

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 2700 of 2022**

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RASIKBHAI KHODIDAS PATEL

Versus

SHRI KRISHNA DIARY FARM AND COLDRINKS & 2 other(s)

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Appearance:

ABHISST K THAKER(7010) for the Petitioner(s) No. 1

MS RADHA A THAKER(11299) for the Petitioner(s) No. 1

for the Respondent(s) No. 1,2,3

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CORAM: HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**Date : 09/02/2022****ORAL ORDER**

1. Heard learned advocate Mr. A.K. Thaker for the petitioner through video conference.

2. Learned advocate Mr. Thaker has drawn the attention of this Court about the order dated 18.12.2021 passed by the Court No.27, City Civil Court, Ahmedabad City, specially para 8, the learned City Civil Court has observed that the suit is not maintainable on the ground that the firm is unregistered.

2.1. Learned advocate Mr. Thaker has also referred to the order dated 07.08.2015 passed by the Co-ordinate Bench of this Court in Appeal from Order No. 218 of 2015.

2.2. Further, learned Counsel Mr. Thaker has drawn the attention of this Court that the order dated 07.08.2015

passed by the Co-ordinate Bench of this Court in Appeal from Order No. 218 of 2015, wherein following observations are made:

“3. Having heard learned Counsel for the parties and having perused documents on record, it would appear that the trial Court has not examined any other aspects of the matter except for requirement of registration. Prayers being in the nature of taking accounts and dissolution of the partnership firm, surely, in view of sub-section (3) of Section 69 of the Partnership Act, embargo against maintainability of the suit contained under Section 69(1) in case of an unregistered partnership firm would not apply. The trial Court, not having examined any other aspects of the matter, it would be appropriate to remand the proceedings for fresh consideration. Whether the plaintiff has made out any case for grant of interim relief, be it in the nature of mandatory or preventive, is a question which needs to be judged on the basis of materials brought on record by both sides. I would leave the trial Court to undertake such exercise. While doing so, I also take note of the stand of the defendants No.2 and 3 that eventually, the issue, being one between the brothers, they are open to any amicable resolution.”

2.3. Learned Counsel for the petitioner further urged that this Court has already observed and held that despite non-registration of Firm, suit is to proceed but the learned Trial court committed an error, which is not sustainable in the eyes of law since the application for discovery and production are rejected and also observed that the suit is not maintainable due to non-registration of Firm.

3. This Court has considered the averments made in the petition and also considered the contentions raised by learned advocate Mr. Thaker. Matter requires consideration.

Issue Rule, returnable on 22.03.2022.

Meanwhile, interim relief, in terms of para 5 (B) is granted till the next date of hearing.

Direct service is permitted.

(A. C. JOSHI,J)

KUMAR ALOK / 4