

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF OCTOBER, 2025

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

COMMERCIAL APPEAL NO. 498 OF 2024

BETWEEN:

- 1 . M/s. CHILDREN'S CORNER
A PARTENERSHIP FIRM
REP. BY ITS MANAGING DIRECTOR
SMT. NISHALI RAI
HAVING ITS OFFICE AT
14-4-507/5
HOTEL ROOPA BLDG
BALMATTAROAD
MANGALORE-575 001
- 2 . SMT. NISHALI RAI
AGED ABOUT 47 YEARS
W/O ASHWIN SHETTY
MANAGING PARTNER
M/s. CHILDREN'S CORNER
HAVING ITS OFFICE AT
ROOPA BLDG
BALMATTAROAD
MANGALORE-575 001

...APPELLANTS

(BY SRI. SAMPAT ANAND SHETTY, ADVOCATE)

AND:

- 1 . SMT. YASHODA N RAI
W/O LATE NARAYANA T. RAI
AGED ABOUT 72 YEARS

- 2 . ADITYA N. RAI
S/O LATE NARAYANA T. RAI
AGED ABOUT 45 YEARS

BOTH ARE R/AT No.3-W-30-2393/2
KADRI B, KADRI RESIDENTIAL-5
BELOW ROAD, 30, POUND GARDEN
BEHIND CITY HOSPITAL, KADRI
MANGALURU-575 003

- 3 . M/s. THE CHILDREN'S CORNER
A REGISTERED PARTNERSHIP FIRM
REP. BY ITS MANAGING PARTNER
SMT.YASHODA N. RAI
HAVING ITS REGISTERED OFFICE AT
DOOR No.14-4-507/5
HOTEL ROOPA BUILDING
BALMATTA ROAD
MANGALORE-575 001

...RESPONDENTS

(BY SRI. K. CHANDRANATH ARIGA, ADVOCATE FOR R1 & R2;
R3 IS SERVED)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION
13(1A) PROVISIO OF COMMERCIAL COURTS ACT, 2015, PRAYING
TO SET ASIDE THE ORDER DATED 16.10.2024 PASSED BY THE IV
ADDITIONAL DISTRICT JUDGE, MANGALURU IN I.A.No.3 IN COM.
O.S. No.284/2024.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 15.10.2025 AND COMING ON FOR
PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN
J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV JUDGMENT**(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)**

This Commercial Appeal is preferred against an order dated 16.10.2024 passed by the IV Additional District Judge, Mangaluru in Com.O.S.No.284/2024 on I.A.No.3 filed by the defendants under Order VII Rule 11(d) (provision wrongly mentioned in I.A.No.3) of the Code of Civil Procedure for rejection of plaint.

2. We have heard Shri. Sampath Anand Shetty, learned counsel appearing for the appellants and Shri. Chandranath Ariga, learned counsel appearing for respondents No.1 and 2.

3. The plaint was filed seeking a permanent prohibitory injunction restraining the defendants, their men and servants from carrying on any business whatsoever, in 'A' schedule premises, in the name of any new partnership firm, alleged to have been formed by them or in the name of any other entity adopted by them.

4. The facts necessary for considering the dispute raised are as follows:-

Appellant No.1 is a Partnership Firm. A partnership was entered into initially by the father of appellant No.2 along with respondent No.1, their mother. On 12.04.2013, the firm was reconstituted. Appellant No.2 and respondent No.2 were included as additional partners. Late Narayana Thimmappa Rai, father of appellant No.2 and respondent No.2, passed away on 08.11.2018 and the firm was again reconstituted. Thereafter, disputes arose between the parties and appellant No.2 issued a notice for Dissolution of the Firm. Since the Partnership Deed contained an arbitration clause, the parties have raised a dispute which is being considered in arbitration. However, while so, it is submitted that respondents No.1 and 2 registered a new firm named M/s.Children's Corner in schedule 'A' property, which is the asset of appellant No.1 firm and started running business in all the schedule properties. On these allegations, the plaint was filed seeking a permanent prohibitory injunction as stated earlier.

5. The respondents filed an application under Order VII Rule 11(d) of CPC seeking rejection of the plaint. The reasons stated in the application were that the firm is not registered and plaintiff No.2 is not shown as a partner in the Register of Firms. It was therefore, contended that the suit is not maintainable under Section 69(2) of the Partnership Act. Further, it was contended that the dispute is liable to be subjected to Arbitration and Section 11 of the Commercial Courts Act, 2015 bars the jurisdiction of the Commercial Courts since the plaintiff has filed CMP No.403/2024 before this Court for appointment of an arbitrator.

