



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL**

SECOND APPEAL No. 276 of 2011

SUBODH KUMAR JAIN AND OTHERS

Versus

M/S SURJIT AUTO AGENCY

Appearance:

Ms. Sanjana Sahni with Shri Kapil Rohra – Advocates for the appellants.

Shri B.D. Singh with Shri Azad Krishna Bais – Advocate for respondent.

Reserved on	::	04.12.2025
Pronounced on	::	09.12.2025

J U D G M E N T

This second appeal has been preferred by the appellants/defendants challenging the judgment and decree dated 22.12.2010 passed by First Additional District Judge to the Court of First Additional District Judge, Bhopal in Regular Civil Appeal No.46-A/2010 affirming the judgment and decree dated 29.01.2010 passed by Sixth Civil Judge Class-I, Bhopal in Civil Suit No.692-A/2009, whereby both the Courts below have concurrently decreed the respondent/plaintiff's suit for eviction filed on the ground of bonafide requirement available under Section 12(1)(f) of the M.P. Accommodation Control Act, 1961 (in short 'the Rent Act').



2. In short the facts are that the respondent/plaintiff had instituted a suit for eviction of the rented shop no.4 admeasuring 7'8''x 24' sq.ft. situated on plot No.7, Lala Lajpat Rai Colony, Bhopal in which the defendants were inducted as tenants on 25.08.1987 and thereafter a written agreement of tenancy (Ex.P/1) was executed on 08.09.1990 for a period of 5 years i.e. upto 01.09.1995 by previous landlord and owner namely Arjun Das and Shanti Devi, who later on sold the shop on 01.02.2007 to the plaintiff- M/s Surjit Auto Agency. The suit was filed with the allegations that plaintiff is engaged in the business of Bajaj Auto Agency and it is in need of the suit shop for expansion of its existing business of Bajaj Auto Agency, which is being run by the plaintiff on plot nos. 4, 5 & 6 and there is no other alternative suitable vacant accommodation available with the plaintiff. On *inter alia* allegations the suit was filed.

3. The defendants appeared and filed written statement denying the plaintiff averments and contended that the plaintiff being an unregistered partnership firm and the suit filed by one of the partners is not maintainable in view of Section 69(2) of the Indian Partnership Act, 1932 (in short 'the Act of 1932'). It is also contended that the plaintiff is already in possession of several other alternative vacant accommodations and it does not require the suit shop for its alleged expansion of business. On *inter alia* contentions the suit was prayed to be dismissed.

4. On the basis of pleadings of the parties, the Trial Court framed issues and recorded evidence of the parties. The plaintiff in support of its case examined



Tulsi Nainwani (PW/1), Ramesh Nainwani (PW/2) and produced documentary evidence (Ex.P/1 to P/29). The defendants also in support of their case examined Sunil Kumar Jain (DW/1) and produced documentary evidence (Ex.D/1 to D/15).

5. After hearing learned counsel for the parties, the Trial Court vide its judgment and decree dated 29.01.2010 decreed the suit on the ground of bonafide requirement available under Sec. 12(1)(f) of the Rent Act, against which defendants preferred Civil Appeal No.46-A/2010, which was dismissed by First Appellate Court vide impugned judgment and decree dated 22.12.2010.

6. Against the aforesaid judgment and decree passed by the Courts below, instant second appeal was preferred by the defendants, which was admitted for final hearing on 19.04.2011 on the following substantial question of law :-

“Whether the suit filed by the plaintiff, an unregistered partnership firm, through one of its partners for eviction of the defendants from the suit is hit by the provisions of Section 69(2) of the Indian Partnership Act 1932 ?”

7. Learned counsel for the appellants submits that the plaintiff is an unregistered partnership firm and is having five partners, therefore, the suit filed on behalf of an unregistered partnership firm that too by one of the partners was not maintainable being hit by the provisions of Section 69(2) of the Act of 1932. He submits that this question was raised before the Courts below, but the same was not considered by the Courts below in its real perspective, which has vitiated the impugned judgment and decree passed by the Courts below. In support of his submissions he placed reliance on the decisions in the case of Umesh Goel vs.



