

SHARAD VASANT KOTAK AND ORS.

v.

RAMNIKLAL MOHANLAL CHAWDA AND ANR.

DECEMBER 17, 1997

[SUHAS C. SEN AND K. VENKATASWAMI, JJ.]

Partnership Act, 1932 :

Sections 4, 17(a), 31, 39, 58, 59, 63, 69-A and 69(2-A) (as amended by State of Maharashtra Amendment introduced by Act 29 of 1984)—Suit for dissolution of firm—Maintainability—Conditions for filing a suit are that the firm must be registered and the persons suing must be shown in Register of Firms as partners—Partnership firm originally registered—Reconstitution of firm after death of a partner in which widow of deceased partner inducted as partner—Reconstituted firm not registered—Suit filed by a founder partner of that firm whose name included in the Register of Firms, for dissolution of the firm—Held, suit maintainable.

Sections 58, 59 & 63 and 69-A (as in force in the State of Maharashtra)—Registration of firm—Does not cease on reconstitution of the firm pursuant to induction of a new partner (widow of a deceased partner)—No fresh registration required—However, information about changes made after reconstitution must be given—Failure to comply attracts penalties under Section 69-A.

Sections 17(a), 31 & 32—Induction of a new partner will amount to reconstitution and not dissolution of the firm—Dissolution and reconstitution are two different legal concepts.

Interpretation of deeds and documents—Substance and not mere words used, is relevant.

A partnership firm with seven partners was registered. One of the partners died and in his place, his widow was admitted as a partner in the firm and this was not brought to the notice of the Registrar of Firms. R-1 gave a notice of dissolution of the firm to the appellant and filed a suit for dissolution of partnership firm. Subsequently R-1 sought amendment of the plaint to the effect that subsequent changes and/or modifications in

- A the original partnership deed and also in the subsequent deed were merely in the nature of changes and/or modifications which did not affect registration of the said firm, as required under the Partnership Act, for entitling a partner to institute a suit for relief against the other partners on dissolution of the firms and alternatively, the other amendments sought to challenge the vires of Section 69(2-A) of the Act as in force in the State of Maharashtra. These amendments were seriously opposed by the appellants *inter alia* contending that the suit as filed was not maintainable and hence amendments cannot be allowed. The Trial Judge accepted the contentions of the appellant and dismissed the suit. On appeal before the Division Bench by Respondent No.1, it not only restored the suit but also allowed the amendments. Hence this appeal.

Dismissing the appeal, this Court

- HELD : 1. The suit in question is not hit by Section 69(2-A) of the Partnership Act. On the induction of the second respondent, the existing firm was only reconstituted and, therefore, there was no necessity to get a fresh registration. If by virtue of non-compliance of certain mandatory provisions in not informing the Registrar of Firms about the change in the constitution of the firm, certain penalties provided in the Act alone are attracted, that will not lead to the conclusion that the registration of the firm ceased. This conclusion is based on a conjoint reading of Sections 58-63 and the forms prescribed thereunder. Further, this conclusion does not in any way mitigate the object of the Maharashtra Amendment introduced by Act 29 of 1984. [570-G-H]

- Wazid Ali Abid Ali v. CIT*, [1988] Suppl. SCC 193 and *Bharat Sarvodaya Mills Co. Ltd. v. M/s Mohatta Brothers*, AIR (1968) Guj. 178, referred to.

2. In view of clause 11 of the second deed of partnership it cannot be contended by the appellants that by reason of death of one of the partners, the existing firm stood dissolved. By clauses 4 and 5 of the said deed relating to the commencement of the partnership and the accounting year, minimal changes were introduced in the second deed of partnership in place of clauses 4 and 5 in the first partnership deed and in other respects, namely, the name of the partnership firm, the address and location of the firm, the business carried on and shares allotted among the partners and duration of the partnership, are identical. Having regard to

the substance of the three deeds there was no indication that the old firm was dissolved. Thus the existing firm continued. [564-A-D] A

Tyresoles (India) v. Commissioner of Income Tax, (1963) 49 ITR 515 and *Commissioner of Income Tax v. A.N. Figgies & Co.*, [1954] 5 SCR 171, relied on.

