

**REGISTRATION OF PARTNERSHIP
(CHAPTER VII) (SECTIONS 56 TO 71)**

The Act does not make the registration of partnership firms compulsory in India nor does the Act impose any penalties for non-registration. However, certain disabilities are provided in s 69 of the Act for unregistered firms and their partners. The procedure for registration is very simple and the disadvantages of non-registration are so great that generally the partners of a firm would like to get the firm registered.

Ss 58 and 59 deal with the procedure for the registration of a firm. The registration of a firm may be affected by submitting to the Registrar of Firms a statement in the prescribed form and accompanied by the prescribed fee. The Registrar of Firms are appointed by the State Government and State Government is also to define the areas within which the Registrars shall exercise their powers and perform their duties.¹ The application for registration has to be made in the prescribed form,² and the same has to be accompanied by the prescribed fee. The State Government has been authorised to make rules prescribing the fee³ but that shall not exceed the maximum fees specified in Schedule 1, which is Rs. 3/- for the purpose. The application must state the following:

- a) The firm's name,
- b) The place or principal place of business of the firm,
- c) The names of any other places where the firm carries on business,
- d) The date when each partner joined the firm,
- e) The names in full and permanent addresses of the partners, and
- f) The duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf. Each person signing the statement shall also verify it in the manner prescribed.⁴

A firm may be got registered at any time after the creation of partnership. It is not necessary that it should be registered at the time of its formation. Moreover, the Act does not lay down any time limit within which the firm should be registered. Therefore, there is no period of limitation either for the original registration, or recording of subsequent changes, as contemplated in s 63 of the Act. Thus, the concept of any limitation period or that of reasonable time cannot be introduced either for original registration or for subsequent changes in a firm. Hence, any legislation by the State Government laying down any time limit either for original registration or for recording of subsequent changes will be ultra vires the Partnership Act and, therefore, bad in law.⁵ The Registrar of Firms cannot reject an application for recording changes in the constitution of the firm on the ground of inordinate delay in submitting the application.⁶

If a firm remains unregistered, the firm and its partners would suffer from the disabilities mentioned in s 69. If the firm is registered but some partner or partners have not been registered, e.g., they join after the registration of the firm, such partners who are not registered, will be subject to the disabilities mentioned in s 69 91) and (2).

¹ S 57.

² The State Government has been empowered under section 71 (2) (a) to prescribe the form.

³ S 71 (1).

⁴ S 58 (2).

⁵ Rajasthan Trading Co. v Registrar of Firms AIR 1975 A.P. 232.

⁶ Harijan Boot House v Registrar of Firms AIR 1988 Guj. 188.

A firm's name shall not contain any of the following words, namely:-

'Crown', 'Emperor', 'Empress', 'Imperial', 'King', 'Queen', 'Royal', or words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm name by order in writing.⁷

When the Registrar is satisfied that the above-mentioned requirements have been complied with, he shall record an entry of the statement in the register called the Register of Firms, and shall file the statement. This amounts to the registration of the firm.

Penalty for furnishing false particulars (s 70)

Information given to the Registrar through various documents filed with him in connection with the registration of a firm serves the purpose of making the third parties conversant with the firm and the partners so that third parties dealing with the firm are not misled. Correct and complete information should be available with the Registrar. S 70 imposes penalty for making any false declaration in any document filed with the Registrar. According to s 70:

Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particular which he knows to be false or does not believe to be true, or containing particulars which he knows to be incomplete or does not believe to be complete, shall be punishable with imprisonment which may extend to three months, or with fine, or with both.

Power to make Rules (s 71)

S 71 grants power to the State Government to make rules prescribing the fees payable, statements to be submitted, regulating the procedure to be prescribed by the Registrar when disputes arise, filing of documents, inspection of documents, and with regard to carrying out the purposes of Chapter VII concerning the Registration of Firms.

In *Salem Chit Funds v State of Tamil Nadu*,⁸ it has been held by the Madras High Court that Rule 3A of the T.N. Partnership (Registration of Firms) Rules, 1932 requiring every registered firm to file with the Registrar a declaration to the effect that registered firm had been carrying on its business or has been in operation during the financial year is intra vires rule making power. Therefore, the requirement of the filing of the return every year was held to be valid.

