been pressed into service a decision in the case of Purushottam (supra) and by referring to this a contention is raised that the bar of Section 69(2) will not apply in the background of this fact. However, again if the fact is to be seen of that decision even the head note of the said decision itself makes it clear that if the right sought to be enforced does not arise from a contract to which unregistered firm is a party or is not entered into in connection with the business of the unregistered firm, the bar under Section 69(2) will not apply. As such, on the contrary, this decision helps the petitioners to substantiate the contention here as seen in the proceeding on hand that there is a transaction entered into by and on behalf of plaintiff firm which is undisputedly unregistered firm and the claim and relief sought is arising out of that contract which has been entered into to which plaintiff unregistered is a very much party. C D E

Hence, this judgment, on the contrary will not come, in assistance to the respondent as in that particular case, the contract was neither entered into by unregistered firm nor it was entered into by unregistered firm in the course of its business, and therefore, suit F was held to be maintainable.”

9.4. Ultimately, after an analysis of various decisions, the High Court allowed the revision application and set aside the order dated 07.04.2017 of the Trial Court with the consequential effect of rejection of plaint in the following words: -

“36. The overall analysis of the aforesaid decisions which are pressed into service and the undisputed background of the circumstances of this case has clearly spelt-out that the suit G

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<sup>7</sup> We are not dilating on various other decisions referred by the High Court but have reproduced the aforementioned paragraph 33 for its implication, as shall appear in the discussion hereafter later. H

- A proceedings which are hit by Section 69(2) of the Act read with Order 30 of the C.P.C., there is no reason why such non-maintainable proceedings be allowed against the object of Order 7 Rule 11(d). Hence, by giving full effect to the statutory provisions, the Court is of the considered opinion that serious error jurisdiction is committed by the Court, and as such present Revision Application deserves to be allowed, and the impugned order dated 07.04.2017 passed below Exh. 11 in Special Civil Suit No. 333 of 2015 by the learned 9<sup>th</sup> Additional Senior Civil Judge, Vadodara is quashed and set aside with a consequential effect of rejection of plaint. “
- B 10. The aforesaid judgment and order dated 15.02.2018 as passed by the High Court has been challenged in this appeal by the plaintiff-appellant.

#### Rival Submissions

- C 11. Learned counsel for the appellant has submitted that the High Court has failed to appreciate that Section 69(2) of the Act of 1932 does not bar all suits by an unregistered partnership firm against third parties. In the factual matrix of the present case, suit is not hit by Section 69(2) because the contract is not in the regular business dealings of the firm; and the words “enforcing a right arising under the contract” used in Section 69(2) of the Act of 1932 signify the rights arising out of contracts in respect of the firm’s business transactions only. Learned counsel has relied upon the decisions in ***Haldiram Bhujjawala and Anr. v. Anand Kumar Deepak Kumar and Anr: (2000) 3 SCC 250*** and ***Purushottam (supra)***.
- D 11.1. Learned counsel has supplemented his arguments with reference to the concurrent findings of the Trial Court and the High Court on the fact that the contract under consideration, on which the suit is premised, was not in connection with the business of the unregistered firm. Therefore, as per the law laid down by this Court, suit of the appellant is not barred under the provisions of Section 69(2) of the Act of 1932.
- E 11.2. In addition to the above, learned counsel has also emphasised that Section 69(2) of the Act does not bar a suit by an unregistered partnership firm for enforcement of a statutory right or a common law
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right, as held by this Court in ***Haldiram Bhujiawala*** (supra). In this A regard, the learned counsel has also referred to the findings of the Trial Court that since the contract of sale has been affected through a registered sale document, non-payment of the consideration against the said sale gives right to the appellant firm to enforce the terms of the sale document; and such a right is acquired by law, under the Transfer of B Property Act, 1882.

12. *Per contra*, learned counsel appearing for the contesting respondents has strenuously argued that the sale document dated 23.02.2015 was executed by the administrator-partner of the unregistered firm and not in his individual capacity. Consequently, the sale document was related to the business of the firm. Thus, the learned counsel has supported the High Court's conclusion that the suit was hit by the bar under Section 69(2) of the Act of 1932.

