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FA-1458-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 5th OF MARCH, 2026FIRST APPEAL No. 1458 of 2025*DEEN MOHAMMAD**Versus**PARADISE GARH NIRMAN SHAHKARI SAMITI AND OTHERS*

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Appearance:

Shri Avinash Zargar with Shri Kedar Prasad Kuswaha - Advocate and Shri Gouransh Bhurak and Shri Arvind Soni - Advocate for the appellant.

Shri Ashok Kumar Gupta - Advocate for the respondent No.1.

Shri Anshuman Singh, with Shri Anuj Shrivastava - Advocate for the respondents No.2, 4 and 5.

Shri Fuzail Usmani, learned counsel for the respondent No.3.
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ORDER

The present appeal has been filed under section 96 of the CPC assailing the impugned order dated 9.5.2025 passed by 18th District Judge, Jabalpur, in R.C.S.A.No.15063/2024, whereby the suit filed by the appellant/plaintiff has been rejected under Order 7 Rule 11 CPC.

2. It is the case of the appellant/plaintiff that the appellant/plaintiff has filed a suit seeking declaration that he is co-owner of the suit property and also claimed permanent injunction to restrain the respondents from creating third party interest and alienating the suit property. It is averred in the plaint that plaintiff, defendant no.3 and one Farog Ahmed Ansari, who were partners, entered into an agreement dated 5.5.2016 with defendant no.1, which is a registered co-operative society, to purchase the lands mentioned in



para 1 of the plaint. It is further averred that the aforesaid agreement to sell was made for sale consideration of Rs.1,35,00,000/- per acre, total amounting to Rs.15,18,75,000/-. All the partners have paid their respective shares in advance. It is averred that one partnership deed dated 18.7.2016 was also executed between plaintiff, defendant no.3 and Ahmad Ansari. It is further averred that since defendants are trying to sell the suit property in parts, therefore, plaintiff made paper publication on 13.1.2024 and has also sent a notice dated 18.9.2024 to the defendants, however, the defendants are continuously changing the nature of suit property, hence present suit seeking relief of permanent injunction has been filed.

3. Defendants no.2, 4 and 5 filed an application under Order VII Rule 11 CPC on the ground that the plaintiff was not party to the agreement dated 5.5.2016, hence the suit is liable to be dismissed. Secondly, the suit is barred under the provisions of Section 2(c)(vii)(xi) & (xv) of the Commercial Courts Act, 2015. Further, it is stated that the suit is hit by section 69 of the Indian Partnership Act because the partnership firm is an unregistered firm and the agreement to sell dated 5.5.2016 is also an unregistered document. It is further stated that defendant no.1 is a registered co-operative society and any disputed between the plaintiff and the defendant no.1 will lie before the Registrar, Co-operative Society as per the provisions of section 64(1)(c) and 64(2)(iv) of the M.P. Co-operative Societies Act.

4. The learned court below held that the plaintiff along with defendant no.3 and one Farog Ahmed Ansari have executed a partnership deed on 18.7.2016 and thereafter on expiry of Farog Ahmed Ansari, another



partnership deed has been executed on 14.3.2018 showing one Santosh Usrethe to be the partner of the said firm. The learned court below while considering the application of the defendants under Order 7 Rule 11 CPC, found that the abovesaid partnership firm is an unregistered partnership firm and, therefore, as per the provisions of section 69(2) of the Indian Partnership Act, 1932, a suit arising from a contract by or on behalf of any person suing as a partner in a firm against any firm or person is not maintainable unless the said partnership firm is a registered firm and, accordingly, rejected the suit of the plaintiff. Thereafter, the plaintiff has preferred a review under Order XLVII Rule 1 CPC, which was also dismissed vide order dated 16.7.2025.

