INTERPRETATION OF SECTION 69(2) OF INDIAN PARTNERSHIP ACT EXERCISE OF UNACHIEVED FINALITY

By

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I am a keen observer in the changing laws. There is a general belief in the society that the judicial interpretations are moulding or rather drifting from the legislative intentions taking the umbrella of the principles of equity. Equity and Justice are two different valuable concepts used as tools or yardsticks in the mechanism of Judiciary.

The recent conflicting nature of judgments rendered by two different Hon'ble Judges of High Court of Andhra Pradesh, interpreting the concept of registration of firm as reported in AIR 2005 AP 1 (In the case of *M/s. Samyuktha Cotton Trading Co. v. Bheemineni Venkata Subbaiah and others*) and the other reported in 2010 (5) ALD 578 (In the case of *S. Visweshwara Rao v. Malla Seetha Ratnam*) gave an opportunity for me to look into the purview, scope and applicability of Section 69(2) of Indian Partnership Act as interpreted by the various Courts of law in India.

The dicta as per the judgment in the case of *M/s. Samyuktha Cotton Trading Co. v. Bheemineni Venkata Subbaiah and others* reported in AIR 2005 AP 1 rendered by His Lordship *L. Narasimha Reddy*, J. is that in a suit filed by an unregistered firm two options are available to overcome the prohibition envisaged under Section 69 of the Act (*i.e.*) (1) by taking return of the suit and file after the registration or (2) to secure registration even during pendency of the suit and allow the already filed suit to continue.

In a different view not giving the option of registration during the pendency of the suit as a valid compliance of Section 69 of the Act, it was held in the case of *S. Viswesara Rao v. Malla Seetha Ratnam* reported in 2010 (5) ALD 578 rendered by His Lordship *R. Kantha Rao*, J., that registration of firm while the suit is pending would not cure the defect and bar under Section 69 of the Act would still apply. However it was added that with no bar for the unregistered firm to file a fresh suit on being registered, a fresh suit may be filed provided the cause of action still survives.

The proviso of Section 69(2) of Indian Partnership Act reads as follows :

"(2) 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."

A bare perusal of the proviso of Section 69(2) indicates that it has two limbs with the first being that registration of a firm is a precondition for suing and the other being relating to the persons who are competent to sue.

The present Article deals to demonstrate the various dimensions as brought out by various judicial pronouncements over a period of time touching on the aspect relating to the concept of registration of firm.

The judicial pronouncements on a detailed study reveal that they have looked upon the concept of registration of firm broadly to cover mainly three stages (*viz.*) requirement of registration of a firm at the time of filing of suit, registration of a firm during pendency of the suit, registration of a firm during the pendency of the suit with scope for filing a fresh suit.

It is apparent that the proviso of Section 69(2) of the Indian Partnership Act has been moulded by the Hon'ble Judges of various High Courts and Hon'ble Supreme Court over a period of time in the course of their analyzing the concept going much into the depth with appearing of their liberal interpretations and conclusions thereof on equities, appearing to be extending sometimes beyond the intentions of the legislations itself.

The interpretation of Section 69(2) of the Act dates back as early as of the year 1935 itself to the best of my study in the case of *Ram Prasad Thakur Prasad v. Kanta Prasad Sita Ram*, AIR 1935 All. 898, it was brought to light by His Lordship *Kendall*, J., that "Before instituting a suit against a firm by a partner, the firm must be duly registered and the Registrar must have recorded the person suing as a partner in the firm. The act of subsequent registration of the firm and amending the plaint does not make a valid institution merely making an application for registration before the suit is not sufficient. Section 69 of the Act is mandatory.

In a glaring new dimension, in the case of *T. Varadarajuly Naidu and others v. Rajamanika Mudaliar and others*, AIR 1937 Mad. 767, it was held by His Lordship *Horwill*, J. "that registration of firm during the pendency of the suit can be allowed. The view was that no doubt Section 69 of the Act embodies a principle of public policy intended to penalize partnerships which do not register, but when registration has been carried out during the pendency of the suit the requirements of Legislature are to be taken as fulfilled and there is no reason in equity as to why from the moment of registration a suit previously filed should not be allowed to go on. The subsequent act of registration does not validate the plaint from the date of its being filed but it is to be valued from the date of registration. This view of AIR 1937 Mad. 767, was overruled in the case of *K.K.A.P. Goundar v. Muthusami Goundar and others* reported in AIR 1942 Mad. 252 (Division Bench – headed by His Lordships *Leach* CJ and *Happell*, J making it clear that registration of firm after filing of suit cannot cure the defect.

