MS (Com) – 115/2024

Present: Ishani Chakravarty Banerjee (J.O Code.WB00890)
Judge Commercial Court at Rajarhat
North 24 Parganas

CNR:WBNP19-000028-2024

Sri Enterprises and Ors.
…. Plaintiffs
vs.
M/s. Sainath Autolinks Pvt. Ltd. & Ors.
…. Defendants

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24.04.2026

Parties file haziras.

The record is taken up for passing order in respect of the application ***(IA No.7 of 2024)*** dated 19.12.2024 filed by the defendants.

Perused the plaint, instant application dated , the annexures, as well as written notes of arguments filed thereto.

It is necessary to bringforth the factual backdrop of the case in order to adjudicate the present application. However, prior to that, the identification of the parties is required to be placed and the same is as follows :-

Parties :-

The plaintiff no.1 herein is the Partnership Firm with the plaintiff nos.2 to 4 as its partners. The defendant no.1 is a company, defendant nos.2 & 3 being its directors and the defendant no.4 being an Advisory and Accountant of the defendant no.1 company.

Nature of the suit :-

The instant suit pertains to the recovery of money along with interests from the defendants on account of a loan granted by the plaintiffs for the defendants' business purposes.

Facts as per the plaint :-

The defendants had approached the plaintiffs for a loan in the month of June, 2019 and upon negotiations, the plaintiffs agreed to pay Rs.2,72,50,000/- in tranches and accordingly, the said loan was disbursed to the Oriental Bank of Commerce Durgapur through RTGS. A part of such loan amounting to Rs.1,49,75,000/- was also repaid by the defendants, leaving the balance amount of

Rs.1,22,75,000/-. Thereafter, inspite of verbal intimation and dishonour of such cheque dated 16.02.2020 amounting to Rs.6,00,000/- issued by the defendants, the balance amount remain unpaid prompting the plaintiffs to take recourse to NCLT under Section 7 of the Act. However, such case was dismissed with an observation that the plaintiffs may seek other remedies in law. Thereafter, a demand notice dated 22.02.2024 demanding the said balance along with interest 18% per annum was issued by the plaintiff and failure to make payment of such outstanding amount along with interest resulted in the institution of this suit.

Defendant's application :-

The Defendants appeared before this Court and filed the present application praying for rejection of the plaint on the ground that the instant suit is barred by the provisions of Section 69(2) of the Partnership Act, 1932. The Defendants/Petitioners have contended that Plaintiff No. 1 is a partnership firm, and being an unregistered partnership firm, it is barred from enforcing any contractual right against a third party by instituting a suit, in view of the express prohibition contained under Section 69(2) of the Partnership Act, 1932 and consequently, the said firm is not entitled to recover the said amount from the Defendants. It has been specifically submitted by the learned Counsel that as money was lent pursuant to an Agreement and the suit has been filed for recovery of money thereby implying that the suit is for enforcement of an Agreement, the same is hit by Section 69(2) of the Partnership Act, 1932.

In support of the aforesaid contention, reliance was placed on the judgment of the Hon'ble Calcutta High Court in ***Sunderlal and Sons vs. Yagendra Nath Singh and Ors., reported at AIR 1976 Cal 471***, wherein it has been held that a decree passed in favour of an unregistered partnership firm is void and non est, and such a plea can be taken even at the stage of execution and that a plaint filed by an unregistered partnership firm would be no plaint in the eye of law, and proceedings initiated on the basis of such an invalid plaint would be without jurisdiction. Further reliance was placed on the Division Bench judgment of the Hon'ble Calcutta High Court in ***In the matter of Abani Kanta Pal, reported at AIR 1986 Cal 143***, wherein it has been held that the embargo under Section 69(1) and 69(2) of the Partnership Act is founded on public policy and cannot be waived by the defendant and that if a firm is not registered, the Court has no jurisdiction to entertain a suit in violation of the said provisions, and any such plaint is liable to be treated as void and non est in the eye of law. The Defendants have also relied upon the judgment of the Hon'ble Supreme Court in ***Shreeram Finance Corporation vs. Yasin Khan and Ors., reported at (1989) 3 SCC 476***, wherein it has been held that a suit is not maintainable if the persons suing are not shown as partners in the Register of Firms as on the date of institution of the suit, in view of Section 69(2) of the Partnership Act. The judgment of the Hon'ble Supreme Court in ***Delhi Development Authority vs. Kochhar Construction Work and Ors., reported at (1998) 8 SCC 559***, was referred wherein it has been held that Section 69(2) clearly bars the institution of a suit for enforcement of a right arising from a contract by or on behalf of an unregistered partnership firm against a third party, unless the firm is registered and the persons suing are shown in the Register of Firms as partners.