Himachal Pradesh Cooperative Group Housing Society Limited, **(2016) 11 SCC 313**; Hirendra Bhola vs. M/s. Gulati Marketing Company and another, **AIR 2007 MP 165**; Mahavir Trading Co. Vs. M/s. Modi Oil Mills, **1989 (I) MPWN 174**; and Vijay Kumar and another vs. M/s. Shriram Industries and others, **AIR 2017 MP 16**. He also submits that one application under Order 41 Rule 27 CPC was also filed before the First Appellate Court on 07.12.2010, but the same was decided on 13.12.2010 even prior to passing of final judgment on 22.12.2010, which being contrary to law laid down by Hon'ble Supreme Court in the case of Union of India vs. Ibrahim Uddin & Anr., **(2012) 8 SCC 148**, the impugned judgment and decree passed by the First Appellate Court are not sustainable. He also submits that one application under Order 6 Rule 17 CPC was also filed before the First Appellate Court, but the same was not decided, which has also vitiated the judgment and decree passed by the Court below. He also submits that the plaintiff is not in need of the suit shop for its alleged expansion of business and further there is sufficient alternative accommodation available with the plaintiff but the same was not considered by the Courts below. With these submissions, he prays for allowing the second appeal.

8. Learned counsel appearing for the respondent/plaintiff supports the impugned judgment and decree passed by the Courts below and submits that in the light of decision of Hon'ble Supreme Court in the case of Haldiram Bhujawala and another vs. Anand Kumar Deepak Kumar and another, **(2000) 3 SCC 250** and M/s Laxmi Construction & Anr vs. Harsh Goyal & Anr., **2025 SCC OnLine**



SC 2109, the suit is not hit by the provisions of Section 69(2) of the Act of 1932. With these submissions he prays for dismissal of the second appeal.

9. Heard learned counsel for the parties and perused the record.

10. From the order passed by this Court on 19.04.2011, it is clear that in the present case only one substantial question of law was formulated and no other question regarding veracity of the findings recorded/judgment & decree passed by the Courts below was formulated. So, in the present case only the applicability of Section 69(2) of the Act of 1932 to the instant suit, is required to be considered.

11. For ready reference, Section 69 of the Act of 1932 is quoted as under :-

“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.

(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.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of setoff or other proceeding to enforce a right arising from a contract, but shall not affect,—

(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

(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.

(4) This section shall not apply,—

(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

(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, 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.”

12. Further, the provision of Order XXX Rule 1 of CPC, which provides for filing of suit by a firm, is also quoted as under :-

“1. Suing of partners in name of firm:

(1) 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 (if any) of which such persons were partners at the time of the accruing of the cause of action, and any 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 and verified in such manner as the Court may direct.

(2) Where persons sue or are sued partners in the name of their firm under sub-rule (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 such pleading or other document is signed, verified or certified by any one of such persons.”

13. In the present case, it is not disputed that the suit property belonged to Arjun Das and Shanti Devi and being owner and landlord, they let out the rented premises to the defendants on 25.08.1987. It is also not in dispute that the plaintiff purchased the rented premises from Arjun Das and Shanti Devi vide registered sale deed dated 01.02.2007. So, by operation of law, the plaintiff became the owner and landlord of the suit shop. It is also an admitted fact that after purchase of the rented shop, the plaintiff issued notice to the defendants informing them about purchase of the shop and the defendants started paying rent to the plaintiff accepting themselves to be tenant of the plaintiff, so there is no dispute about relationship of landlord and tenant amongst the parties.

14. Only question which has been formulated by this Court and argued by



learned counsel for the appellants, is about maintainability of the suit by an unregistered partnership firm. In the present case, it is not in dispute that the plaintiff firm is an unregistered partnership firm. Section 69(2) provides that no suit to enforce a right arising from a contract shall be instituted in any Court or on behalf of a firm against any third party. Even though the defendants who are undisputedly tenants in the rented premises are to be treated as a third party, would fall within the ambit of this provision. What, therefore, remains to be examined is whether the suit for eviction instituted by an unregistered firm can be said to be a suit to enforce a right “arising from a contract” so as to attract the bar contemplated under Section 69(2) of the Act of 1932.

15. In the case of *M/s. Raptakos Brett & Co. Ltd. v. Ganesh Property*, AIR 1998 SC 3085=(1998) 7 SCC 184 Hon’ble Supreme Court has held as under :-