6. An objection was raised by the plaintiff stating that an Interlocutory Application seeking rejection of plaint on the ground that the plaintiff's firm is not a registered firm is liable to be rejected since the present suit is not filed for enforcement of any contractual right and that the suit for simple injunction is perfectly maintainable. It was further contended that the disputes with regard to the dissolution of the firm being admittedly pending in proceedings under the

Arbitration and Conciliation Act, 1996. The question whether the defendants could carry on business in the same or deceptively similar name requires a consideration on its merits.

7. The learned counsel appearing for the appellants submit that the decisions relied on by the appellants had been made extracted and narrated in the impugned order. The decisions were specifically to the effect that Section 69(2) of the Indian Partnership Act, 1932 bars a suit for enforcing a right arising from the contract or a right conferred by the Partnership Act alone, but does not take away the right of the partners of an unregistered firm to enforce their right under other enactments or their common law rights. It is submitted that after referring to all the judgments which are perfectly clear, the trial Court held as under:-

"In the present suit, as stated relief is also sought against the third parties defendant Nos.2 and 3. Further, the authorities relied are applicable when the relief is sought against the partners of the firm and not against third parties. Hence, the contention of

exercising of right under common law/tort holds no substance.

Further, as admitted, plaintiff has invoked the arbitration clause by filing AA No.6/2024 for interim relief. Hence, filing of the suit is an abuse of process of Court."

8. On these findings, the Interlocutory Application filed for rejection of plaint was allowed.

9. The learned counsel for the appellants submits that a plain reading of Section 69 of the Partnership Act would make it clear that the bar with regard to filing of a suit by an unregistered firm would have no application whatsoever in the facts of the instant case, where the suit is one for bare injunction as against passing off.

10. The learned counsel has placed reliance on the decision of the Apex Court in the case of ***M/s. Haldiram Bhujiawala and another v. M/s. Anand Kumar Deepak Kumar and another***¹.

¹ ***AIR 2000 SC 1287***

11. The learned counsel appearing for respondents No.1 and 2, would, on the other hand, contend that since the dispute between the parties who are mother and children are already pending under the provisions of the Arbitration and Conciliation Act, there was absolutely no reason for the appellants to have approached the Court with a suit for injunction which is intricately connected to the main matter of dissolution. Further, it is contended that even if the suit were to be maintainable, the same cannot be entertained for want of pre-conciliation mediation under Section 12A of the Commercial Courts Act.

12. The learned counsel would also place reliance on the judgment of the Apex Court in the case of ***Dhanbad Fuels Private Limited v. Union of India and Another***², to contend that even if such a contention is not raised, the Commercial Court should *suo motu* consider whether a suit filed without complying with Section 12A of the Commercial Courts Act is liable to be rejected at the threshold or not.

²2025 SCC Online SC 1129

13. Having considered the contentions advanced, we notice that the contention raised by the respondents before the Court of the first instance was specifically that the suit was not maintainable on account of Section 69(2) of the Partnership Act. Section 69 of the Partnership Act reads as follows:-

"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 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 [the territories to which this Act extends], or whose places of business in [the said territories], are situated in areas to which, by notification under [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."

14. It is clear that the present suit is only a suit for injunction simpliciter and therefore is not directly the subject matter of the arbitration which has been initiated between the parties. In any view of the matter, the application filed by the defendants under Order VII Rule 11(d) of CPC has been allowed only on the grounds that:-

- (i) The suit is barred under Section 69 of the Partnership Act; and
- (ii) The same cannot be considered in view of the arbitration clause contained in the partnership deed.

Though other grounds are being urged before us in this appeal by the respondents, we notice no such grounds had either been raised or argued before the Court of the first instance.

15. Having considered the contentions advanced, we have no hesitation to hold that the bar under Section 69(2) of the Partnership Act would under no circumstances apply to a suit seeking the reliefs as sought for in the instant case. The bar under Section 69(2) of the Partnership Act is specifically for filing of a suit arising out of contract or under the provisions of the Partnership Act and in no other case. In the instant case, the relief sought for is for a permanent injunction from utilizing the trade name or against passing off. Since the suit is not for enforcing any right arising out of contract, we are of the clear opinion that the suit could

not have been rejected on the grounds as stated in the impugned order. We are therefore of the opinion that the impugned order cannot be sustained, the same is liable to be set aside.

16. Accordingly:-

- (i) The Commercial Appeal is ***allowed.***
- (ii) The order dated 16.10.2024 passed by the IV Additional District Judge, Mangaluru in Com.O.S.No.284/2024 on I.A.No.3, is set aside.
- (iii) The suit in Com. O.S.No.284/2024 is restored to its original file.
- (iv) However, we make it clear that we have made no comment on the maintainability of the suit and that the same is liable to be considered by the Competent Court in accordance with law.

All pending interlocutory applications shall stand dismissed.

There is no order as to costs.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**

cp*