Subsequent changes and alterations (Ss 60-65)

Sometimes after the registration, there may be some changes as in the firm's name or the principal place of business, or closing or opening of branches by the firm, or in the names and addresses of the partners, or consequent on the dissolution of the firm or by an order of

⁷ S 58 (3).

⁸ AIR 1999 Mad. 300.

the court, etc. the alterations may have to be recorded by the Registrar. The Act contains the following provisions in this connection:

- 1) **Alteration in the firm's name and principal place of business.-** When there is an alteration in the firm's name or in the location of principal place of business of a registered firm, the same kind of formalities as have been mentioned in s 58 are to be observed. When the Registrar is satisfied that the necessary formalities have been complied with, he shall amend the entry in the Register of Firms.⁹
- 2) **Closing and opening of branches.-** When there is closing or opening of branches of an already existing firm, any partner or agent of the firm may send intimation thereof to the Registrar, who shall then make necessary changes in the Register of Firms.¹⁰
- 3) **Changes in names and addresses of partners.-** In case there is any change in the name or permanent address of any partner of a registered firm, an intimation of the alteration may be sent by any partner or agent of the firm to the Registrar. The Registrar shall then make necessary changes in the Register of Firms.¹¹
- 4) **Changes in the constitution of the firm or on dissolution of the firm. -** Changes in the constitution of the firm may occur either on the introduction of a partner¹² to the firm, or when a partner ceases to be a partner by retirement,¹³ expulsion,¹⁴ insolvency,¹⁵ or death.¹⁶ No fresh registration is needed on the death of a partner or otherwise in case of a change in the constitution of the firm, but it is sufficient to notify the Registrar, who can make a note in the relevant register. When change in the constitution of the firm occurs or the firm is dissolved, its notice thereof, may be given to the Registrar by the incoming or outgoing partner, or by any of the continuing partners or by a duly authorised agent of any of the abovesated persons. Like registration of a firm, the notice of the change in the constitution of the firm or its dissolution is not compulsory. However, in the case of retirement or expulsion of a partner or on the dissolution of a firm, public notice of such retirement,¹⁷ expulsions¹⁸ or dissolution¹⁹ has to be given, otherwise the liability of the partners for the act of each other continues to be the same as before.²⁰ In the case of a registered firm, public notice includes notice to the Registrar under s 63.²¹

When a minor has been admitted to the benefits of partnership, such a minor on attaining the age of majority has to give a public notice of his election as to whether

⁹ S 60.

¹⁰ S 61.

¹¹ S 62.

¹² S 31.

¹³ S 32.

¹⁴ S 33.

¹⁵ S 34.

¹⁶ S 35.

¹⁷ S 32 (3).

¹⁸ S 33 (2).

¹⁹ S 45.

²⁰ See s 32 (4).

²¹ S 72 (a).

he becomes a partner or not.²² Public notice in the case of a registered firm also includes notice to the Registrar.²³

The Act does not lay down any time limit within which notice of a change under ss 60, 61, 62 and 63 of the Act is to be given to the Registrar. Therefore, when the Kerala Partnership (Registration of Firms) Rules, 1959 provided a limit of 15 days for notifying a change to the Registrar, the same was held to be ultra vires the Partnership Act and bad in law. Similarly, the Registrar of Firms cannot reject an application for recording changes in the constitution of a firm on the ground of inordinate delay in submitting the application.

On receipt of the notice as stated above the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice alongwith the statement relating to the firm filed under s 59.²⁴

In *Sharad Vasant Kotak v Ramniklal Mohanlal Chawda*,²⁵ there was change in the constitution of a registered firm in so far as on the death of one of the partners, a new partner was introduced in his place. It was held that by such a change the registration of the firm had not ceased, and there was no need of fresh registration of the firm. Information about the change in the constitution of the firm has to be given to the Registrar under s 63. Failure to comply with s 63 only attracts penalty under s 69A of the Act. Moreover, the person whose name does not find a place in Register of the Firms may suffer certain disabilities under s 69 clauses (1) and (2), but that does not affect the Registration of the Firm.

- 5) **Rectification of mistakes (s 64).**- S 64 (1) empowers the Registrar to correct any mistake which may have been there in the Register of Firms in order to bring the Register relating to any firm in conformity with the documents filed under this Chapter.