In the case of *Bank of Koothattukulam v. Itten Thomas and another* reported in AIR 1955 Travancore-Cochin 155 (Division Bench-headed by His Lordships *Govinda Pillai*, J and *Vithayathil*, J. it was held that registration of a firm is a condition precedent to its right to institute a suit of nature mentioned under Section 69(2) of the Act. Registration after institution of suit cannot cure the defect of non-registration before the date of suit.

The judicial pronouncement reported in AIR 1972 Mad. 86 (Division Bench-headed by His Lordships *Sadasivam*, J. and *V. Ramaswami*, J. in the case of *Jalal Mohd. Ibrahim (died) and others v. Kakka Mohd. Ghouse Sahib and another*, added a new dimension. It was held that a decree passed in a suit filed by an unregistered firm is not a nullity and more so when the plea of non-registration was not raised in the suit itself. Such a plea cannot be raised in a separate suit.

In a peculiar situation in the case of *M/s. Buhari Trading Co. v. Star Metal Co.* reported in AIR 1983 Mad. 150 (Division Bench-headed by His Lordships *V. Ramaswami*, J and *Singarvelu*, J., it was held that dismissal of suit which was sought to be withdrawn on the ground that the plaintiff was an unregistered firm does not bar filing of fresh suit on the same cause of action after the firm gets itself registered and for doing so no permission is needed. In this judgment the case reported in AIR 1971 Pun. 212 was relied on.

It was held in the case of M/*s Sreeram Finance Corporation v. Yasin Khan and others* reported in AIR 1989 SC 1769 headed by His Lordships *K.N. Singh*, J. and *M.H. Kania*, J., that suit filed by firm after change in constitution but before the change was recognized by the Registrar as not

maintainable since the current partners as on the date of suit was not shown in the Register of Firms.

In the case of *Atmuri Mahalakshmi and others v. Jagdeesh Traders* reported in AIR 1990 AP 288, His Lordships *G. Radhakrishna Rao*, J. held that registration of firm made during the pendency of suit, cures the defect of requirement of registration as envisaged under Section 69 of the Act. This pronouncement was however overruled in the case of *Annapoorna Fertilisers and General Stores v. Arunodaya Fertilisers and General Stores and another* reported in AIR 1994 AP 157 (Division Bench-headed by His Lordships *V. Sivaraman Nair*, J and *S. Dasaratharami Reddy*, J. It was made clear in AIR 1994 AP 157 (DB), that a suit by a firm which is not registered on the date of filing of suit is not maintainable and subsequent registration during the pendency of suit does not cure the requirement of Section 69 of the Act.

The view of judgment reported in AIR 1994 AP 157 (Division Bench) has the support of various earlier judicial pronouncements reported in AIR 1953 Cal. 497, AIR 1964 Ker. 251, AIR 1976 Cal. 471, AIR 1971 SC 1015 and AIR 1977 SC 336 respectively.

In one of the recently decided case by the Hon'ble Supreme Court as reported in AIR 1998 SC 3085 (*M/s Raptakos Brett & Co. Ltd. v. Ganesh Property*) it was held by the Bench constituting of His Lordships *S.B. Majumdar*, J. and *M. Jagannadha Rao*, J., that registration of firm during the pendency of suit cures the defect of registration as required under Section 69 of the Act and that the suit as filed initially by an unregistered firm should be allowed to be continued for the said Act would avoid prolonging of litigation and would cause no harm to either side. In this judgment, though plea was raised to reconsider the earlier decision of Hon'ble Supreme Court reported in AIR 1989 SC 1769, the Hon'ble Court gently declined to do so by stating that it is not necessary for us to express any final opinion on this question or to direct reference to a Larger Bench.

As a latest decision, it was held in the case reported in AIR 2011 Pat. 60 that a firm registered during pendency of suit and before appearance of defendant, suit though not maintainable initially could be filed afresh after registration.