3. The contention that the induction of new partner will result in dissolution of the firm is not acceptable. Section 17(a) suggests only reconstitution of the firm where a change occurs in the reconstitution of the firm. Otherwise, the old firm remains the same. The dissolution and reconstitution of a partnership are two different legal concepts. The dissolution put an end to the partnership, but reconstitution keeps it subsisting, though in another form. [565-C] B C

Tyresoles (India) v. Commissioner of Income Tax, (1963) 49 ITR 515 and *Commissioner of Income Tax v. Pigot Champan & Co.*, AIR (1982) SC 1085, relied on. D

4. Rules 3, 4, 6 and 17 and Forms "A", "E", "G" and "H" show that there is a definite distinction between the Certificate of Registration given to the firm and any alterations to be entered in the Register of Firms. This will suggest in no uncertain terms that the changes in the constitution of the firm will not affect the registration once made. In other words, it is not required that every time a new partner is inducted, fresh registration has to be applied and obtained. However, information about changes have to be given. Failure to comply attracts penalties under Section 69-A of the Act. [566-D-E] E

Maddi Sudarsanam v. Borogu Vishawanadham Brothers, AIR (1985) AP 12; *Girdharmal Kapur Chand v. Dev Raj Madan Gopal*, [1964] 1 SCR 995, relied on. F

Pratapchand Ramchand & Co. v. Jehangirji Bomanji Chinoy, AIR (1940) Bom 257; *Tapendra Chunder Goopta v. Jogendra Chunder Goopta*, AIR (1942) Cal 76; *Durga Das Janak Raj v. Preete Shah Sant Ram*, AIR (1959) Punj. 530 and *Kesrimal v. Dalichand*, AIR (1959) Raj. 140, approved. G

5. Section 69(3)(a) of the Central Act enables the partners of both registered and unregistered firms to file a suit for dissolution and/or H

- A accounts. By introducing sub-section (2-A) in Section 69, the Maharashtra Legislature has placed certain restrictions to the extent that even the suit for dissolution of a firm or for accounts, the suit can be filed only if the firm is registered and the 'person' suing as a partner is shown in the Register of Firms as a partner in the firm. In other words, a person, who is not shown in the Register of Firms by induction after registration even though the firm is registered, cannot file a suit for dissolution or accounts. This does not in any way mean that the registration given to the firm earlier will cease. In this case, the firm was registered and there was only a reconstitution of the firm and the first respondent, the plaintiff in this case, is a person whose name is shown in the Register of Firms along with the names of the appellants and, therefore, there is compliance of Section 69(2-A). [569-E-F]

- Madho Prasad v. Gauri Dutt Ganesh Lal*, AIR (1939) Pat. 323; *Minakshi Achi v. P.S.M. Subramaniam Chettiar*, AIR (1957) Mad. 8; *Gauri Shankar Shroff v. Central Hindustan Bank Ltd.*, AIR (1959) Cal 262; *Nandlal Sohanlal v. Commissioner of Income Tax*, AIR (1977) P & H 320, distinguished.

6. It is not possible to accept the argument that if the definition of Section 4 is applied to Section 69(2-A) then unless the names of all the partners find a place in the Register of Firms, the suit filed by the plaintiff cannot be sustained. The facts that the firm was registered and the plaintiff's name finds a place in the Register of Firms are not in dispute. The name of the newly introduced partners, of course, does not find a place in the Register of Firms. That means the person whose name does not find a place in the Register of Firms may incur certain disabilities and that will not disable the plaintiff to press the suit against the firm, which was registered against the persons whose names find a place in the Register of Firms. It is not necessary to decide what the disabilities of the person, whose name does not find a place in the Register of Firms. For the purpose of Section 69 (2A), the partnership firm will mean the firm as found in the certificate of registration and the partners as found in the Register of Firms maintained as per rule in Form "G". The present suit being one for dissolution accounts by one of the partners, whose name admittedly finds place in the Register of Firms along with the names of all the appellants, the requirements of Section 69(2-A) are satisfied. Section 4 of the Act is also complied with for this limited propose. [570-C-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8830 of 1997. A

From the Judgment and Order dated 15.7.97 of the Bombay High Court in A.N. No. 509 of 1997.

R.F. Nariman, P.H. Parekh, Sameer Parekh and Ms. Sunita Sharma, B
for the Appellants.

Soli J. Sorabjee, Ramesh Singh, Parimal K. Shroff, Ms. Bina Gupta, Ms. Rakhi Ray and Pritesh Kapur for the Respondents.