Sometimes there may be some mistake in the documents filed with the Registrar or in the records of the Registrar. S 64 (2) provides that on application made by all the parties who have signed documents relating to a firm, the Registrar may rectify any mistakes in such documents in the records or note thereof made in the Register of Firms.

- 6) **Amendment of Register by order of Court (s 65).**-

Sometimes as a consequence of a decision relating to a registered firm, the need for amendment in the entry in the Register of Firms may arise. In such a case, the Court deciding any matter relating to a registered firm has been empowered by s 65 to direct the Registrar to make any amendment in the entry of the Register of Firms as may become necessary as a consequence of the decision.

Inspection of documents and grant of copies (ss 66 & 67)

²² S 30 (5).

²³ Ss 72 (a) and 63 (2).

²⁴ S 63 (1).

²⁵ AIR 1998 SC 877.

The Register of Firms shall be open to inspection by any person on payment of such fees as may be prescribed.²⁶ Moreover, all statements, notices and intimations filed under this Chapter shall be open to inspection, subject to such conditions and payment of such fee as may be prescribed.²⁷

Maximum fee which can be charged for inspection of any document or obtaining copies from the Registrar has been mentioned in Schedule I. The State Government has, however, been empowered to prescribe such charges in respect of the above, but such charges cannot exceed the maximum amount mentioned in Schedule I.²⁸

Evidentiary value of entries in the Register of Firms (s 68)

The following rules have been stated in s 68 to explain the evidentiary value of entries in the Register of Firms:

1. The documents filed with the Registrar, on the basis of which he prepares his record and Register of Firms, shall be conclusive proof of the facts contained therein as against any person by whom or on whose behalf such document was signed.²⁹ Therefore, if a person's name is there in the Register of Firms as a partner, he would be liable as a partner. The object of the provision is to compel the partners to have the changes in the constitution of the firm notified to the Registrar. When a partner retires or is expelled or the firm is dissolved, the partners continue to be liable for the act of each other unless a public notice of such retirement,³⁰ or expulsion,³¹ or dissolution,³² of the firm is given. Public notice in the case of a registered firm includes notice to the Registrar of Firms.³³
2. A certified copy of an entry relating to a firm in the Register of Firms may be produced to prove either the registration of the firm or some other statements, etc. filed with the Registrar.³⁴

In the case of *Shivraj Reddy and Brothers v Raghuraj Reddy*,³⁵ the application for registration of a firm contained signature of plaintiff, therefore, he could be said to be a partner in the firm and plea that he was only nominally shown as partner was held not tenable.

Effects of Non-Registration (s 69)

S 69 contains the provision describing the effects of non-registration of a partnership firm.

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

²⁶ S 66 (1).

²⁷ S 66 (2).

²⁸ S 71 (1).

²⁹ S 68 (1).

³⁰ S 32 (3).

³¹ S 33 (2).

³² S 45.

³³ S 72.

³⁴ S 68 (2).

³⁵ AIR 2002 N.O.C 120 (A.P.).

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 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 (3 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 ⁸ [the territories to which this Act extends], or whose places of business in ⁹ [the said territories], are situated in areas to which, by notification under ¹⁰ [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 (5 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. State

Amendments

(Maharashtra) — (1) In section 69,—

(a) in sub-section (1), insert the following proviso, namely: — “Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.”

(b) after sub-section (2), insert the following sub-section, namely:— “(2A) No suit to enforce any right for the dissolution of a firm or for accounts of a dissolved firm or any right or power to realise the property of a dissolved firm 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: Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of a dissolved firm or to realise the property of a dissolved firm.”;

(c) in sub-section (3),— (i) for the words, brackets and figures “sub-sections (1) and (2)”, substitute the words, brackets, figures and letter “sub-sections (1), (2) and (2A)”; (ii) for clause (a), substitute the following clause, namely:— “(a) the firms constituted for a duration up to six months or with a capital up to two

thousand rupees; or.” [Vide Maharashtra Act 29 of 1984, sec. 13 (w.e.f. 1-1-1985)].