“21. So far as the applicability of the bar of Section 69 sub-section (2) of the Partnership Act is concerned, it is true that it is a penal provision which deprives the plaintiff of its right to get its case examined on merits by the court and simultaneously deprives the court of its jurisdiction to adjudicate on the merits of the controversy between the parties. It will, therefore, have to be strictly construed. It is also true that once on such construction of this provision, the bar under Section 69(2) of the Act gets attracted, then the logical corollary will be that the said provision being mandatory in nature would make the suit incompetent on the very threshold. Consequently, it is not necessary for us to examine various decisions of this Court rendered in connection with Section 80 of the CPC or Section 77 of the Indian Railways Act, 1890 to which our attention was invited by learned Senior Counsel, Shri Nariman. **We may proceed on the basis that for sustaining a suit which falls within the sweep of Section 69 sub-section (2), the condition precedent is that the firm must be registered at the time of filing of the suit. If it is not registered, the suit must be held to be incompetent from the inception.** In this connection, we may refer to a decision of the Division Bench of the Calcutta High Court in the case of *Gorakhnath Champalal Pandey v. Hansraj Manot* [(1970) 74 CWN 269 : ILR (1970) 2 Cal 506] which had confirmed the decision of the learned Single Judge of the same High Court in the case of *Hansraj Manot v. Gorakhnath Champalal Pandey* [(1962) 66 CWN 262] . It was held in the said decisions that the conditions of Section 69 sub-section (2) were mandatory in nature. However, it must be observed that the said decisions were rendered in an entirely different fact situation wherein during the subsistence of the contract of tenancy, the tenant had failed to pay rent and consequently the landlord had filed the suit for possession on the ground that the tenant had committed breach of the term of tenancy about regular payment of rent. The said suit obviously was a suit for



enforcement of the right arising out of a contract of tenancy for regular payment of stipulated rent which was subsisting between the parties. The said suit filed by the plaintiff-unregistered firm was rightly held to be barred by Section 69 sub-section (2) of the Partnership Act. **In this connection, we may also refer to a decision of the Patna High Court in Padam Singh Jain v. Chandra Bros. [AIR 1990 Pat 95] wherein a learned Single Judge of the Patna High Court had taken the view that after the expiry of the contractual tenancy when the tenant had continued in occupation as a statutory tenant and when the landlord based his suit for possession on any of the grounds available under the Rent Act, it cannot be said to be a suit for enforcement of a right arising from the contract of tenancy.** The said decision rendered on its own facts cannot advance the case of either side. Similarly, the aforesaid decisions of the Calcutta High Court equally cannot advance the case of either side. In the present case, we are concerned with the lease which has come to an end and the erstwhile tenant has remained in occupation as a tenant at sufferance. **Under the law, the erstwhile landlord is entitled to the restoration of possession by enforcement of statutory obligation of the erstwhile tenant as statutorily imposed on him under Section 108(g) read with Section 111(a) of the Property Act. The non-compliance of the statutory obligation by the defendant when made the subject-matter of a corresponding legal right of the erstwhile landlord cannot be said to be giving rise to enforcement of any contractual right of the plaintiff arising from the expired contract of tenancy.** As seen earlier, the controversy would have clearly ended in favour of the respondent and against the appellant if the plaint had referred to only the law of the land under which the defendant was required to be evicted on the expiry of the lease. But unfortunately for the plaintiff, the suit is also based on the breach of the covenant of the lease as seen from para 2 of the plaint. It is, therefore, not possible to interpret the averments with reference to the covenant of the lease only as referring to a historical fact as tried to be submitted by Dr Singhvi for the respondent.

23. “.....”On the facts of the present case it has to be held that there is no further *locus poenitentiae* given to the tenant to continue to remain in possession after the determination of the lease by the efflux of time on the basis of any such contrary express term in the lease. Consequently, it is the legal obligation flowing from Section 108(g) of the Act which would get squarely attracted on the facts of the present case and once the suit is also for enforcement of such a legal right under the law of the land available to the landlord, it cannot be said that the enforcement of such right arises out of any of the express terms of the contract which would in turn get visited by the bar of Section 69 sub-section (2) of the Partnership Act. **Consequently it has to be held that when para 2 of the plaint in addition made a reference to the right of the plaintiff to get possession under the law of the land, the plaintiff was seeking enforcement of its legal right to possession against the erstwhile lessee flowing from the provisions of Section 108(g) read with Section 111(a) of the Property Act which in turn also sought to enforce the corresponding statutory obligation of the defendant under the very same statutory provisions. So far as this part of the cause of action is concerned, it stands completely outside the sweep of Section 69 sub-section (2) of the Partnership Act. The net result of this discussion is that the present suit can be said to be partly barred by Section 69 sub-section (2) so far as it sought to enforce the obligation of the defendant under clauses 14 and 17 of the contract of lease read with the relevant recitals in this connection as found in para 2 of the plaint. But it was partly not barred by Section 69 sub-section (2) insofar as the plaintiff based a part of its cause of action also on the law of the land, namely, the Transfer of Property Act whereunder the plaintiff had sought to enforce its statutory right under Section 108(g) read with Section 111(a) of the Property Act. Enforcement of that right had nothing to do with the earlier contract which had stood determined by the efflux of time.** The first point for determination, therefore, has accordingly to be held partly in favour of the plaintiff



and partly in favour of the defendant. As the decree for possession is passed on the basis of both parts of causes of action, even if it is not supportable on the first part, it will remain well sustained on the second part of the very same cause of action.”