The Judgment of the Court was delivered by C

K. VENKATASWAMI, J. Leave granted.

This appeal by special leave has arisen under the following circumstances :-

The appellants are the partners of a suit firm called 'M/s Paramount Builders'. The partnership was entered into on 29.11.1979 with the following individuals as partners : D

| S. No. | Name of Partners | Share |
|--------|--------------------------------|-------|
| 1. | Shri Sharad Vasant Kotak | 15% |
| 2. | Shri Dilip Vasant Kotak | 15% |
| 3. | Shri Anil Dhirendra Kotak | 15% |
| 4. | Smt. Hemkuver Vasant Kotak | 15% |
| 5. | Smt. Lilavati Dhirendra Kotak | 15% |
| 6. | Shri Mohanlal Hinji Chawda | 12½% |
| 7. | Shri Ramniklal Mohanlal Chawda | 12½% |

The said partnership firm was registered on 15.12.1980 under Registration No. 158675 with the Registrar of Firms. On 6.5.1986, Shri Mohanlal Hinji Chawda, a partner of the firm (Sr. No. 6 above) died and in his place, his widow Smt. Jijiben Mohanlal Chawda was admitted as a H

- A partner in the firm. After the admission of the said Smt. Jijiben Mohanlal Chawda, another deed of partnership was made consisting of the old six partners and the newly admitted partner Smt. Jijiben Mohanlal Chawda. As a matter of fact, the induction of the new partner was not brought to the notice of the Registrar of Firms by forwarding the required particulars.
- B It is on record that still later on 3.11.1992 another partnership deed was brought into existence consisting of the same partners. It is also on record that yet another partner Smt. Hemkuver B. Kotak (S.No. 4 above) died in September, 1994. The fact of death of this partner also was not intimated to the Registrar of Firms. While so, the 1st respondent gave a notice of dissolution of the firm to the appellants and also filed a suit for the dissolution of the partnership firm bearing suit No. 5016/94 on 15.12.94 in the High Court of Judicature at Bombay on the original side. Initially in the plaint, the constitutional validity of Section 69(2A) of the Indian Partnership Act (hereinafter called the "Act"), as amended by Maharashtra Act, was not raised. The 1st respondent moved a Chamber Summon No. 301/97 seeking permission of the Court to carry out certain amendments to the plaint. Briefly, the amendments sought were that subsequent changes and/or modifications in the partnership deed of M/s. Paramount Builders under the deed of partnership dated 20.10.1986 and also in the deed of partnership dated 3.11.1992 are merely in the nature of changes and/or modifications which do not affect registration of the said firm of M/s Paramount Builders, as required under the Act, for entitling a partner to institute a suit for reliefs against the partners on dissolution of firms and alternatively, the other amendment sought was to challenge the vires of Section 69(2A) of the Act as in force in the State of Maharashtra.
- F The amendment sought was seriously opposed by the appellants *inter alia* contending that the suit as filed was not maintainable and, therefore, the amendment cannot be allowed. In other words, according to the appellants on and from 20.10.1986 when a new partnership deed was made, the registration already given to the firm ceased to have validity and the partnership as at present must be deemed to be an unregistered one and, therefore, the suit was hit by Section 69(2A). It was also contended that without impleading State of Maharashtra and Union of India, the vires of Section 69(2A) in the Partnership Act cannot be challenged. The learned trial Judge accepting the objections raised by the appellants found that
- G Section 69(2A) of the Act creates a bar on the threshold of the filing of the suit for the relief covered in the suit and the very suit filed by the
- H

plaintiff was incompetent. That being the position, the application for amendment could not be permitted. Consequently, the application was rejected.

Aggrieved by the rejection of the amendment application, the first respondent preferred an appeal to the Division Bench of the High Court in Appeal No. 509/97.

The appellate court was of the view that the registration of the firm continues to be in force notwithstanding any reconstitution of the firm and even when dissolution takes place, the registration of the firm continues. The Division Bench further held that Section 69(2A) requires the registration of a firm and it does not require a fresh registration each time a reconstitution or dissolution of the continuing firm takes place. After finding that the suit filed by the first respondent was not hit by Section 69(2A), the Division Bench held as follows :-

"The proposed amendment consists of two parts. The first part is only a factual aspect which has been sought to be introduced in order to demonstrate that the bar under Section 69(2A) is not attracted. There is no reason as to why such an amendment should not be granted. The second part of the amendment pertains to the constitutional challenge of the validity of Section 69(2A). As we have already taken a view that Section 69(2A) is not attracted, the question of challenge does not survive and, therefore, it is not necessary to grant the amendment containing constitutional challenge."

Ultimately the appellate court allowed the appeal and permitted the amendment only regarding the factual portions and not regarding the constitutional validity of Section 69(2A).

Aggrieved by the judgment of the Division Bench, the appellants have preferred this appeal by special leave.