(2) After section 69, insert the following section, namely: — “69A. Penalty for contravention of section 60, 61, 62 or 63.—If any statement, intimation or notice under section 60, 61, 62 or 63 in respect of any registered firm is not sent or given to the Registrar, within the period specified in that section, the Registrar may, after giving notice to the partners of the firm and after giving them a reasonable opportunity of being heard, refuse to make the suitable amendments in the records relating to the firm, until the partners of the firm pay such penalty, not exceeding ten rupees per day, as the Registrar may determine in respect of the period between the date of expiry of the period specified in sections 60, 61, 62 or as the case may be 63 and the date of making the amendments in the entries relating to the firm.” [Vide Maharashtra Act 29 of 1984, sec. 14 (w.e.f. 1-1-1985)].

It may be noted that the Partnership Act neither makes the registration of a firm compulsory nor does it impose any penalties for non-registration. However, it provides certain disabilities for an unregistered firm and the partners of such a firm or the partners whose names have not been shown as registered partners even though the firm is registered. S 69 (1) provides that no suit can be instituted to enforce rights arising from a contract or conferred by the Partnership Act by any partner against his co-partners or against the firm. Similarly, according to s 69 (2), no suit can be instituted to enforce any right arising from a contract by an unregistered firm against any third party. Sub-section (3) also provides that the disability mentioned in sub-sections (1) and (2) shall also apply into a claim of set off or other proceedings to enforce a right arising from a contract. The idea behind making these provisions is that in their own interest, the partners may get the firm registered and thereby the interest of the third parties with whom the firm may be dealing may be protected. The procedure for registration is very simple and disabilities being too compelling that generally the partners would like to get the firm registered at one time or the other. Certain exceptions, where the disabilities do not apply, have been stated in s 69, sub-sections (3) and (4). The disabilities on non-registration of a partnership firm and the exceptions thereto may be noted.

1. Suits between partners and the firm

According to s 69 (1), no suit to enforce a right arising from a contract or conferred by the Partnership Act can be instituted in any Court unless the following two requirements are satisfied:

- i) The partnership firm is registered; and
- ii) The partners filing the suit have been shown in the Register of Firms as the partners of the firm.

In *Neelakantan Omana v Neelakantan Raveendran*,³⁶ it was held that if firm is unregistered, the suit by a partner demanding rendition of accounts would not be maintainable.

³⁶ AIR 1993 Ker. 196.

In *Oriental Fire & General Insurance Co. Ltd. V The Union of India*,³⁷ it has been held that when a firm takes an insurance policy on a motorvehicle belonging to the firm, the claim under that policy arises out of a contract of insurance, rather than out of statute, i.e., the Insurance Act, and therefore, the same cannot be enforced by filing a suit if the firm is unregistered.

In *Mahendra Singh Chaudhary v Tej Ram Singh*,³⁸ one of the partners of the firm, i.e., 'A' brought an action for injunction requiring that the cheques for payment to the firm should not be paid singly to the other partner 'B', but should be paid in the joint name of A & B so that the money could reach the coffers of the firm. The said firm was unregistered. It was held that the suit brought by A was on behalf of the firm, and the firm being unregistered, the suit was not maintainable under section 69.

In *Atmuri Mahalakshmi v Jagadesh Traders*,³⁹ the Andhra Pradesh High Court has held that if the firm is not registered when the suit is filed, but it gets registered during the pendency of the suit, the plaint already filed can be treated as valid from the date of registration of the firm. The Court followed decision of the Madras High Court⁴⁰ where it had been held that when the registration has been carried out, the requirements of the Legislature are fulfilled and there is no reason in equity why from the moment of registration suit previously filed should not be allowed to go on.

Suit only by an authorised person

In *Popular Automobiles v G.K. Channi*, the suit was filed on behalf of the firm. The plaint was signed by the manager of the firm. No power of attorney was given to him by the firm to verify and sign plaint on behalf of the firm, nor did his name appear in the Register of Firms as a partner. It was held that the suit was bad for non-compliance of mandatory provision contained in s 69(2) requiring the filing of the suit by a partner or an authorised person. Such suit is liable to be dismissed. Such defect cannot be cured by subsequent incorporation of verification and signatures by a partner.

2. Suits between the firm and the third parties

According to s 69 (2), if the firm is unregistered, no suit to enforce a right arising from a contract can be instituted by the firm or its partners against a third party. Sub-section (2) also requires two conditions to be fulfilled before a suit can be instituted against a third party:

- i. The firm must be a registered firm;⁴¹
- ii. The persons suing must be shown in the Register of Firms as partners of the firm.

³⁷ AIR 1991 Pat. 250.