In light of the aforesaid submissions and settled position of law, it has been emphasized that the very institution of such a suit is barred under the said provision and it has been urged that the plaint is liable to be rejected.

The Plaintiff's/Respondent's resistance to the application :-

The Plaintiffs/Respondents entered appearance and contested the present application by filing written objections. It is their case that the instant suit has not been instituted solely by the partnership firm, as Plaintiff Nos. 2, 3, and 4 are also co-plaintiffs who have signed and verified the plaint in their individual capacities. The loan in question was advanced through banking transactions from the joint bank account of Plaintiff Nos. 2, 3, and 4, which is jointly operated by them, and therefore the loan was granted jointly by the said plaintiffs. The notice of demand was also issued jointly by Plaintiff Nos. 2, 3, and 4 and the plaint clearly states that all the plaintiffs jointly advanced the loan and are now seeking recovery. The plaintiffs further contended that the claim is not based on enforcement of any contract but on a statutory right, and therefore the bar under Section 69(2) of the Partnership Act, 1932 is not attracted. The loan having been advanced in a non-gratuitous manner, the same is recoverable under Section 70 of the Contract Act, 1872. It is also submitted that the question whether the suit has been instituted by the partnership firm or by Plaintiff Nos. 2, 3, and 4 in their individual capacities can only be determined upon appreciation of evidence and documents and cannot be decided at the threshold.

According to the plaintiffs, Section 69(2) bars only suits by an unregistered partnership firm for enforcement of contractual rights and does not extend to enforcement of statutory or common law rights, and referred to the rulings in ***Raptakos Brett & Co. Ltd. vs. Ganesh Property, (1998) 7 SCC 184***, ***Haldiram Bhujiwala & Anr. vs. Anand Kumar Deepak Kumar & Anr., (2000) 3 SCC 250***, and ***P.C. Chandra Financial Services Private Limited vs. State of West Bengal & Ors., 2025 SCC OnLine Cal 6998***. It has been submitted that the plaint discloses that the plaintiffs have jointly advanced the loan, and whether such claim is true or not is a matter for trial, which cannot be decided at the stage of rejection of plaint, and in this respect referred to the rulings reported in ***Mangilal Jagrupji Jain vs. Bharat Shankarlal Dhakad (HUF) & Ors., 2012(1) Mh. L.J. and Humayun Properties Limited vs. Commonwealth Jewellers, 2003 SCC OnLine Cal 387.*** It is further contended that the suit also seeks recovery of amounts covered by cheques issued by the defendants and is therefore not confined to enforcement of a contractual right, as recognised in ***Narendra Kumar Saxena vs. M/s. Paper Traders, 2003(1) Mh. L.J. and Kerala Arecanut Stores vs. M/s. Ramkishore & Sons & Anr., 1974 SCC OnLine Ker 24***. The claim is also maintainable under Section 70 of the Contract Act, 1872 as a statutory right arising from a non-gratuitous act, as held in ***Messrs. S.N. Bagla & Company vs. Shree Hanuman Sugar & Industries Limited, 2001 SCC OnLine Cal 691***.

It is thus contended that the present application for rejection of the plaint is not maintainable in law, inasmuch as (a) the claim arises from a statutory right and (b) all the plaintiffs are jointly entitled to recover the said amount, and these being questions involving mixed questions of fact and law, can only be adjudicated upon trial. Accordingly, it is submitted that the plaint ought not to be rejected at this stage, and the instant application for rejection of the plaint dated 19.12.2024 filed by the Defendants/Petitioners be dismissed.