In this appeal, the following substantial question of law arises for our consideration :-

"Whether on the facts of this case the suit for dissolution and account of partnership is hit by Sec. 69(2A) of the Act as amended in the State of Maharashtra."

A For answering the question, it is necessary to set out the relevant provisions of the Act as amended in the State of Maharashtra, which are given below :-

B "4. Definition of "partnership". "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

"Partner" "firm" and "firm-name"

C Persons who have entered into partnership with one another are called individually, "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm-name".

17. Rights and duties of partners after a change in the firms. Subject to contract between the partners -

D (a) where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;

E (b)

(c)

CHAPTER V

F Incoming and outgoing partners

G 31. Introduction of a partner. (1) Subject to contract between the partners and to the provisions of Section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

(2) Subject to the provisions of Section 80, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

H

CHAPTER VI
Dissolution of a firm

A

39. Dissolution of a firm. The dissolution of a partnership between all the partners of a firm is called "dissolution of the firm".

B

CHAPTER VII
Registration of Firms

58. Application for registration. (1) [Subject to the provisions of sub-section (1A), the registration of a firm] effected by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee [and a true copy of the deed of partnership] stating :-

C

D

(a) the firm-name,

[(aa) the nature of business of the firm;]

(b) the place or principal place of business of the firm,

E

(c) the names of any other places where the firm carries on business,

(d) the date when each partner joined the firm,

F

(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.

G

[(1A) The statement under sub-section (1) shall be sent or delivered to the Registrar within a period of one year from the date of constitution of the firm :

H

A Provided that in the case of any firm carrying on business on or before the date of commencement of the Indian Partnership (Maharashtra Amendment) Act, 1984, such statement shall be sent or delivered to the Registrar within a period of one year from such date].

B (2) Each person signing the statement shall also verify it in the manner prescribed.

(3)

(4)

C 59. Registration [(1)] When the Registrar is satisfied that the provisions of section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement. [On the date such entry is recorded and such statement is filed, the firm shall be deemed to be registered.]

D [(2) The firm, which is registered, shall use the brackets and word "(Registered)" immediately after its name.]

E 63. Recording of changes in and dissolution of a firm. (1) When a change occurs in the constitution of a registered firm, (every) incoming, continuing or outgoing partner, and when a registered firm is dissolved, (every) person who was a partner immediately before the dissolution, or the agent of (every) such partner or person specially authorised in this (shall, within a period of 90 days from the date of such change or dissolution, give notice to the Registrar of such change or dissolution, specifying the date thereof;) and the Registrar shall make a record of the notice in the entry relating to the firm in the Registrar of Firms and shall file the notice along with statement relating to the firm filed under section 59.

G [(1A) Where a change occurs in the constitution of a registered firm, all persons, who after such change are partners of the firm, shall jointly send an intimation of such change duly signed by them, to the Registrar, within a period of 90 days from the date of occurrence of such change and the Registrar shall deal with it in

H

the manner provided by section 61.]

A

(2)

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 a partner in a firm against the firm on 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 :

B

[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.]

C

(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.

D

(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 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 :

E

F

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.]

G

(3)

H

A [69A. Penalty of contravention of sections 60, 61, 62 or 63. If any statement, intimation or notice under sections 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.]

B

C

Rule 3. Forms of Statements. -- The Statements required to be sent or delivered to the Registrar under sections 58 and 60 of the Act shall, respectively, be in Forms "A" and "B" and be verified in the manner as laid down in the footnotes to the respective Forms.

D Rule 4. Forms of intimation and notice. -- Intimations and notices which are required to be given under sections 61, 62 and 63 of the Act shall, respectively, be given in Forms "C", "D", "E" and "F" and be verified in the manner set forth in the footnotes to the respective Forms.

E Rules 6. Form of Register. -- The Register shall be maintained in Marathi in Form "G" and a separate page shall be devoted to each firm. The pages, after the entries are made, shall be bound in proper permanent registers in the order of the consecutive number allotted to each firm on registration. Every entry in Register shall be signed by the Registrar.

F

Rule 17. Certificate of Registration. -- Where a firm is registered under section 59 of the Act, the Registrar shall issue a certificate in Form 'H'.

G

Form 'A'
Application for Registration of Firms
(See rule 3)

H We, the undersigned, being partners, hereby apply for registration as a firm and for that purpose supply the following particulars

pursuant to section 58 of the Indian Partnership Act, 1932 : -- A

(a) Firm Name

(b) Nature of business of the firm Place

(c) Principal place of business of the firm Taluka District B

(d) Names of any other places where the firm carries on business in the above name.