³⁸ AIR 1987 All 152.

³⁹ AIR 1990 A.P. 288.

⁴⁰ *Varadarajulu v Rajamanika* AIR 1937 Mad. 767.

⁴¹ It must be registered under the Partnership Act, 1932.

To enforce the rights against third parties, it is not enough that the firm is registered, it is further necessary that “the person suing is or has been shown in the Register of Firms as a partner in the firm.”⁴²

In *Gandhi & Co v Krishna Glass Pvt. Ltd.*,⁴³ it was held that if the name of one of the partners had not been shown in the Register of Firms, the suit filed by the partnership firm must fail.

In *M/s Shreeram Finance Corpn. v Yasin Khan*,⁴⁴ a suit was filed by a registered firm after there was a change in the constitution of the firm. Two of the partners had left the firm, one new partner had come in and two minors had been admitted to the benefit of the partnership, but none of these changes were shown in the Register of Firms on the date of the filing of the suit. The plaint was also amended at a later date, but it was held by the Supreme Court that the suit is not saved by amending the plaint subsequently. Since the partners filing the suit had not been shown in the Register of Firmson the date of the filing of the suit, the same was liable to be dismissed.

Arbitration proceedings not barred under s 69

S 69 puts a bar on the enforcement of contract by an unregistered firm. It has been held by the Supreme Court in *Kamal Pushpa Enterprises v D.R. Construction Company*,⁴⁵ that bar under s 69 has no application to proceedings before the arbitrator. Proceedings for enforcement of the arbitration award is not a right under contract.

Suit against infringement of trade mark not barred under s 69(2)

In *Haldiram Bhujjwala v Anand Kumar Deepak Kumar*,⁴⁶ that a suit for perpetual injunction to restrain the defendant from infringing plaintiff's trade mark and passing defendant's goods as those of the plaintiff, and a claim of damages in that regard, is not barred by s 69 (2). Such right does not arise out of contract. In such a case there is enforcement of a statutory right arising under the Trade Marks Act.

No disability against third parties

As is obvious from sub-sec (2), the disability is against an unregistered firm or its partners but it is not against the third party. Therefore, a third party is not barred from bringing an action against an unregistered firm. In *Kantilal Jethalal Gandhi v Ghanshyam Ratilal Vyas*,⁴⁷ as s 69, clauses (1) & (2) do not bar an action by a third party against the firm, the bar under s 69(1) & (2) does not operate against suit for recovery of debt due and payable by an unregistered dissolved firm.

⁴² S 69, clauses (1) and (2).

⁴³ AIR 1987 Bom. 348.

⁴⁴ AIR 1981 S.C. 1769.

⁴⁵ AIR 2000 SC 2676.

⁴⁶ AIR 2000 SC 1287.

⁴⁷ AIR 1994 Guj. 56.

In *Raptakos Brett & Co. Ltd. V Ganesh Property*,⁴⁸ it has been held that if an action is not based on contract but on a statutory right, the same is not hit by s 69 (2) of the Partnership Act. In the instant case, a suit for restoration of possession against the erstwhile lessee was filed by the lessor, an unregistered firm. The lease in this case had terminated by efflux of time but the lessee had failed and neglected to quit those premises. The lessee had a statutory obligation under s 108 (q) read with s 111 (a) of the Transfer of Property Act, 1882 to quit those premises. It was held that the action in this case had not arisen out of erstwhile contract of lease but the right to get possession had arisen under the law of the land, i.e., The Transfer of Property Act, 1882. The suit was, therefore, not barred under s 69 (2) of the Partnership Act.

Claim of set-off or other proceedings

According to sub-section (3), the disabilities mentioned above also apply to a claim of set-off or other proceedings to enforce a right arising from a contract. For example, if a third party brings an action against the firm to recover some money, the firm cannot say that the third party also owes some money to the firm and, therefore, the claim of the third party should be adjusted against the claim of the firm, which means the unregistered firm cannot claim a set-off.

Disabilities also apply to other proceedings

The disabilities mentioned in sub-sections (1) and (2) also apply to 'other proceedings' to enforce a right arising from a contract. In *Messrs Gappulal Gordhandas v Messrs Chunilal Shyam Lal*,⁴⁹ it has been held that if an unregistered firm brings an action for the reduction of rent against its landlord, such a suit to enforce a right arising out of a contract of tenancy is not maintainable because the suit falls under the disability mentioned in sub-section (3).

