

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2569/2025
(@Petition for Special Leave to Appeal (C) No.26521/2024)

ASHOKA GROUP

Appellant(s)

VERSUS

HARIRAM BUDDHRAJA & ORS.

Respondent(s)

O R D E R

1. Leave granted.

2. This appeal arises from the Judgment and Order passed by the High Court of Madhya Pradesh at Jabalpur dated 23-7-2024 in First Appeal No.302/2013, by which the appeal filed by the appellant - herein (original plaintiff) came to be dismissed, thereby affirming the order passed by the 4th Additional District Judge, Jabalpur rejecting the plaint under Order VII Rule 11(d) of the Civil Procedure Code, 1908 on the ground that the Civil Suit instituted by the plaintiff is hit by Section 69(2) of the Indian Partnership Act.

3. The facts giving rise to this appeal may be summarized as under.

4. The appellant (herein) is one of the partners of a partnership firm (now registered).

5. The partnership firm is running in the name of 'Ashoka Group'.

6. At the relevant point of time when the partnership firm was unregistered, it entered into an agreement of sale with the

respondents (herein) (original defendants) with respect to the suit property.

7. As disputes arose between the parties, the plaintiff had to institute a suit for specific performance of contract based on the agreement of sale.

8. The defendants raised a preliminary issue as regards the maintainability of the suit on the ground that in view of the provisions of Section 69(2) of the Partnership Act, the suit filed by one of the partners of an unregistered partnership firm is not maintainable.

9. The application filed by the defendants for rejection of plaint came to be allowed.

10. The plaintiff, being dissatisfied, with the order passed by the Trial Court rejecting the plaint, went in appeal before the High Court of Madhya Pradesh. The High Court dismissed the first appeal.

11. In such circumstances, referred to above, the plaintiff is here before this Court with the present appeal.

12. We heard Mr. Amit Anand Tiwari, the learned Senior counsel appearing for the appellant (original plaintiff) and Mr. Mrigank Prabhakar, the learned counsel appearing for the respondents (original defendants).

13. The issue is limited. As on date, the said partnership firm is registered. However, at the relevant point of time when the suit was instituted, indisputably it was an unregistered partnership firm.

14. In such circumstances, both the Courts below took the view that the suit is not maintainable.

15. The other side, i.e., the defendants although dispute the execution of the agreement of sale yet they have not disputed receiving Rs.15,00,000/- towards earnest money.

16. Yesterday, when the matter was heard for some time, we suggested to the parties to sit and try to arrive at some amicable settlement.

17. We tried to persuade the appellant - herein that they should accept Rs.15,00,000/- paid towards earnest money with 9% interest from 2006.

18. In such circumstances, the learned counsel requested that let the matter be kept today so that he can take appropriate instructions from his client.

19. Today, when the matter was taken up for hearing, the learned counsel appearing for the appellant submitted that his client would like to pursue this litigation further and would not like to accept the amount of Rs.15,00,000/- with 9% interest from 2006.

20. Our attention has been drawn to a decision of this Court in the case of "Haldiram Bhujiawala And Another vs. Anand Kumar Deepak Kumar And Another" reported in (2000) 3 SCC 250, more particularly Para 26 therein. Para 26 reads thus:-

"In fact, the Act has not prescribed that the transactions or contracts entered into by a firm with a third party are bad in law if the firm is an unregistered firm. On the other hand, if the firm is not registered on the date of suit and the suit is to enforce a right arising out of a

contract with the third-party defendant in the course of its business, then it will be open to the plaintiff to seek withdrawal of the plaint with leave and file a fresh suit after registration of the firm subject of course to the law of limitation and subject to the provisions of the Limitation Act. This is so even if the suit is dismissed for a formal defect. Section 14 of the Limitation Act will be available inasmuch as the suit has failed because the defect of non-registration falls within the words "other cause of like nature" in Section 14 of the Limitation Act, 1963. (See *Surajmal Dagduramji Shop v. Shrikisan Ramkisan* [AIR 1973 Bom 313 : 1973 Mah LJ 624]).

21. The dictum as laid down by this Court in "*Haldiram Bhujiawala*" (supra), referred to above, is that if the firm is not registered on the date of suit and the suit is to enforce a right arising out of a contract with the third party defendant in the course of his business, then it will be open for the plaintiff to seek withdrawal of the plaint with leave and file a fresh suit after registration of the firm, subject to the provisions of the Limitation Act. This Court went on further to observe that it would be so even if the suit is dismissed for a formal defect. It proceeded further to observe that Section 14 of the Limitation Act will be available inasmuch as the suit has failed because the defect of non-registration falls within the words "other acts of like nature" in Section 14 of the Limitation Act, 1963.

22. "Haldiram Bhujawala" (supra) is based on a decision of the Bombay High Court in the case of "*Surajmal Dagduramji Shop v. Shrikisan Ramkisan*" [AIR 1973 Bom 313].

23. Be that as it may, today we are not getting into any other debate. We permit the plaintiff to withdraw the suit in terms of the dictum as laid down in "Haldiram Bhujawala" (supra) with liberty to file a fresh suit in accordance with law, leaving all the questions open for both the sides to be agitated before the Trial Court.

24. The appeal is, accordingly, disposed of.

25. Pending applications, if any, shall also stand disposed of.

.....J
(J.B. PARDIWALA)

.....J
(R. MAHADEVAN)

NEW DELHI
11TH FEBRUARY, 2025.

ITEM NO.51

COURT NO.13

SECTION IV-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No.26521/2024

[Arising out of impugned final judgment and order dated 23-07-2024 in FA No. 302/2013 passed by the High Court of Madhya Pradesh Principal Seat at Jabalpur]

ASHOKA GROUP

Petitioner(s)

VERSUS

HARIRAM BUDDHRAJA & ORS.

Respondent(s)

[TO BE TAKEN UP AS FIRST MATTER ON BOARD]
(IA No. 4151/2025 - APPLICATION FOR VACATION OF INTERIM ORDER)

Date : 11-02-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) :

Mr. Amit Anand Tiwari, Sr. Adv.
Mr. Arjun Garg, AOR
Ms. Kriti Gupta, Adv.
Ms. Sagun Srivastava, Adv.
Ms. Saaranish Shukla, Adv.

For Respondent(s) :

Mr. Siddharth R. Gupta, Adv.
Mr. Mrigank Prabhakar, AOR
Mr. Sankalp Kochar, Adv.
Mr. Siddhant Kochar, Adv.
Mr. Aman Agarwal, Adv.
Mr. Uddaish Palya, Adv.
Mr. Siddharth Sahu, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. The appeal is disposed of, in terms of the signed order.
3. Pending applications, if any, shall also stand disposed of.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)

(Signed Order is placed on the file)