(e) Names in full and permanent address (residential) of all the partners. C

(f) Date on which each partner joined the firm.

(g) Duration of the firm. In case there is any provision made by contract for the duration of the partnership or for the determination of the partnership, please state the provisions briefly. If no such provision is made, words "AT WILL" may be stated. D

Note 1. - For the registration of each Firm a separate application is necessary. Accordingly the applicants should apply in this application only particulars of the Firm in respect of which the application is made. This applies to the case of the same persons carrying on business in partnership under different Firm names. E

Note 2. - Against items (c) and (d), the exact location of the place should be given. F

Note 3. - This application must be signed by all partners or their agents specially authorized in this behalf on solemn affirmation before a Magistrate or other officer duly empowered to administer Oaths. G

Note 4. - Making a false, untrue, or incomplete statement is punishable under section 70 of the Indian Partnership Act, 1932.

(h) In case there are any minors admitted to the benefits of partnerships :- H

| A | Name & Address of Minor | Name & Address of Guardian | Date of admission to benefits | Date when he/she will attain majority |
|---|-------------------------|----------------------------|-------------------------------|---------------------------------------|
| | (1) | (2) | (3) | (4) |
| B | | | | |

We are sending the prescribed registration fee by cash/money order. We the abovenamed, solemnly affirm that what is stated in paragraphs is true to our own knowledge and that what is stated in the remaining paragraphs is stated on information and belief, and I/We believe the same to be true.

C

We also declared on solemn affirmation that up to the date of submission of this application there has not been any change whatever in any of the particulars aforesaid.

D

Solemnly affirmed at

Dated this day of.....

(1)

(2)

(3)

(4)

(5)

Name and Signatures

E

Certified that the persons who have signed the application have signed in my presence and have solemnly affirmed that the particulars furnished therein are true.

F

Name of Attesting Witness

Designation

G

Address

And Seal, if available

H

Before me
(Price Re. 1)

FORM 'E'

A

INDIAN PARTNERSHIP ACT, 1932

Notice of change of Constitution or Dissolution of Firm

(See rule 4)

B

FIRM REGN. NO. and DATE

Firm Name.....

Registered Address.....

C

Partners in the above named firm

We, being agents of a partner in the abovementioned firm persons specially authorised by a partner in the above mentioned firm to give notice in this behalf hereby give notice that

D

(a) the constitution of the firm has changed as follows :

(1) Mr./Messrs..... of has/have joined the firm as new partner/partners on

(2) Mr./Messrs..... of has/have retired as partner/partners of the firm with effect from.....

E

(b) the said firm has been dissolved on.....

I/We..... the abovenamed..... solemnly affirm that what is stated in paragraphs is true to my/our own knowledge, and that what is stated in the remaining paragraphs..... is stated on information and belief, and I/We belief the same to be true.

F

I/We declare on solemn affirmation that up to the date of submission of this application there has not been any change in any of the particulars previously intimated save and except the change notified above.

G

Solemnly affirmed at :

H

A Dated this day of 19.....

Name and Signatures -

(1)

(2)

(3)

B Certified that the person who has signed this notice has signed it in my presence and he has solemnly affirmed that the particulars furnished therein are true.

C In the case of person not conversant with the English language, the contents of the above particulars have been explained to him in a language familiar to him and he has affirmed the truth thereof.

Signature.

D Note 1. - Please strike out item (a) or (b) whichever is not applicable.

Note 2. - Please give dates according to the English Calendar.

E Note 3. - In case there is only one person left then the firm should be considered as dissolved and the form should be filled in accordingly.

Note 4. - This notice must be signed by every partner or his agent specially authorised in this behalf on solemn affirmation before a Magistrate or other Officer duly empowered to administer Oaths.

F (Price Re. 1)

FORM 'G'

G (See rule 6)
Register of firms

Firm No.....

H Name :

Business :

A

| Number of Entry | Date of Entry | Nature of Entry | Remarks |
|--------------------|------------------|--------------------|---------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

B

C

FORM 'H'
(See rule. 17)

Certificate of Registration
(National Emblem)

D

The Indian Partnership Act, 1932
(Act No. IX of 1932)

Registration No.....

E

It is certified that a firm by name with its head office
at has this day been duly registered under the Indian
Partnership Act, 1932 (Act No. IX of 1932).

Given under my hand this
day of 19....

F

Registrar/Assistant Registrar of Firms
Bombay, Pune, Nagpur, Aurangabad.

G

Before proceeding further, we remind ourselves that we are
concerned with a suit filed by a partner for dissolution and accounts. No
third party rights or liabilities are involved in the present suit filed by
respondent no. 1.