5. Learned counsel for the appellant submitted that the plaintiff has filed the suit for enforcement of legal rights and they were not arising out of the partnership deed. It is submitted that the plaintiff has invested huge amount in the suit property hence, he has incurred right in the same and is entitled for the relief of declaration in his favour. Secondly, it is contended that question with regard to the suit being barred by section 69 of the Indian Partnership Act, 1932, could not be decided without adducing evidence. It is further submitted that the partnership firm in question alleged to have been constituted on 18.7.2016 and 14.3.2018 is not a party to the suit, hence, the question of the suit being hit by section 69 of the Indian Partnership Act, 1932 does not arise. It is further submitted that even assuming that the plaintiff has failed to establish formation of partnership firm, then also the plaintiff share over the suit property could not vanish as the plaintiff has



made payment of portion of sale consideration. It is further submitted that the court below has committed grave error of law in rejecting the suit under Order 7 Rule 11 CPC without affording an opportunity to lead evidence to prove the case. To buttress his contention, reliance has been placed upon the judgment of Apex Court in the case of **Kumari Geeta Vs. Nanjundaswamy & others, (2024) 14 SCC 390, Sania Patel & Others Vs. Rav Himavatsing & Ors., 2021 SCC Online MP 3995, Mayor (H.K.) Ltd. & Ors. Vs. Owners & Parties Vessel MV Fortune & Ors., (2006)3 SCC 100, Dahiben Vs. Arvindbhai Kalyanji Bhanusali, (2020) 7 SCC 366, Shri Mukund Bhavan Trust Vs. Shrimant Chhatrapati, (2024)15 SCC 675 and Mansukhlal Dhanraj jain & Others Vs. Eknath Vitthal, (1995) 2 SCC 665** and a judgment of Madras High Court in the case of **S.Sri Sagana Vs. K.Padmavathi**, passed on 18.2.2022 in CRP.PD.No.1304/2019 & CMP No.8523/2019.

6. Per contra, learned counsel for the respondents submitted that even if it is assumed that an agreement has been entered into with the defendant no.1 and the plaintiff has paid the sale consideration, he cannot claim himself to be owner of the property in absence of execution of registered sale-deed. Therefore, the suit seeking relief of declaration of co-owner of the suit property and permanent injunction itself is bad in law and is not maintainable. At the most, the plaintiff could have filed a suit for specific performance of contract if the defendant no.1 has refused to execute the sale-deed, or in case of refusal by the defendants to execute the sale-deed he could have claimed his share of consideration by way of a suit seeking refund of money and damages. But, the present suit seeking declaration as a



co-owner of the property which is not yet sold to the plaintiff cannot stand in the eyes of law. Moreover, the plaintiff has filed the suit on the basis of agreement dated 5.5.2016 in which he himself was not a party. Moreover, the partnership deed dated 18.7.2016 on the basis of which the plaintiff is claiming ownership over the suit property is an unregistered partnership deed, thus the suit is hit by section 69 of the Indian Partnership Act. Thus, it is contended that the court below has rightly passed the impugned order rejecting the plaint under Order VII Rule 11 CPC, which does not call for any interference. To bolster his contention, counsel for the respondents have relied upon a judgment of Hon'ble Apex court in the case of *Haldiram Bhujiawala v. Anand Kumar Deepak Kumar, (2000) 3 SCC 250* and judgment of a coordinate Bench this Court dated 23.07.2024 in the case of *Ashoka Group Vs. Shri Hariram Buddhraja and others, passed in F.A.No.302/2013*.

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

8. From perusal of the application filed under Order 7 Rule 11 CPC by defendants no.2, 4 and 5, it is found that the application has been filed on various factual and legal grounds. However, the court below has decided the application only on the ground that the suit has been found to be not maintainable under section 69(2) of the Indian Partnership Act.

9. It is trite law that for consideration of rejection of plaint, only the plaint averments are germane. The Hon'ble Apex court in the case of *Nusli Neville Wadia v. Ivory Properties, (2020) 6 SCC 557*, has held that the pleadings of the plaint are germane to decide the application under Order 7



Rule 11 of CPC. No other documents of defence is required to be seen at the time of deciding the application under Order 7 Rule 11, that is to be seen at the time of final hearing if those documents are brought by the other side in accordance with law. The Hon'ble Apex Court has held as under :-

