A SHREERAM FINANCE CORPORATION

v.

YASIN KHAN AND OTHERS

JULY 21, 1989

B [K.N. SINGH AND M.H. KANIA, JJ.]

Partnership Act, 1932: Sections 59 and 69—Suit filed by registered firm—Person suing—Not shown as partners in Register of Firms—Suit whether maintainable.

C **Under a Hire Purchase agreement entered into with the appellant, a firm registered under the Partnership Act, 1932, carrying on the business of hire-purchase of automobile vehicles, Respondent No. 1 hired the truck owned by the appellant, under the agreement Respondent No. 1 agreed to pay initial hire charge of Rs.10,000 and certain monthly hire charges on due dates. On the failure of Respondent No. 1 to pay the** D **monthly hire charges, after paying the initial hire charges and charges for one month, the appellant filed a suit against Respondent No. 1 and his guarantor on July 22, 1968, for the recovery of a sum of Rs.13,422.23 for breach of terms and conditions of the agreement.**

There was a change in the constitution of the firm on July 1, 1967 E **with the retirement of two of the then partners, and addition of one new partner as also admission of two minors to the benefits of the Partnership. This change was notified to the Registrar of Firms on August 28, 1968 and was duly taken note of in the Register of Firms subsequently. Thus, no notice of the change had been given to the Registrar of firms. The Trial Judge dismissed the suit as not maintainable in view of** F **Section 69(2) of the Partnership Act, 1932. Upholding this decision, the High Court dismissed the appeal of the firm. Hence, the appeal, by special leave, by the appellant firm.**

Dismissing the appeal, the Court.

G **HELD: Sub-section (2) of Section 69 of the Partnership Act lays down 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 were or had been shown in the Register of Firms as partners in the firm. [487C]**

H **In the present case, the suit filed by the appellant firm is clearly**

hit by the provisions of sub-section (2) of Section 69 of the said Partnership Act, as on the date when the suit was filed, two of the partners shown as partners as per the relevant entries in the Register of Firms were not, in fact, partners, one new partner had come in and two minors had been admitted to the benefit of the partnership firm regarding which change no notice was given to the Registrar of Firms. Thus, the persons suing, namely, the current partners as on the date of the suit were not shown as partners in the Register of Firms. Therefore, the suit was not maintainable in view of the provisions of sub-section (2) of section 69 of the Partnership Act, 1932. [487D-E]

Although the plaint was amended on a later date, that cannot save the suit.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1548 of 1974.

From the Judgment and Order dated 12.12.1972 of the Bombay High Court in F.A. No. 152 of 1972.

V.A. Bobde, B.R. Agarwala and R.B. Hathikhanwala for the Appellants.

M.S. Gupta for the Respondents.

The Judgment of the Court was delivered by

KANIA, J. This is an appeal by special leave granted under Article 136 of the Constitution of India against the judgment of a Division Bench of the Bombay High Court (Nagpur Bench) in First Appeal No. 152 of 1972, the judgment having been delivered on December 12, 1972.

The appellants are a firm registered under the Partnership Act, 1932 and *inter alia* carry on the business of hire-purchase of automobile vehicles. The appellants were the owners of a diesel truck complete with tools and other accessories. On January 24, 1962 respondent No. 1 hired the said truck from the appellants under a Hire Purchase Agreement in writing of the same date. Under the said agreement, respondent No. 1 agreed to pay to the appellants a sum of Rs. 10,000 as initial hire charges and certain monthly hire charges. It was provided under the said agreement that on the payment of all the monthly hire charges and other amounts payable under the agreement

A on the respective due dates and fulfilment of the other terms and conditions of the agreement, respondent No. 1 would have the option to purchase the said truck. However, if any of the monthly hire-charges were not paid or there was a breach of any of the terms and conditions of the agreement, the appellants were entitled to take possession of the truck. Until respondent No. 1 validly exercised the B option to purchase the said truck, the said truck was to remain the property of the appellants. Respondent No. 2 is the guarantor. Respondent No. 1 failed to pay the monthly hire charges to the appellants as provided under the agreement. In fact, he paid only the initial hire of Rs.10,000 and hire charges for one month only. Giving up certain claims for damages and other items the appellants filed a suit in the C Court of Civil Judge (Senior Division) at Nagpur for recovery of a sum of Rs.13,422.23 p against the respondents. Several issues were framed by the learned Trial Judge and they were all decided in favour of the appellants. However, the learned Trial Judge dismissed the suit on the ground that it was not maintainable in view of the provisions of section 69(2) of the Partnership Act, 1932. The appellants preferred an appeal D against this decision to the Bombay High Court (Nagpur Bench). The said appeal was, however, dismissed by the High Court upholding the view of the learned Trial Judge regarding the non-maintainability of the suit. It is against this decision, that the present appeal is directed.

In order to appreciate the controversy before us, it is necessary E to take note of a few further facts none of which is disputed.

The appellant-firm was registered under the Partnership Act, 1932 on November 2, 1960. There was a change in the constitution of the firm on July 1, 1962 but we are not concerned with that change. What is material is that, on July 1, 1967, there was another change in F the constitution of the firm whereby two of the then partners retired and one new partner, namely, Smt. Sarita Agrawal joined as a partner of the said firm; and two minors, namely, Ashish Kumar and Rohit Kumar were admitted to the benefits of the said partnership firm. On the said date, namely, July 1, 1967 two of the then partners, namely, Smt. Sheela R. Agrawal and Shri Ramkishan retired as aforestated G from the said partnership firm. The suit was instituted on July 22, 1968. The notice regarding the change in the constitution of the said firm as aforesaid was given to the Registrar of Firms on August 28, 1968 and a note was taken of the said change in the Register of Firms subsequently. Thus, as pointed out by the learned Trial Judge, on the date when the suit was filed, two partners shown as partners in the H appellant-firm in the relevant entries in the Register of Firms had

already retired, one new partner had joined the said firm and two minors had been admitted to the benefit of the said partnership firm and no notice had been given to the Registrar of Firms in respect of these changes. The notice regarding these changes was given to the Registrar of Firms subsequently and noted on November 19, 1968.

Section 69 of the said Partnership Act deals with the effect of non-registration of firms. Sub-section (2) of the said section, which is material for the purposes of this appeal, runs as thus:

> "(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."

In the present case the suit filed by the appellants is clearly hit by the provisions of sub-section (2) of section 69 of the said Partnership Act, as on the date when the suit was filed, two of the partners shown as partners as per the relevant entries in the Register of Firms were not, in fact, partners, one new partner had come in and two minors had been admitted to the benefit of the partnership firm regarding which no notice was given to the Registrar of Firms. Thus, the persons suing, namely, the current partners as on the date of the suit were not shown as partners in the Register of Firms. The result is that the suit was not maintainable in view of the provisions of sub-section (2) of section 69 of the said Partnership Act and the view taken by the Trial Court and confirmed by the High Court in this connection is correct. Although the plaint was amended on a later date that cannot save the suit. Reference has been made to some decisions in the judgment of the Trial Court; however, we do not find it necessary to refer to any of them as the position in law, in our opinion, is clear on a plain reading of sub-section (2) of section 69 of the said Partnership Act.

In the result, the appeal fails and is dismissed with costs.

N.P.V. Appeal dismissed.