H

A Undoubtedly counsel on both sides addressed arguments covering larger questions. But we propose to confine ourselves strictly to the facts of the case and decide the controversy without touching upon the larger issues or connected issues arising out of the pleadings because the maintainability of the suit is the sole issue based on Section 69(2A) of the Act.

Section 69(2A) (extracted above) requires two conditions before a partner can sue for dissolution of a firm and for accounts :

1. The firm must be registered.

C 2. The person suing is or has been shown in the register of firm as partner in the firm.

D It is not in dispute that the partnership, as entered into under a deed dated 28.11.1979, was duly registered and a certificate of registration was granted. It is also an admitted fact that the plaintiff, first respondent herein, was one of the founder partner under the deed dated 28.11.1979 and his name did find a place in the register of firm as a partner and there is nothing to show that at any point of time, his name has been removed from the register of firm. We have seen that on the death of one of the partners, his widow was inducted into the partnership and a deed was entered into on 20.10.1986, repeating almost all the clauses in the partnership deed dated 28.11.1979 except for consequential changes necessitated by the induction of new partner in the place of deceased partner.

F It is the contention of learned senior counsel, Mr. Nariman, that when the new partner was inducted under the partnership deed dated 20.10.1986 in the place of the deceased partner, the firm registered under the partnership deed dated 28.11.1979 ceases to be on the records of register of firm and, therefore, the registration already given will not ensure to the benefit of the partnership entered on 20.10.1986. If that be so, according to Mr. Nariman, learned senior counsel, the conditions imposed by Section 69(2A) are not satisfied and, therefore, the suit as filed was not maintainable.

H In support of his argument, he placed strong reliance on the expression 'partnership' as defined in Section 4 of the Act. It is the contention of Mr. Nariman that bearing in mind the definition in Section

4 of the Act, the partners including second respondent will collectively be a firm and that firm is not registered inasmuch as the name of the second respondent does not find a place in the Register of Registrar of Firms. Therefore, the learned Single Judge was right in holding that the suit was not maintainable at the threshold. According to the learned senior counsel, the mere fact that the plaintiff's name find a place in the Register of Registrar of Firms is not sufficient to maintain the suit when admittedly one of the partner's name (second respondent's name) was not shown in the Register of Registrar of Firms. He also contended that a comparison of language employed in Sections 31 and 32 of the Act, will show that whenever a partner is inducted into an existing firm, the old firm ceases to exist and an altogether new firm comes into existence from the date of induction of the new partner and that new firm must get fresh registration. In support of this proposition, he placed reliance on *Madho Prasad and Others v. Gouri Dutt Ganesh Lal*, AIR (1939) Patna 323; *Meenakshi Achi and Another v. P.S.M. Subramanian Chettiar and Others*, AIR 1957 Madras 8 and *Gouri Sankar Sheroff and Others v. Central Hindustan Bank Ltd. and Others*, AIR 1959 Calcutta 262. He also submitted that the partners entered into another deed on 3.11.1992 and they have expressly treated the firm as reconstituted one. In other words, according to the learned senior counsel, the deed dated 20.10.86 in the absence of such expression (reconstituted firm) the understanding was the old firm, ceases to be in existence and a new firm was brought into existence. For this, he also placed reliance on clauses 4 and 5 regarding 'Commencement' and 'Accounting Year'. He also placed reliance on a passage from Lindley on the Law of Partnership, 15th Edition, page 374 :

"Each partner is, it is true, the agent of the firm; but as before pointed out, the firm is not distinguishable from the persons from time to time composing it; and when a new member is admitted he becomes one of the firm for the future, but not as from the past, and his present connection with the firm is no evidence that he ever expressly or impliedly authorised what may have been done prior to his admission. This is wholly consistent with the fact that after the admission of a new member, a new partnership is constituted, and thus special circumstances are required to be shown before the debts and liabilities of the old partnership are treated as having been undertaken by the new partnership."