Practically with the given state of affairs as of date, there are glaring two conflicting Hon'ble Supreme Court judgments as reported in AIR 1989 SC 1769 and as reported in AIR 1998 SC 3085 surviving on the concept of registration of firm as envisaged under Section 69 of Indian Partnership Act.

In the light of the above discussion it appears that equities are playing a vital role as a whole in the course of interpretation of statutes. The judgment reported in AIR 2005 AP 1 in the case of *M/s Samyuktha Cotton Trading Co.*, which placed reliance on AIR 1998 SC 3085 is a judicial pronouncement based more on equities rather than the thought of legislative implementations. On the contrary, the judgment reported in 2010 (5) ALD 578 is near to legislative intentions/ implementations in a strict sense.

The ambiguity still persists today. It is respectfully suggested in the interests of practising Advocates at large that there is need for a Larger Bench judicial pronouncement more particularly from the Hon'ble Supreme Court of India in keeping with the conflicting decisions of cases reported in AIR 1989 SC 1769 and AIR 1998 SC 3085, in particular and also several other Hon'ble Supreme Court and other various Hon'ble High Courts pronouncements respectively as discussed hereinabove as regards the scope of Section 69 of Indian Partnership Act. It is equally important that the curtains be laid down for the two conflicting views of our Hon'ble Andhra Pradesh High Court judgments as reported

in AIR 2005 AP 1 and 2010 (5) ALD 578 by process of reference to a Larger Bench for determining authoritative precedent in the light of several authoritative pronouncements and to bring uniformity in understanding the scope, nature and ambit of the Section 69 of the Indian Partnership Act. The finality to the concept of registration of firm as envisaged under Section 69 of the Indian Partnership Act is still unattained leaving open to the Advocates, law students and legal luminaries to pick and choose judicial pronouncements of their choice, which indirectly is likely to hinder proper and effective adjudication by the fraternity of Hon'ble Judges also.

Is Chapter-XVII of Negotiable Instruments Act 1881 (Central Act No.26 of 1881), titled as "Of Penalties in case of dishonour of certain cheques for insufficiency of funds in the accounts" still in force in the teeth of "The Repealing and Amending Act, 2001 (Central Act 30 of 2001)" which received the assent of the President of India on 3.9.2001 and was also published in Gazette of India, Extra Part-II, S.I, dated 3.9.2001 P.P.1-15) ?

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(i) The Negotiable Instruments Act 1881 (Act No.26 of 1881) originally consisted of 16 chapters containing Sections 1 to 137 only. Thereafter, Chapter-XVII was added in 1885 containing Sections 138 and 139, titled as "Notaries Public" by Negotiable Instruments Act 1885 (Act 2 of 1885), Section 10. Sections 138 and 139 dealt with power to appoint notaries public and power to make rules for notaries public. The said Amendment to the main Act by way of adding Chapter XVII came partly to be again amended by Act 12 of 1891, Section 4 and Section 1 known as "Enactments repealed. Repealed by Amending Act 1891 (Act 12 of 1891), Section 2 and Schedule-I. At last in 1956, the said Chapter XVII was wholly repealed by the Notaries Act, 1952 (Act 53 of 1952) Section 16 with effect from 14.2.1956. So, after 14.2.1956, there was no Chapter XVII at all and there used to be 137 sections only in the N.I. Act, 1881.

(ii) While so, in 1988, Parliament again amended the N.I. Act, 1881 by way of adding Chapter XVII with effect from 1.4.1989, by way of passing an Act by name, "Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment Act) 1988 (Act No.66 of 1988) with effect from 1.4.1989 containing Sections 138 to 142 and further amended Chapter XVII by way of adding Sections 143 to 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (Act 55 of 2002) *w.e.f.* 6.2.2003. Thus Chapter XVII contains Sections 138 to 147 by 2003.

(iii) While so, Parliament again passed an Act known as "Repealing and Amending Act 2001 (Act 30 of 2001) with effect from 3.9.2001 and the said Act received the assent of the President on 3.9.2001 and was also published in Gazette of India Extra, Part-II Section-I, dated 3.9.2001 P.P.1-15), As per the said Act 30 of 2001, number of Central Acts were repealed in whole or in part. The Act, "Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act 1988 (Act 66 of 1988)" was wholly