12.1. Learned counsel for the contesting respondents has referred to the cases of ***Umesh Goel v. Himachal Pradesh Co-operative Group Housing Society Ltd:*** (2016) 11 SCC 313 and ***Farooq v. Sandhya Anthraper Kurishingal and Ors.:*** (2018) 12 SCC 580, for the submission that any suit filed by an unregistered partnership firm is hit by Section 69 of the Act of 1932; and if the said suit is filed for enforcement of rights arising out of a contract to which the said unregistered partnership firm is a party, it would be rendered non-maintainable. D E

12.2. Thus, learned counsel for the contesting respondents would argue that the High Court has rightly allowed the revision application and has rightly rejected the plaint filed by the appellant firm. F

13. Having given anxious consideration to the rival submissions and having examined the record with reference to the law applicable, we are clearly of the view that the impugned judgment and order dated 15.02.2018, as passed by the High Court, cannot be sustained and the bar of Section 69(2) of the Act of 1932 is not attracted to the suit filed by the appellant. G

#### **Section 69 of the Act of 1932 and the relevant principles**

14. For dealing with the questions raised in this matter, we may take note of the provisions contained in Section 69 of the Act of 1932 as follows: - H

- A      “**69. Effect of non-registration.**— (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.
- B      (2) No suits 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.
- C      (3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect,—
- D      (a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or
- E      (b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920) to realise the property of an insolvent partner.
- F      (4) This section shall not apply,—
- G      (a) to firms or to partners in firms which have no place of business in the territories to which this Act extends, or whose places of business in the said territories are situated in areas to which, by notification under Section 56, this Chapter does not apply, or
- H      (b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in Section 19 of the Presidency Small Cause Courts Act, 1882 (5 of 1882), or, to outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.”

15. In our view, the questions arising in this matter could be directly answered with reference to the principles enunciated by this Court in the case of *Raptakos Brett & Co. Ltd. v. Ganesh Property: (1998) 7 SCC 184*, which have further been explained and applied by this Court in the cases of *Haldiram Bhujjawala* and *Purushottam* (supra). We may take note of the principles vividly expounded in the case of *Haldiram Bhujjawala* (supra) that to attract the bar of Section 69(2) of the Act of 1932, the contract in question must be the one entered into by firm with the third-party defendant and must also be the one entered into by the plaintiff firm in the course of its business dealings; and that Section 69(2) of the Act of 1932 is not a bar to a suit filed by an unregistered firm, if the same is for enforcement of a statutory right or a common law right.

16. Briefly put, the relevant factual aspects in the case of *Haldiram Bhujjawala* (supra) had been as follows: The suit in that case was filed by the plaintiffs seeking perpetual injunction to restrain the defendants from infringing the trademark and from using the trademark/name ‘Haldiram Bhujjawala’. There were two plaintiffs, the first being a partnership firm comprising of three sons of Moolchand whereas the second plaintiff was his fourth son. The historical facts were that the business in the name of “Haldiram Bhujjawala” was being carried on by one Ganga Bishan alias Haldiram since the year 1941. In the year 1965, he constituted a partnership with his two sons Moolchand, Shiv Kishan and his daughter-in-law Kamla Devi (wife of another son R.L. Aggarwal) to carry on business under the same name. The said firm was granted registration of the said trade name. However, on 16.11.1974, the said partnership was dissolved and in terms of the dissolution deed, the above trademark fell exclusively to the share of Moolchand for whole of the country except the State of West Bengal whereas the said Smt. Kamla Devi was given ownership of the trademark rights for the State of West Bengal. The four sons of Moolchand got their names recorded as subsequent joint proprietors of the trademark. Three of them formed a partnership (the plaintiff No. 1 in the subject suit) in the year 1983 and were running a shop at Chandni Chowk, Delhi. In the meantime, on 10.10.1977, the said R.L. Aggarwal and his son applied in Calcutta for registration of the same trademark while claiming themselves to be the full owners thereof without disclosing the dissolution deed dated 16.11.1974. One Ashok Kumar, son of Smt. Kamla Devi, constituted a new firm and opened a shop at Arya Samaj Road, Karol Bagh, New Delhi. In the given circumstances, the plaintiffs of the subject

- A suit claimed the reliefs of injunction, damages, and for destruction of material etc., while claiming their rights of using the said trademark. The defendants sought rejection of the plaint for the reason that the plaintiff No. 1 was not a registered partnership firm on the date of filing of the suit. The application was dismissed by the Trial Court as also by the High Court. Hence, the matter was in appeal before this Court. The points arising for determination in the said matter were formulated by this Court in the following terms: -

**“8. The points that arise for consideration are:**

- (i) Whether Section 69(2) bars a suit by a firm not registered on the date of suit where permanent injunction and damages are claimed in respect of a trademark as a statutory right or by invoking common law principles applicable to a passing-off action?
- (ii) Whether the words “arising from a contract” in Section 69(2) refer only to a situation where an unregistered firm is enforcing a right arising from a contract entered into by the firm *with* the defendant during the course of its business or whether the bar under Section 69(2) can be extended to any contract referred to in the plaint unconnected with the defendant, as the source of title to the suit property?