"69. In *Hareendran v. Sukumaran* [*Hareendran v. Sukumaran*, (2018) 14 SCC 187 : (2018) 4 SCC (Civ) 510], this Court has laid down that question of limitation in the case being mixed question of law and facts, could not have been decided as preliminary issue. The provision under which a plaint can be rejected is provided in Order 7 Rule 11(d). The language used in Order 7 Rule 11 is where averments made in plaint does not disclose a cause of action; relief claimed is undervalued, and the plaint is not corrected in spite of the direction of the Court; plaint is insufficiently stamped, and in spite of the Court's order the plaintiff has failed to supply the requisite stamp duty; where the suit appears from the statement in the plaint to be barred by any law; where it is not filed in duplicate; and where the plaintiff fails to comply with the provisions of Rule 9. What is of significance under Order 7 Rule 11 is that from the averments of the plaint itself the suit is barred by any law and it would include limitation also including bar created by any other law for the time being in force. For the rejection of plaint, averments made by the defendant in the written statement or otherwise cannot be seen, only the averments of the plaint are material and can be taken into consideration and no other evidence".

(emphasis supplied)

10. The Hon'ble Apex Court in the case of *Dahi Ben Vs. Arvind Bhai*, (2020) 7 SCC 366, has held that even the documents filed along with the plaint when they are referred to in the plaint, forms the basis of the plaint, it should be treated to be a part of the plaint. In exercise of the power under Order 7 Rule 11 CPC, the court would determine if the assertions made in the plaint are contrary to the statutory law or judicial dicta or for deciding whether case for rejecting the plaint at the threshold is made out. The Hon'ble Apex Court has held as under :-

"23.2. The remedy under Order 7 Rule 11 is an independent and



special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [*Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I*, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [*Sopan Sukhdeo Sable v. Charity Commr.*, (2004) 3 SCC 137]

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra* [*Saleem Bhai v. State of Maharashtra*, (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in *Azhar Hussain case* [*Azhar Hussain v. Rajiv Gandhi*, 1986 Supp SCC 315. Followed in *Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba*, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823].

11. The Hon'ble Apex court in the case of *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I*, (2004) 9 SCC 512 has held that the test for exercising the power under Order 7 Rule 11 CPC is that if the averments



made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. The Hon'ble Apex court has further held as under :-

139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.

12. It is further held by the Hon'ble Apex court that *it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form which has to be looked into. The plaint has to be construed as it stands without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact.* (See D.Ramchandran Vs. R.V. Jankiraman, (1999) 3 SCC 267.)

13. The Hon'ble Apex court in the case of *Dahi Ben* (supra) has delineated the meaning of cause of action which means every fact which would be necessary for the plaintiff to prove, if traversed in order to support his right to judgment. It consists of bundle of material facts which are necessarily for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

14. The Hon'ble Apex court in the case of *Swamy Atmananda v. Sri Ramakrishna Tapovanam*, (2005) 10 SCC 51, has held as under :-

24. A cause of action, thus, means every fact, which, if traversed,



it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.

15. From perusal of the plaint, it is found that though the plaintiff has submitted that there was some monetary transaction with defendants, for which details have been mentioned in para 3 of the plaint; but, from other pleadings it is found that the appellant has pleaded that such amount has been used for payment of consideration of land of Rs.15,18,75,000/- in which the plaintiff has also paid his share along with defendant no.3 and one Farog Ahmed Ansari. It is also submitted that the land has been agreed to be purchased under the partnership by way of agreement dated 5.5.2016, in which name of one of the defendants has been mentioned as representative of the firm. Thereafter, one another partnership deed dated 14.3.2018 has been executed in which another partner has been included and defendant no.3 has been made consent giver. It is the case of the plaintiff that by use of that money, of which details have been mentioned in the plaint, the defendant no.3 has been made Vice President of defendant no.1 Society and defendant no.2 has been appointed as President. It is nowhere mentioned that how the defendant no.1 has become owner of the land, which is a co-operative society.

16. Moreover, from perusal of the partnership deed dated 18.7.2016, it is found that there is a mention that an agreement to purchase land from the said society has been executed. The deed has also got some recitals of other



agreement executed with defendant Sarvesh Mishra, who has been appointed as Vice President of the society. Thereafter, one another deed with name and style 'Partnership deed' has been sought to be executed on 14.3.2018, which has also been filed along with the plaint.