ii) The aforementioned Judgement in the case of M/s. Raptakos Brett & Co. Ltd. (**Supra**) was followed by Hon’ble Supreme Court in the case of M/s. Haldiram Bhujawala & Anr. v. M/s. Anand Kumar Deepak Kumar & Anr., **AIR 2000 SC 1287=(2000) 3 SCC 250**, wherein the Court observed as under:

“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 *Raptakos 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.”

iii) Further, in Shiv Developers through its Partner Sunilbhai Somabhai Ajmeri v. Aksharay Developers and Others, **AIR 2022 SC 772 = 2022 1 RCR (Civ) 802 = (2022) 13 SCC 772**, the Hon’ble Supreme Court after examining the earlier judgements, held as under:

“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 and Co. Ltd. vs. Ganesh Property*, **(1998) 7 SCC 184**, which have further been explained and applied by this Court in the cases of *Haldiram Bhujawala and Purushottam (supra)*. **We may take note of the principles vividly exposted in the case of Haldiram Bhujawala (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. In the light of aforementioned settled legal position, it becomes evident that Section 69(2) of the Act of 1932 creates a bar only in respect of suit instituted



by an unregistered partnership firm for enforcement of rights arising out of a contract. However, where the claim originates from a statutory obligation, the said provision has no application. As the remedy of eviction under S. 12(1) of the Rent Act is a statutory right, a suit filed by an unregistered partnership firm to enforce such right cannot be treated as non-maintainable. Hence, the suit for eviction is clearly maintainable.

17. Insofar as the challenge to the maintainability of the suit on the ground that it has been instituted by only one of the partners of an unregistered partnership firm is concerned, in the present case the plaintiff has clearly proved that the partner Tulsi (PW/1) has been authorized by all other partners of the firm and in support of oral testimony, he has also placed on record a partnership deed dtd.01.04.1996 (Ex.P-2) as well as power of attorney dtd.30.04.2008 (Ex.P-3), which has also been taken into consideration by the Courts below while rejecting the defendants' objection about maintainability of the suit, which is clear from paragraphs 8 to 11 of the judgment of Trial Court and paragraph 10 to 12 of the judgment of First Appellate Court.

18. In view of the aforesaid discussion, substantial question of law formulated by this Court is decided in the manner that the suit filed by the plaintiff, an unregistered partnership firm, through its one of the partners is not hit by the provision of Section 69(2) of the Indian Partnership Act, 1932 and is maintainable.

19. At the same time it is hereby observed that in view of the aforesaid factual



scenario and legal position settled by Hon'ble Supreme Court, the decisions relied upon by learned counsel for the appellants in the case of Umesh Goel (**supra**); Hirendra Bhola (**supra**); Mahavir Trading Co. (**supra**); and Vijay Kumar (**supra**) being distinguishable on facts, do not provide any help to the case of the appellants.

20. Even though, to some extent learned counsel for the appellants has argued about veracity of the findings recorded and judgment and decree passed by the Courts below but in absence of any substantial question of law, the argument cannot be considered, especially when no prayer for formulation of additional question of law has been made. Even otherwise, the findings on the question of bonafide requirement recorded by the Courts below do not appear to be perverse or illegal, hence are not liable to be interfered with within the limited scope of second appeal provided under Section 100 CPC, which are otherwise pure findings of facts and do not raise any substantial question of law, as has been held by a coordinate Bench of this Court in the case of Kishore Singh v. Satish Kumar Singhvi, **2018 (1) MPLJ 457=2017 (3) JLJ 375**.

21. Further, the argument advanced by learned counsel for the appellants in respect of decision of application under Order 41 Rule 27 CPC prior to final judgment and non-decision of application under Order 6 Rule 17 CPC, is concerned, the same does not affect the merits of the case, because the defendants have not placed on record sufficient material to prove availability of alternative suitable vacant accommodation with the plaintiff.



22. Resultantly, this second appeal fails and is hereby **dismissed**.

23. Pending application(s), if any, shall stand disposed of.

(DWARKA DHISH BANSAL)
JUDGE