- E 16.1. Answering the first question in the negative, this Court referred to the previous decision in *Raptakos Brett & Co. Ltd.* (supra) and held as follows: -

- “9. The question whether Section 69(2) is a bar to a suit filed by an unregistered firm even if a statutory right is being enforced or even if only a common law right is being enforced came up directly for consideration in this Court in *Raptakas Brett Co. Ltd. v. Ganesh Property* [(1998) 7 SCC 184]. In that case, Majmudar, J. speaking for the Bench clearly expressed the view that Section 69(2) cannot bar the enforcement by way of a suit by an unregistered firm in respect of a statutory right or a common law right.** On the facts of that case, it was held that the right to evict a tenant upon expiry of the lease was not a right “arising from a contract” but was a common law right or a statutory right under the Transfer of Property Act. The fact that the plaint in that case referred to a lease and to its expiry, made no difference. Hence, the said suit was held not barred. It appears to

us that in that case the reference to the lease in the plaint was obviously treated as a historical fact. That case is therefore directly in point. Following the said judgment, **it must be held in the present case too that a suit is not barred by Section 69(2) if a statutory right or a common law right is being enforced.** A

XXXX XXXX XXXX B

**11.** Likewise, if the reliefs of permanent injunction or damages are being claimed on the basis of a registered trademark and its *infringement*, **the suit is to be treated as one based on a statutory right** under the Trade Marks Act and is, in our view, not barred by Section 69(2). C

**12.** For the aforesaid reasons, in both these situations, the unregistered partnership in the case before us cannot be said to be enforcing any right “arising from a contract”. Point 1 is therefore decided in favour of the respondent-plaintiffs.”

(emphasis supplied) D

16.2. This Court further exposed on the scope of the words “enforcing a right arising under the contract”, as used in Section 69(2) of the Act of 1932; and after a detailed survey of the reports and precedents which led to the frame of the said provision as also after reference to various authorities on the point, this Court explained the rationale and object of the provision that the same was intended to protect those in commerce who deal with a partnership firm in business, inasmuch as they ought to be enabled to know the names of the partners of the firm before they deal with them in business; and the bar of Section 69(2) is not attracted to any and every contract referred to in the plaint as a source of title to an asset owned by the firm. This Court held and explained as under: - E

“**23** The further and additional but equally important aspect which has to be made clear is that the contract by the unregistered firm referred to in Section 69(2) must not only be one entered into by the firm with the third-party defendant **but must also be one entered into by the plaintiff firm in the course of the business dealings of the plaintiff firm with such third-party defendant.** G

**24... The real crux of the question is that the legislature,** H

- A when it used the words “arising out of a contract” in Section 69(2), it is referring to a contract entered into in course of business transactions by the unregistered plaintiff firm with its defendant customers and the idea is to protect those in commerce who deal with such a partnership firm in business.
- B Such third parties who deal with the partners ought to be enabled to know what the names of the partners of the firm are before they deal with them in business.

**25 Further, Section 69(2) is not attracted to any and every contract referred to in the plaint as the source of title to an asset owned by the firm.** If the plaint referred to such a contract

- C it could only be as a historical fact. For example, if the plaint filed by the unregistered firm refers to the source of the firm’s title to a motor car and states that the plaintiff has purchased and received a motor car from a foreign buyer under a contract and that the defendant has unauthorisedly removed it from the plaintiff firm’s possession, — it is clear that the relief for possession against the defendant in the suit does not arise from any contract which the defendant entered into in the course of the plaintiff firm’s business with the defendant but is based on the alleged unauthorised removal of the vehicle from the plaintiff firm’s custody by the defendant. In such a situation, the fact that the unregistered firm has purchased the vehicle from somebody else under a contract has absolutely no bearing on the right of the firm to sue the defendant for possession of the vehicle. Such a suit would be maintainable and Section 69(2) would not be a bar, even if the firm is unregistered on the date of suit. The position in the present case is not different.”

F (emphasis supplied)

17. The aforesaid decision in *Haldiram Bhujiaawala* (supra) was further considered and applied by this Court in the case of *Purushottam* (supra) while holding as under: -

- G “**24.** With respect, we find ourselves in complete agreement with the principles enunciated in *Haldiram Bhujiaawala*. Having regard to the purpose Section 69(2) seeks to achieve and the interest sought to be protected, the bar must apply to a suit for enforcement of right arising from a contract entered into by the unregistered firm with a third party in the course of business dealings with such third party. If the right sought to be enforced does not arise

from a contract to which the unregistered firm is a party, or is not entered into in connection with the business of the unregistered firm with a third party, the bar of Section 69(2) will not apply.” A