Judicial Determinations Rendered by the Court :-

Having heard the rival submissions of the parties and upon careful consideration of the pleadings, the plaint, the written objection, the application under Order

VII Rule 11 of the Code of Civil Procedure, 1908, and the materials placed on record, this Court proceeds to decide the controversy at hand, which is whether the suit is liable to be rejected being barred by law, on the backdrop of the plaintiffs herein being an unregistered partnership firm. This Court is also mindful of the principle that rejection of plaint is a drastic power and must be exercised sparingly. However, where the bar to the suit is patent and incontrovertible from the averments contained in the plaint itself, the Court would be failing in its duty if it permits such a suit to proceed to trial, thereby subjecting the parties to unnecessary litigation.

Prior to embarking upon the discussion, it necessitates a mention that it is beyond any pale of controversy that the plaintiff no.1 is an unregistered partnership firm and the plaintiff nos.2 to 4 are its partners.

For the purpose of completeness, Section 69(2) of the Partnership Act, 1932, which forms the basis of the present application, is reproduced hereinbelow :-

" Section 69(2) of the Partnership Act, 1932 :-

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."

As this Court is dealing with the question of rejection of the plaint, it is the averment made in the plaint which would decide whether the suit can be said to be barred by any law, to be specific by Section 69(2) of the Indian Partnership Act, 1932 in the factual backdrop of this case. This Court is mindful that it is not permissible for the Court to cull out any particular averment made in the plaint and read it out of context but the same has to be read as a whole. Having perused the judgements cited by the learned Counsel for the plaintiffs it is seen that in all these cases it has been observed that an unregistered partnership firm is entitled to initiate an action for enforcement of *statutory right*, but none of the cited judgements gave its stamp of approval on the proposition that an unregistered firm was entitled to initiate an action or enforcement of *contractual right*. It has now to be seen from the averment of the plaint as to whether it is the enforcement of a statutory right or a contractual right that has been pleaded.

As per the plaint case, the present suit has been instituted for recovery of money arising out of a loan transaction. Perusal of the various paragraphs of the plaint would reveal that the plaintiffs have acted upon an oral Agreement to transfer an amount to the defendants as loan, and money which was lent and advanced was a loan transaction, some of which was repaid by the defendants too, as per the averment in the plaint. Several paragraphs of the plaint point out to an agreement between the parties and the entire dispute revolves around loan transaction. It is the failure of the defendants to repay the balance amount along with interest which led to the filing of this suit. Since repayment of loan is contractual right, the embargo of Section 69(2) would come into play. In this regard, reliance may be placed on ***Raptakos Brett & Co. Ltd. vs. Ganesh Property, (1998) 7 SCC 184***. The Hon'ble Supreme Court therein has clearly laid down that the embargo under Section 69(2) is confined to suits for enforcement of contractual rights and does not extend to enforcement of statutory rights or rights arising independent of contract. The entire foundation of the suit, as pleaded, arises out of a loan transaction which is inherently contractual in nature. There is no independent statutory or common law right pleaded in the plaint which could take the case outside the rigours of Section 69(2) of the Partnership Act, 1932.

In the present case, a holistic reading of the plaint unmistakably demonstrates that the genesis of the dispute lies in a consensual arrangement whereby the plaintiffs agreed to advance a loan to the defendants for business purposes. The disbursement of money in tranches, partial repayment thereof, and the claim for the balance amount along with interest are all indicative of mutual obligations arising out of an agreement, albeit oral. The existence of such reciprocal promises clearly brings the transaction within the realm of contractual obligations.

In the present case, at the time of argument, it was submitted that the claim is not confined to a pure contractual loan transaction but also arises out of statutory liability under Section 70 of the Indian Contract Act, 1872, being a case of non-gratuitous benefit conferred upon the Defendants. However, such argument has no foundation in the pleadings and there is no mention of the same in the four corners of the plaint and at the risk of repetition, it is once against stated that while considering the question of rejection of plaint, it is only the averment made in the plaint which is to be looked into.

This Court is, therefore, constrained to observe that the attempt made by the plaintiffs during the course of arguments to bring the claim within the ambit of Section 70 of the Indian Contract Act, 1872 is clearly an afterthought and dehors the pleadings. It is a settled principle of law that no amount of submission can substitute pleadings, and a case not pleaded cannot be permitted to be argued. The plaint, as it stands, unequivocally discloses that the claim is for recovery of money advanced as loan pursuant to an agreement between the parties and for enforcement of the obligation of repayment arising therefrom.