- A Contending contrary and supporting the judgment of the Division Bench, Mr. Soli J. Sorabjee, learned Senior Counsel, submitted that there is a well-recognised distinction between the legal concept of dissolution and reconstitution of a firm. In the case of an incoming or an outgoing partner in an existing firm, there is only a reconstitution of the firm and in
- B all other respects, the existing firm continues with old and new partners. A look at Chapter V of the Act, according to him, will fortify the above contention. In other words, Chapter V deals with "Incoming and Outgoing partners" while Chapter VI separately deals with "Dissolution of a Firm". The two are totally different concepts and cannot in law be equated with
- C each other. According to the learned Senior Counsel, the rules framed by Maharashtra Government in 1989 and the forms prescribed under the rules in particular Forms E, G and H clearly support the said contention. It is also his contention that even when there is a dissolution of a firm, it does not cease to be registered firm but for the purposes of Partnership Act it
- D continues to be registered. In other words, according to the learned Senior Counsel, the registration of a firm is valid till it is cancelled in a manner known to law. Non-compliance of Sections 61, 62 and 63, as amended in Maharashtra, if at all, will attract the penalties prescribed under Section 69A and nothing more and it is incorrect to contend that non-compliance
- E of the said provisions will result in deregistration of the firm. As the consequence of deregistration is a drastic one, it is impermissible to hold that non-compliance with Sections 63(1) and 63(1A) would lead to deregistration of a firm in the absence of express and clear legislative provision to that effect. He further contended that merely because another
- F partnership deed was made on 20.10.1986, it cannot be said that there was a dissolution of the old firm and consequential formation of a new firm under the latter deed. According to the learned Senior Counsel, it is the substance of the matter that is relevant to be looked into and not the phraseology employed by the parties. In other words, the test is whether
- G after the execution of the deed dated 20.10.1986, for all intents and purposes, the firm as reconstituted was a different unit or remained the same unit in spite of change in its constitution. Looked at from this angle, the unit remained the same as it originally was in spite of change in its constitution and the contention to the contrary, according to the learned
- H Senior Counsel, was not correct. To support this, he pointed out the

similarities between the two deeds. The alleged dissimilarities as found in Clauses 4 and 5 of the Document dated 20.10.1986 are really not dissimilarities but consequential and incidental changes.

In support of his contentions, he placed reliance on the following judgments of this Court and other High Courts :

Commissioner of Income-Tax, West Bengal v. A.W. Figgies & Co. and Others, [1954] 5 SCR 171; *M/s. Wazid Ali Abid Ali v. C.I.T. Lucknow*, [1988] Supp. SCC 193; *Tyresoles (India) Calcutta v. Commissioner of Income-Tax, Coimbatore*, [1963] Vol. 49 ITR 515; *Firm Girdhar Mal Kapur Chand v. Firm Dev Raj Madan Gopal*, [1964] 1 SCR 995; *Pratapchand Ramchand & Co. v. Jehangirji Bomanji Chinoy*, AIR (1940) Bombay 257; *Tapendra Chunder Goopta v. Jogendra Chunder Goopta and Others*, AIR 29 (1942) Calcutta 76; *Messrs. Durga Das Janak Raj v. Messrs. Preete Shah Sant Ram*, AIR 1959 Punjab 530; *Bharat Sarvodaya Mills Co. Ltd. Ahmedabad v. Ms. Mohatta Brothers a Firm*, AIR (1969) Gujarat 178 and *Kesrimal and Another v. Dalichand and Others*, AIR (1959) Rajasthan 140.

In reply to the contention of Mr. Nariman that the purpose for which Section 69(2A) was introduced by Maharashtra legislature will be the last if the view projected by him is not accepted, Mr. Sorabjee submitted that failure to comply with the mandatory provisions in Sections 61, 62 or 63 may attract the penalties provided under Section 69 A of the Act but not the deregistration of the firm. In support of this, he placed reliance on a judgment of the Andhra Pradesh High Court in *Maddi Sudarsanam and Others v. Borogu Viswanadham Brothers*, AIR 1955 Andhra 12.

At the outset, we would like to deal with the substance of the Partnership Deeds in this case. As noticed earlier, the first Deed of Partnership was entered into on 29.11.79 and that partnership firm was registered on 15.12.80. One of the partners (Shri Mohanlal Hinji Chawda) died on 6.5.86 and in his place, his widow was inducted. The second Deed of Partnership was drawn on 20.10.86. By reason of the second Deed of Partnership, can it be said that the existing firm dissolved or ceased. It is relevant here to note that in both the deeds it was expressly made that the death, insolvency or retirement of any partner shall not dissolve the partnership firm. On the other hand, the partner shall be entitled to carry on the partnership business on the terms and conditions mutually agreed