In *Jagdish Chang Gupta v Kajaria Traders (India) Ltd.*,⁵⁰ the question arose whether the term 'other proceedings' cover arbitration proceedings also. The Supreme Court answered the question in the affirmative. In that case, an agreement between two partners was that in case of any dispute between them, the matter will be referred to arbitration. In accordance with the agreement, one of the partners appointed an arbitrator to which the other did not agree. An action was brought to enforce the agreement and the appointment of the arbitrator. The disagreeing partner contended that such a right of the other partner was not enforceable as the firm was unregistered. The Supreme Court held that the suit was not maintainable.

Claim under s 65, Indian Contract Act also barred

In *Bijendra Prasad v Duleshwari Devi*,⁵¹ a partnership firm enacted on 3rd July 1954 was not registered. The firm consisted of the plaintiffs and three minors, now defendants whereby the three minor sons, were to be given a share of profits under the guardianship of their father.

⁴⁸ AIR 1998 SC 3085.

⁴⁹ AIR 1961 Raj. 286.

⁵⁰ AIR 1964 SC 1882.

⁵¹ AIR 1998 Pat. 122.

The question arose whether an action could be brought against these minors for the return of the benefit received by them under s 65 of the Indian Contract Act. It was held that the suit for the return of benefit under s 65 of the Contract Act was also barred under s 69 of the Partnership Act, as it was an unregistered firm.

Unregistered Firm and Section 9, Arbitration and Conciliation Act, 1996

Prima facie, the bar enacted by s 69 of the Partnership Act, 1932 in case of registered firm does not affect maintainability of an application under s 9 of the Arbitration and Conciliation Act, 1996. The A&C Act is a long leap in the direction of alternate dispute resolution systems. It is based on UNCITRAL Model. An application under s 9, under the scheme of the A&C Act is not a suit. Undoubtedly, such application results in initiation of civil proceedings but can it be said that a party filing an application under s 9 of the Act is enforcing a right arising from a contract? "Party" is defined in clause (h) of sub-section (1) of s 2 of A&C Act to mean 'a party to an arbitration agreement.' Filing of an application by a party by virtue of its being a party to an arbitration agreement is for securing a relief which the Court has power to grant before, during or after arbitral proceedings by virtue of s 9 of the A&C Act. The relief sought for in an application under s 9 of the A&C Act, is neither in suit nor a right arising from a contract. The right arising from the partnership deed or conferred by the Partnership Act, is being enforced in the arbitral Tribunal; the Court under s 9 is only formulating interim measures to protect the right under adjudication before the arbitral Tribunal from being frustrated. S 69 of the Partnership Act has no bearing on the right of a party to an arbitration clause to file an application under s 9 of A and C Act.⁵²

The question as to whether the subsequent registration of the firm would cure the initial defect in the filing of the suit arose for consideration in *D.D.A. v Kochhar Construction Work and another*.⁵³ This Court held that in view of the clear provision of the Act it was not possible to subscribe to the view that subsequent registration of the firm may cure the initial defect, because the proceedings were ab initio defective as they could not have been instituted since the firm in whose name the proceedings were instituted was not a registered firm on the date of the institution of the proceedings.

The same view was also reiterated in *U.P. State Corporation Ltd. v Jain Construction Co. and another*.⁵⁴

In *Haldiram Bhujawala and another v Anand Kumar Deepak Kumar and another*,⁵⁵ this Court noticed the recommendations made by the Special Committee in its report which was considered by the legislature while enacting the Partnership Act, 1932. The Committee recommended that registration of firms be made optional as it considered making registration compulsory too drastic for a beginning in India. It was proposed that registration should lie entirely with the discretion of the firm or partner concerned, but any firm which was not registered will be unable to enforce its claim against third parties in the Civil Court; and any

⁵² *Firm Ashok Traders and another etc. v Gurumukh Das Saluja and others etc.*, AIR 2004 SC 1433.

⁵³ (1998) 8 SCC 559.

⁵⁴ (2004) 8 SCC 559.

⁵⁵ 2000 (40) ALR 296 (SC).

partner who is not registered will be unable to enforce his claims either against third parties or against fellow partners. It would thus appear that registration of a firm was conceived as a protection to third parties dealing with 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.