The case referred to by the plaintiff in ***S.N. Bagla & Company (supra)*** is distinguishable as therein an alternative claim under Section 70 of the Indian Contract Act was made which is absent in the present suit. The Judgements referred to in **PC Chandra Financial Services (P) Ltd. vs. State od West Bengal, reported in 2025 SCC online Calcutta 6998** and ***Shiv Developer vs. Assharay Developer reported in (2022) 13 SCC 772*** is also not applicable as the same deals with the contention that an unregsitered partnership firm is entitled to initiate an action for enforcement of statutory right. The judgements in the cases cited in ***Kerala Arecanut*** and ***Narendra Kumar (supra)*** has no application in the facts of the instant case. In ***Haldiram Bhujiwala & Anr. vs. Anand Kumar Deepak Kumar & Anr., (2000) 3 SCC 250***, as cited by the plaintiff the case dealt with a passing off action which is a common law action based on tort and the Hon'ble Apex Court has reiterated that Section 69(2) does not bar suits based on statutory rights or where the cause of action is not purely contractual and the same has no nexus with the facts of the instant case.

The other argument advanced from the side of the plaintiffs was that the plaintiff nos.2 to 4 have jointly provided loan to the defendants and as such, it cannot be contended that it is only the partnership firm which has instituted this case. This line of argument loses its force on the bare perusal of the cause title itself wherefrom it appears that plaintiffs nos.2 to 4 have been described as the partners of the plaintiff no.1 which implies that the suit has been filed not in the individual capacity but as partners of the plaintiff no.1 firm. Furthermore, the argument that Plaintiff Nos. 2 to 4 have instituted the suit in their individual capacities is belied not only by the cause title but also by the tenor of the pleadings. The plaint consistently portrays the plaintiffs as a collective entity acting through the partnership firm. There is no clear demarcation or assertion of independent rights vested in Plaintiff Nos. 2 to 4 dehors the firm. In absence of such specific pleadings, the Court cannot infer individual causes of action so as to salvage the maintainability of the suit. The judgement cited in the case of ***Mangilal Jagrupji Jain (supra)*** has no application as the same dealt with the plaintiff filing the suit in their individual capacity.

In such circumstances, once it is admitted that Plaintiff No. 1 is an unregistered partnership firm and Plaintiff Nos. 2 to 4 have instituted the suit in their capacity as partners of the said firm, the statutory bar under Section 69(2) will operate in full force. The legal position in this regard is no longer res integra that a suit instituted by or on behalf of an unregistered partnership firm for enforcement of a contractual right is not maintainable and the defect goes to the very root of the matter.

This Court also cannot accept the contention of the plaintiffs that the issue involves mixed questions of fact and law requiring trial. The bar under Section 69(2) is apparent on the face of the plaint itself and does not require any elaborate enquiry or appreciation of evidence. The cause title, the description of the parties, and the averments made in the plaint leave no manner of doubt that the suit is hit by the statutory prohibition.

Inference :-

In light of the foregoing analysis, the inevitable conclusion that emerges is that the present suit, being instituted by an unregistered partnership firm for enforcement of a contractual right, is hit by the mandatory provisions of Section 69(2) of the Partnership Act, 1932. The defect is incurable in the present proceedings and renders the plaint being barred by law, thereby attracting the provision of Order VII Rule 11(d) of the CPC which mandates the rejection of the plaint if the suit appears, based solely on the statements made in the plaint to be barred by any law.

<u>Decision :-</u>

Hence it is

O R D E R E D

that the application dated 19.12.2024 ***(IA No.7 of 2024)*** filed by the defendants is allowed on contested without costs.

Accordingly, the plaint in ***<u>MS (Com) 115 of 2024</u>*** is rejected on contest.

Thus, the instant suit being ***<u>MS (Com) 115 of 2024</u>*** is disposed of.

Dictated & Corrected by me

<u>Sd/- Ishani Chakravarty Banerjee</u> **Judge** **Commercial Court, Rajarhat** **North 24 Parganas**	**<u>Sd/- Ishani Chakravarty Banerjee</u>** **Judge** **Commercial Court, Rajarhat,** **North 24 Parganas**