18. Nothing contrary to the foregoing discussion is to be found in the decisions cited on behalf of the contesting respondents. The case of **Umesh Goel** (supra) essentially related to the operation of the provision contained in Section 69(3) of the Act of 1932 and interpretation of the expression “other proceedings” in the wake of the question as to whether arbitral proceedings and the award passed therein could be read into the expression “other proceedings”. The said decision has no relevance to the questions at hand. In the case of **Farooq** (supra), this Court found, after a wholesome reading of the plaint, that the suit was based on clause 25(d) of the partnership deed which specifically stated that ‘*no partners of the firm shall without the consent in writing of the other partners being entitled to transfer immovable property belonging to the firm*’. In that case, two partners of an unregistered firm had sued for cancellation of a sale made by the defendant partner without the consent of all the partners. This Court found that the suit was only to enforce a right arising from the terms of said partnership deed and hence, it attracted the bar of Section 69(2) of the Act of 1932. The said decision, for an entirely different fact situation and different claim, has no application to the facts of the present case. D

#### **Application of the relevant principles to the subject suit**

19. Taking up the facts of the present case, one of the significant features herein is that the transaction in question, i.e., sale of its share by the plaintiff firm to the contesting defendants has not been the one arising out of the business of the plaintiff firm. This factual aspect is apparent from the basic plaint averments and is fortified by the concurrent findings of the Trial Court as also of the High Court. Though the High Court endorsed the finding that the transaction in question was not arising out of the business of the plaintiff firm but, it appears that the implication of this crucial finding has not acquired the requisite attention of the High Court. The decision of this Court in the case of **Purushottam** (supra) was cited before the High Court but, while referring to the same in paragraph 33 of the impugned judgment, the High Court probably looked only at the editor’s headnote and in any case, missed out the ratio and principles therein, as reiterated with reference to the previous decisions. The decision in **Haldiram Bhujjawala** (supra) seems to have not gone H

- A into consideration of the High Court although this decision formed the sheet anchor of the order of the Trial Court.

19.1. As noticed, the crucial and key factor in the present case remains that the sale transaction in question is not arising out of the business of the appellant firm. Equally significant fact is that the subject

- B suit is for enforcing a right of avoidance of a document on the ground of fraud and misrepresentation as also the statutory rights of seeking declaration and injunction. Significantly, the composition of defendant firm “Aksharay Developers” (defendant No. 1) has itself been questioned by the plaintiff-appellant while alleging that on 22.04.2014, this firm was C constituted with four partners but later on, the defendant Nos. 2 and 3 (respondent Nos. 2 and 3 herein), constituted another firm in the same name with themselves as partners while leaving aside the other two.

19.2. We are not commenting on the merits of the case of either of the parties but this much is apparent from a look at the frame and

- D contents of the plaint as also the prayers therein that the present one cannot be said to be such a suit by the unregistered firm which would attract the bar of Section 69(2) of the Act of 1932.

20. To put it differently, the relevant principles, when applied to the facts of the present case, leave nothing to doubt that the transaction in question was not the one entered into by the plaintiff firm during the

- E course of its business (i.e., of building construction); and it had been an independent transaction of sale, of the firm's share in the suit property, to the contesting defendants. The bar of Section 69(2) is not attracted in relation to the said sale transaction. Moreover, the subject suit cannot be said to be the one for enforcement of right arising from a contract;

- F rather the subject suit is clearly the one where the plaintiff seeks common law remedies with the allegations of fraud and misrepresentation as also of the statutory rights of injunction and declaration in terms of the provisions of the Specific Relief Act, 1963 as also the Transfer of Property Act, 1882 (while alleging want of the sale consideration). Therefore, the G bar of Section 69(2) of the Act of 1932 does not apply to the present case.

### **Conclusion**

21. The upshot of the foregoing discussion is that, for the purpose of Section 69 of the Act of 1932, the present case is governed by the

- H principles laid down in *Raptakos Brett & Co. Ltd.* (supra), as further

exposed in ***Haldiram Bhujjawala*** (supra). Hence, the bar of Section A  
69(2) is not attracted to the suit filed by the appellant. The Trial Court  
had rightly appreciated the facts of the case and had rightly rejected the  
baseless application moved by the contesting respondents. The impugned  
order of the High Court, being not in conformity with the applicable legal  
principles, is required to be set aside.

22. Accordingly, this appeal is allowed; the impugned judgment and order dated 15.02.2018, as passed by the High Court of Gujarat in Civil Revision Application No. 241 of 2017 is set aside; and the order dated 07.04.2017 as passed by the 9<sup>th</sup> Additional Senior Civil Judge, Vadodara in Special Civil Suit No. 333 of 2015 is restored. The Trial Court shall now be expected to proceed with trial of the suit in accordance with law.

Divya Pandey  
(Assisted by : Roopanshi Virang, LCRA)

Appeal allowed.