In *Raptakos Brett & Co Ltd.*, the Court after noticing s 69 of the Act observed:

‘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 person 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.’

Effect of non-registration in suit for recovery of money

In *B.B. Patel v Nexim Exports Pvt. Ltd.*,⁵⁶ the plaintiff was the sole proprietor of his concern at the time of giving loan. Loan was therefore personal loan advanced by the plaintiff himself. But loan on sole proprietary concern was converted to partnership firm. Loan advanced by plaintiff had been taken over by partnership firm. Held, that suit filed by plaintiff in his individual capacity was not liable to be dismissed on the ground that partnership firm was not registered at the time of filing of suit.

Suit by unregistered firm- Subsequent registration while suit was pending would cure the defect

The bar contained under s 69 applies to filing of the suit by the firm. It does not insist that the transactions, which are subject-matter of the suit, in relation to, or by a firm, shall be those which take place after the firm is registered. Once a firm was registered, there is nothing in law to disable it from bringing about claims or from pursuing remedies in a Court of law, in relation to transactions, which preceded such registration. Even where a suit was filed by an unregistered firm, two courses are open to it, for ensuring compliance with the requirement,

⁵⁶ AIR 2003 Del. 183.

or overcoming the prohibition contained in s 69. It could return the suit and file it after the firm is registered, or, secure registration even while the suit was pending.⁵⁷

Maintainability of petition by unregistered firm

A firm could also be landlord, though in the strict legal sense, the firm had no juristic personality and was only a compendious expression to describe the relationship between the partners. Once it was shown that a partner was receiving the rent, an unregistered firm can also be a landlord. Therefore, petition by unregistered firm as landlord for eviction of tenant was not barred by s 69 (2) of the Partnership Act.⁵⁸

Exceptions

The disabilities discussed above are not applicable to the unregistered firm in the following exceptional cases:

1. Suit for dissolution etc. [s 69 (3) (a)]

S 44 mentions certain circumstances under which on the suit of a partner the court may dissolve a firm. S 69 (3) (a) permits a suit even by the partners of an unregistered firm to sue for the dissolution of a firm or for the accounts of a dissolved firm. In case the firm has already been dissolved, the partners of the unregistered firm can realise the property of the dissolved firm. In case the firm has already been dissolved, the partners of the unregistered firm can realise the property of the dissolved firm. The right includes enforcing a claim arising from contract prior to dissolution. The disability for non-registration works only during the subsistence of the partnership. After the firm is dissolved, it is not the disability mentioned in sub-sections (1) and (2) of s 69 which governs the position, but it is the provisions of s 69 (3) (a) which operate giving the partners power to “realise the property of the dissolved firm.” In *Biharilal Shyamsunder v Union of India*,⁵⁹ the plaintiffs claimed damages for non-delivery of a bale of cloth despatched from Ahmedabad to Muzaffarpur through railway. The said action was brought after the dissolution of the firm which was unregistered. It was held by the Patna High Court that the partners of the dissolved firm are entitled to bring the suit for compensation from the railway for non-delivery of the consignment of cloth.

In *Gujarat Water Supply & Sewerage Board v Sundardas*,⁶⁰ all the partners of an unregistered firm except one had retired, and all the rights and liabilities of the firm were transferred to the remaining partner. It was held that a suit by the remaining partner against the Government for damages for the breach of contract between the Government and the erstwhile firm was maintainable.

⁵⁷ *Samyukth Cotton Trading Co. v Bheemineni Venkata Subbaiah*, AIR 2005 A.P.1.

⁵⁸ *Dungarsi Ranchodas Jayesh Niwas, Kozhikode v Moolji Visanji*, AIR 2004 Ker. 314.

⁵⁹ AIR 1960 Pat. 397.

⁶⁰ AIR 1991 Guj. 170.

In *Navinchandra v Moolchand*,⁶¹ it has been held that even a suit for damages for misconduct brought by one partner against another after the dissolution of an unregistered firm would be permitted because the amount so realised should be divided between the partners and that is, therefore, the property of the dissolved firm.

In *Premlata v Ishar Dass Chaman Lal*,⁶² it has been held by the Supreme Court that the right to sue for the dissolution of the firm also means right to enforce the arbitration clause for resolving disputes of the dissolved firm and also for the rendition of accounts or any right or power to realise the property of the dissolved firm.