17. In the said deed, there is a recital that one of the Investor/partner Farooq Ahmed has expired and in his place one new partner has been inducted. When the entire deed is read, it is found that it contains all the recitals of the partnership deed. The appellant is claiming his rights through the said partnership deed and on the basis of payment which has been made pursuant to the said deed. Section 69 of the Indian Partnership Act reads 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 set-off 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 a 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 (2 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 1 [the territories to which this Act extends], or whose places of business in 2 [the said territories] are situated in areas to which, by notification



under 3 [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 (15 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.

18. The Hon'ble Apex court in the case of *Haldiram Bhujawala* (*supra*) has held as under :-

22. In *Raptakos Brett and Co.* [(1998) 7 SCC 184] it was clarified that the contractual rights which are sought to be enforced by the plaintiff firm and which are barred under Section 69(2) are “rights arising out of the contract” and that it must be a contract entered into by the firm *with the third-party defendants*. Majmudar, J. stated as follows: (SCC p. 191, para 9)

“A mere look at the aforesaid provision shows that the suit filed by an unregistered firm against a third party for enforcement of any right *arising from a contract with such a third party* would be barred....”

(emphasis supplied)

19. A coordinate Bench of this court in the case of *Ashoka Group* (*supra*) has held as under :-

"20. Hon'ble Apex Court in *Purushottam and another Vs. Shivraj Fine Arts Litho works and others*, (2007) 15 SCC 58, dealing with present issue, has held as under:-

“21. It would thus appear that registration of a firm was conceived as a protection to third parties dealing with a partnership firm. Registration ensured the certainty of existence of the firm and its membership, so that later an unsuspecting third party contracting with the firm may not run the risk of being defeated on discovery that neither the partnership firm nor its partners existed in fact. On the other hand, an unregistered firm could not bring a suit for enforcing its right arising from a contract.



22. In *Raptakos Brett & Co. Ltd.* [(1998) 7 SCC 184] this Court after noticing Section 69 of the Act observed: (SCC p. 191, para 9)

“A mere look at the aforesaid provision shows that the suit filed by an unregistered firm against a third party for enforcement of any right arising from a contract with such a third party would be barred at its very inception. To attract the aforesaid bar to the suit, the following conditions must be satisfied:

(i) That the plaintiff partnership firm on the date of the suit must not be registered under the provisions of the Partnership Act and consequently or even otherwise, the persons suing are not shown in the Register of Firms as partners of the firm, on the date of the suit.

(ii) Such unregistered firm or the partners mentioned in the sub-section must be suing the defendant third party.

(iii) Such a suit must be for enforcement of a right arising from a contract of the firm with such a third party.”

23. Relying upon the aforesaid analysis this Court in *Haldiram Bhujawala* [(2000) 3 SCC 250] held that the contract contemplated by Section 69 of the Act is the contract entered into by the firm with the third-party defendant. The contract by the unregistered firm referred to in Section 69(2) must not only be one entered into by the firm with a 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.

24. With respect, we find ourselves in complete agreement with the principles enunciated in *Haldiram Bhujawala* [(2000) 3 SCC 250]. 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.”



21. Hon'ble Apex Court in **Shiv Developers (supra)** also, after referring and relying upon **Haldiram Bhujawala (supra)**, has 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 *Raptakos Brett & Co. Ltd. v. Ganesh Property* [*Raptakos Brett & Co. Ltd. v. Ganesh Property*, (1998) 7 SCC 184] , which have further been explained and applied by this Court in *Haldiram Bhujawala* [*Haldiram Bhujawala v. Anand Kumar Deepak Kumar*, (2000) 3 SCC 250] and *Purushottam* [*Purushottam v. Shivraj Fine Arts Litho Works*, (2007) 15 SCC 58] . We may take note of the principles vividly exposted in *Haldiram Bhujawala* [*Haldiram Bhujawala v. Anand Kumar Deepak Kumar*, (2000) 3 SCC 250] that to attract the bar of Section 69(2) of the 1932 Act, 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 1932 Act 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.

"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 trade mark 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?"

