

**IN THE COURT OF JUDGE, COMMERCIAL COURT  
(DISTRICT JUDGE CADRE), COIMBATORE**

**Present:** **Thiru. K.Hariharan, M.L.,**  
Judge,  
Commercial Court (District Judge Cadre),  
Coimbatore.

Thursday, the 21<sup>st</sup> day of November, 2024

**I.A. No. 7 of 2024**  
**in**  
**C.O.S.No.18 of 2024**  
(CNR No.TNCB22-000059-2024)

**M/s. Horizon Metal Tech Pvt. Ltd.,**  
represented by its Director and others ... Petitioners / Defendants

// Vs //

**M/s. Sri Murugan Foundry Equipment**  
rep. by its Managing Partner R.Murugaiyan ... Respondent / Plaintiff

These petitions came up for final hearing before me on 04.11.2024 in the presence of Tmt.A.R.Poorvaja,, Advocate for the petitioners/defendants and Thiru.R.Senthilnathan, Advocate for the respondent/defendant and upon perusing the records, and having stood over for consideration till this date, this court doth passed the following:-

**ORDER**

The petition has been filed by the petitioners / defendants to reject the plaint under Order VII Rule 11 of C.P.C.

**2. The petition averments which are found essential for the disposal of the petition is that:-**

The suit has been instituted by the plaintiff against the defendant for recovery of money due for supply of machineries. The respondent has filed the suit claiming they are registered partners. The plaintiff has filed the acknowledgement of registration of the plaintiff firm dated 10.12.2007 along with one reconstituted partnership deed of plaintiff dated 19.11.2020 as documents No.2 & 3. The reconstituted partnership dated 19.11.2020 reflects the reconstitution of the plaintiff firm as on 05.03.2010 as well as 19.10.2020 and the same does not indicate the registration. Further, it is the contention of the petitioner that the registered deed of partnership firm is not filed by the plaintiff. The petitioner / defendant states that no suit to enforce a right arising from a contract shall be instituted in any Court as per Section 69(2) of the Partnership Act. It is the contention of the petitioner that the respondent / plaintiff has failed to produce the details to prove that the present and existing partners of the firm. It is the contention of the petitioner that the respondent would not be permitted to file additional documents without the prior leave of the Court and mentioned that the respondent have not come forward to file any documents and mentioned that the suit is barred by Law under Section 69(2) of the Partnership Act and sought for to allow the petition under Order VII Rule 11(d) of C.P.C.

**3. By denying the petition averments the respondent/plaintiff has filed their counter. The sum and substance of the same are found essential for the disposal of the petition is that:-**

a) The petitioner has raised the contentions that the reconstitution partnership deed has not been registered under the Indian Partnership Act, 1932 and mentioned that cannot be a valid ground for the dismissal of the suit. During the registration of the firm, one Murugaiyan and one Manonmani were partners. Subsequently by the deed of partnership dated 05.03.2010 his father Raveendran was added as partner and he died on 14.11.2020. Subsequently, the partnership firm has been reconstituted vide document dated 19.11.2020. The Murugan Foundry is a registered partnership vide form C dated 10.12.2007. Further at the time of contract was entered the firm had the legal right to recover amount due for machinery erection. It is the contention of the respondent that for filing of civil suit the firm should be registered and it should be shown that the person suing is or has been shown as partners in the firm. In the present case plaintiff's firm has been registered vide form C dated 10.12.2007 and the partner Murugaiyan shown as partner in the firm and mentioned that the suit is not barred by law. The petitioner is also mentioned to have acknowledged the registration of the plaintiff's firm in the documents No.1 to 3 in their admission and denial of documents statement.

b) It is the contention of the respondent that the reconstitution of the firm changes the partners of the firm and mentioned that it do not affect the

status or its right to enforce contract. The reconstitution is mentioned to have occurred for internal purpose and submitted that the firm's legal standing remains intact irrespective of the change in the partners. It is also the stand of the respondent that the non registration of the reconstituted deed do not invalidate the claim made under the contract and the suit is filed for recovery of money for the service and materials supplied by the firm and the suit is filed only due to default of the petitioner. Further the transactions is also mentioned to have been admitted by the petitioner and sought for to dismiss the petition.

**4. Point for consideration:-**

Whether the petition under Order VII Rule 11 of C.P.C. could be allowed?

**Point:-**

5. The petition has been filed by the petitioner that the respondent / plaintiff has not filed any documents to show the existing partners of the plaintiff firm. Further it is also the contention of the petitioner that the respondent would not be permitted to file any additional documents to show the above particulars and stating that the respondent / plaintiff have not established the existing partners of the plaintiff firm, the petitioner has sought for to allow the petition and dismiss the suit as contemplated under 69(2) of the Partnership Act.

6. Section 69(2) of the Partnership Act puts forth that no suit by a partnership could be instituted for the rights arising out of contract unless the firm is registered and the persons suing or have been shown in Register of Firms as partners in the firm.

7. The petitioner has filed the judgement of Hon'ble High Court in ***Seeyan Associates Vs B.M.F. Beltings Ltd., and others***, in that judgment at paragraph No.31 the Hon'ble High Court has highlighted the requisites that are to be considered for a plea taken under Section 69(2) of the Partnership Act which reads as follows:-

“31. In such circumstances, what is to be decided in this case is whether the suit filed by the plaintiff is barred by Sec.69(2) of the Partnership Act. A close reading of Sec.69 (2) will make it very clear that the bar contemplated in that proviso will become applicable only when; 1) a suit filed by a unregistered firm; 2) the suit to enforce a right arising from a contract; 3) the suit is filed against the third party; and 4) the persons suing are not shown in the register of firms as partners in the firm.”

8. For the contention of the petitioner in the petition the respondent has in the counter has stated that at the time of formation of the plaintiff firm in

the year 2007, the respondent submit that the firm was registered and the person suing in the suit Tr.Murugaiyan was the partner of the firm. Further the respondent submits that since the Murugaiyan was partner at the time of the plaintiff firm in the year 2007, the suit is not hit under Section 69(2) of the Partnership Act and sought for to dismiss the petition.

9. From the documents filed on the side of the plaintiff / respondent, the registration certificate of the plaintiff firm, Form C have been filed. Which prima facie shows the plaintiff firm have been registered. Further, in the Annexure B the name of details of managing / authorized partners is filed which reflects the name of Raveendran Murugaiyan. The said Raveendran Murugaiyan is the person suing in this suit. Hence prima facie, the mandates as required under the Section 69(2) of the Partnership Act in the considered view of the Court as of now have been complied.

10. In the above circumstances if the petitioner disputes the registration of firm and the entry of name of Murugaiyan in the Register of Firms, it is for the respondent / plaintiff to establish the same in the suit that the said Murugaiyan was partner of the firm during the year 2021, during which the contract have been entered with the plaintiff firm. Further, the plaintiff also has to establish that the name of Murugaiyan have been entered in the Register of Firms. Hence, this Court is of the considered stand that prima facie the suit is

not found hit under Section 69(2) of the Partnership Act and considers that the petition is liable to be dismissed.

**11. In the result the petition is dismissed. No Costs.**

Dictated to the Steno-Typist, computerized by him directly, Corrected and Pronounced by me, on the 21<sup>st</sup> day of November 2024.

Judge,  
Commercial Court,  
(District Judge Cadre)  
Coimbatore

**List of Witnesses and Documents:- Nil**

Judge,  
Commercial Court,  
(District Judge Cadre)  
Coimbatore