2. Suit on behalf of an insolvent partner [s 69 (3) (b)]

S 69 (3) (b) mentions another exception when an action would be brought on behalf of an insolvent partner against an unregistered firm. It provides that an official assignee, receiver of Court have a power to bring an action to realise the property of the insolvent partner.

Dismissal of suit under s 69(1) is no bar to a subsequent suit under s 69(3) (a)

In *Ramesh Kumar Bhalotta v Lalit Kumar Bhalotta*,⁶³ a partner of an unregistered firm filed a suit against the firm claiming declaration of share, proper administration of firm and rendition of the accounts of the firm. The suit was dismissed as barred under s 69(1).

The same partner subsequently filed another suit praying for the dissolution of the firm, and the accounts of the dissolved firm.

It was held that the subsequent suit was maintainable as it was permissible under s 69(3) (a) and dismissal of the earlier suit was no bar to the present suit.

Moreover, the suit was not barred under Order 2, Rule 2 of the C.P.C., as the cause of action under the two suits was different.

In *Kishore Kumar v Navin Chandra*,⁶⁴ it has been held that if a suit has been filed in the individual capacity by a person who had been a partner of the dissolved firm against another person who had also been a partner of the dissolved firm, the bar under s 69(2A) would not be attracted.

In this case, plaintiffs No. 1 & 2 and defendants No. 1 & 2 were the partners of an unregistered firm, which was dissolved. These persons then became co-owners of the property which earlier belonged to the dissolved firm. Defendants No. 1 & 2 thereafter recovered rent of that property on behalf of the plaintiffs also. Plaintiffs No.

⁶¹ AIR 1966 Bom. 111.

⁶² AIR 1995 SC 714.

⁶³ AIR 2001 Patna 174.

⁶⁴ AIR 1998 Bom. 153.

1 & 2 filed a suit against defendants No. 1 and 2 to recover a sum of Rs. 4, 83, 480 with interest being a proportionate share of the rent due in favour of the plaintiffs.

It was held that in this case the suit was not filed by the plaintiffs in the capacity of partners of the dissolved firm, nor is it a suit for the recovery of the property of the dissolved firm. It was a suit filed in an individual capacity by co-owners of the property. The suit was not barred by the provisions of s 69 (2) or 69 (2A) of the Indian Partnership Act.

3. Suit where provisions relating to Registration of Firms do not apply [s 69(4)(a)]

S 69 (4) (a) exempts such firms from the operation of the provisions of this section whose place of business is not in India or whose place of business is in such areas, where because of notification under s 56, this Chapter does not apply. It has already been noted above that s 56 provides that the Government of any State may, by notification in the Official Gazette, direct that the provisions of this Chapter shall not apply to that State or to any part thereof specified in the notification.

4. When value of the suit does not exceed Rs. 100 [s 69(4)(b)]

S 69 (4) (b) provides an exception for firms having small claims. If the value of the suit does not exceed Rs. 100/-, an unregistered firm or its partner can bring an action against the third party.

Once the registration is made, it would continue to be valid in the eyes of law until the same was cancelled. Thus, there is no need of fresh registration on the death of a partner or when there is otherwise any change in the constitution of the firm. In such cases, it is sufficient to notify the Registrar about the change so that he could note the same in the relevant register.

Registration subsequent to the filing of the suit

If the firm is not registered “no suit shall be instituted” either between the partners inter se or against any third party. In case the firm is unregistered, such a suit shall be liable to be dismissed. There is no specific provision in the Act for the dismissal of the suit suo moto. A plea for the dismissal of the suit on the ground of non-registration has to be made. If the plaintiff admits that his suit is on behalf of an unregistered partnership, the Court must immediately dismiss the suit in view of the express and mandatory provisions of s 69.

In *M/s Jammu Cold Storage v M/s Khairati Lal and Sons*,⁶⁵ *M/s Khairati Lal and Sons* instituted a suit to recover a sum of Rs. 1000/- from *m/s Cold Storage and General Mills Ltd* on 15th April 1959. The firm was not registered on that day but it was got registered subsequently on 30th May 1959. It was held by the J & K High Court that since the firm was not registered on the date of the institution of the suit, the suit cannot proceed further and it must be dismissed.

⁶⁵ AIR 1960 J&K 101.