16.1. Answering the first question in the negative, this Court referred to the previous decision in *Raptakos Brett* [*Raptakos Brett & Co. Ltd. v. Ganesh Property*, (1998) 7 SCC 184] 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 *Raptakos Brett & Co. Ltd. v. Ganesh Property [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.

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11. Likewise, if the reliefs of permanent injunction or damages are being claimed on the basis of a registered trade mark 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).

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.”

16.2 This Court further expounded on the scope of the words “enforcing a right arising under the contract”, as used in Section 69(2) of the 1932 Act; 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:-

“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.*

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

17. The aforesaid decision in *Haldiram Bhujiawala* (supra) was further considered and applied by this Court in *Purushottam [Purushottam* (supra) while holding as under:- “24. With respect, we find ourselves in complete agreement with the principles enunciated in *Haldiram Bhujiawala [Haldiram Bhujiawala v. Anand Kumar Deepak Kumar, (2000) 3 SCC 250]* . 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.”

22. From plaint averments as well as documents referred and quoted in preceding paras, it is evident that present suit has been filed on behalf of the Ashoka Group for specific performance of contract that was executed by one of its partner, on behalf of Ashoka Group, after having been authorized by Ashoka Group. Thus, present suit has been filed for enforcement of a right arising from a contract of firm with third party. Thus, if facts of the present case, as quoted and referred in preceding paras, along with partnership deed/resolution, are examined in the light of legal provision contained in Section 69(2) of the Indian Partnership Act 1932 as well as principles laid down by Hon'ble Apex Court in *Haldiram Bhujiawala* (supra) *Purshottam* (supra) and *Shiv Developers* (supra), then, it is evident that present suit filed by the appellant/plaintiff is clearly barred by Section 69(2) of Indian Partnership Act, 1932.”

20. Applying the aforesaid principles of law laid down by Hon'ble Apex Court and in view of the factual analysis of the present case, bearing in



mind the averments made in the plaint, it is found by this Court that the present suit is not barred by section 69(2) of the Indian Partnership Act. It has been clarified by the Hon'ble Apex court in the case of Haldiram Bhujawala (supra) that the contractual rights which are sought to be enforced by the plaintiff firm and which are barred under section 69(2) are "rights arising out of the contract" and it must be a contract entered into by the firm with the third party defendants. Same principle has been reiterated by the Hon'ble Apex Court in Purushottam and another Vs. Shivraj fine Arts Litho Works and others, (2007) 15 SCC 58, Shiv Developers through its Partner Sunilbhai Somabhai Ajmeri Vs. Aksharay Developers, AIR 2022 SC 772, Shakti Bhog Food Industries Ltd. Vs. Central Bank of India, AIR 2020 SC 2721 and by this Court in Ashoka Group (supra).

21. When pleadings of the plaint have been examined, it is found that the plaintiff is not claiming any rights arising out of a contract with a third party being the partner of the firm nor it is a case that a partnership firm has entered into a contract with a third party in which the appellant being a partner having rights. In fact, it is a case of the appellant that the appellant has invested money with defendants, who are said to be partners in the partnership firm to purchase land. However, the defendant became the office bearer of the society from which it is to be purchased, therefore, it is not a case of the firm against the third party. It is the case of the appellant/plaintiff for declaration of his rights in the land. However, the relief which has been sought by the appellant is ex-facie not tenable in the eyes of law in absence of any transfer in favour of the appellant and other persons who have



invested with the appellant to purchase the land as there is no transfer deed available on record.

22. The object behind section 69(2) of the Act is that a third party should not be defrauded by a firm which is not registered, against whom no contractual obligation can be enforced. But, as a matter of fact, the learned court below has not decided the application on the ground of not having cause of action or rights of the appellant, which can be declared under section 34 of the Specific Relief Act. Thus, in the considered opinion of this court, rejection of the plaint under Order 7 Rule 11 CPC is not in accordance with law. Accordingly, the impugned order dated 9.5.2025 passed by 18th District Judge, Jabalpur, in R.C.S.A.No.15063/2024 is hereby quashed. The matter is remanded back to the trial court to re-examine the application on the available grounds by giving opportunity to all the parties to plead and submit their arguments.

23. With the aforesaid, the appeal stands disposed of.

(DEEPAK KHOT)
JUDGE

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