- A upon by the said partners (vide Clause 11). Therefore, it cannot be contended by the appellants that by reason of death of one of the partners, the existing firm stands dissolved. Can it then be said that by reason of inducting the widow of the deceased partner the existing registered firm ceased and totally a new partnership firm came into existence. According to the appellants, by reason of Clauses 4 and 5 in the second Deed of Partnership, it must be deemed that the old partnership ceased and entirely a new partnership firm was found under the second Deed. We are unable to agree with the contention of the learned senior counsel for the appellants on this aspect. Clauses 4 and 5 relate to commencement of the partnership and accounting year. These are minimal changes introduced in the second Deed of Partnership by reason of the introduction of a new partner in place of Clauses 4 and 5 in the first Partnership Deed and in other respects, namely, the name of the partnership firm, the address and location of the firm, the business carried on and shares allotted among the partners and duration of the partnership, are identical. Moreover a careful reading of clauses 5 of and 6 of the second partnership deed will give an impression that the partners have agreed to continue the existing firm. The profits or losses for the period prior to and up to the death of deceased partner is dealt with and provided. There is no indication that the old firm was dissolved. Likewise, reliance placed on the recitals in the third Deed of Partnership drawn on 3.11.92 will not come to the help of the appellants. Learned counsel for the appellants placed reliance on the term used in the third Partnership Deed reconstituted in the Preamble portion. We are of the opinion that this does not make any substantial difference when we look into the substance of the three deeds. In this connection, the learned counsel for the respondents has rightly placed reliance on the following observations made in *Tyresoles (India), Calcutta* (supra).
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- "In our opinion, the test of the pudding is in the eating and the true scope of the instrument can readily be ascertained from what actually happened instead of merely depending upon expressions which the parties might have under some mistaken notion loosely used."
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- Likewise, this Court in *A.W. Figgies & Co. and Ors.* (supra) at page 177 observed on a construction of two documents of partnership as follows :-
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"To all intents and purposes the firm as reconstituted was not a different unit but it remained the same unit in spite of the change in its constitution." A

We are, therefore, of the view that the existing firm continued.

The contention of the learned counsel for the appellants that the induction of the new partner will result in dissolution of the firm is not also acceptable. Reliance placed on the language of Sections 31 and 32 of the Act to support the said contention will be of no avail if we look into Section 17 of the Act. Section 17(a) of the Act (extracted above) suggests only reconstitution of the firm where a change occurs in the constitution of the firm. Otherwise, the old firm remains the same. Here we can usefully quote the passages from the judgments of this Court and other High Courts. C

In *Tyresoles (India), Calcutta* (supra) a Division Bench of the Madras High Court observed thus : D

"The dissolution and reconstitution of a partnership are two different legal concepts. The dissolution puts an end to the partnership, but reconstitution keeps it subsisting, though in another form. A dissolution followed by some of the erstwhile partners taking over the assets and liabilities of the dissolved partnership and forming themselves into a partnership is not reconstitution of the original partnership. The partnership formed after the dissolution is a new partnership and not a continuation of the old partnership, for it would be a contradiction in terms to say that what ceased to exist was continued. A reconstitution of a firm of partnership necessarily implies that the firm never became extinct. What it denotes is a structural alteration of the membership of the firm, by addition or reduction of members, and an incidental redistribution of the shares of the partners." E F

To the same effect, this Court in *Commissioner of Income-tax, West Bengal-III v. M/s. Pigot Champan & Co.*, AIR (1982) SC 1085 observed as follows : G

"The principle is well settled that it is on examination of relevant documents and relevant facts and circumstances that the Court has H

A to be satisfied in each case as to whether there has been a succession or a mere change in the constitution of the partnership. It cannot be disputed that 'dissolution' and 're-constitution' are two distinct legal concepts, for, a dissolution brings the partnership to an end while a reconstitution means the continuation of the partnership under altered circumstances but in our view in law there would be no difficulty in a dissolution of a firm being followed by the constitution of a new firm by some of the erstwhile partners who may take over the assets and liabilities of the dissolved firm."

C The next question is whether the registration given to the firm under the first Partnership Deed ceases when a new partner was introduced into the firm. For this, we refer to Sections 58, 59 and 63, the relevant portions have already been extracted. Rules 3, 4, 6 and 17 have also been extracted. The forms prescribed in this connection have also been extracted. A close perusal of these provisions with Forms "A", "E", "G" and "H" will show that there is a definite distinction between the Certificate of Registration given to the firm and any alterations to be entered in the *Register of Firms*. This will suggest in no uncertain terms that the changes in the constitution of the firm will not affect the registration once made. In other words, it is not required that every time a new partner is inducted, fresh registration has to be applied and obtained. However, information about changes have to be given. Failure to comply attracts penalties under Section 69A of the Act. In this context, the judgment in *Maddi Sudarsanam* (supra) can be usefully cited. It was held that :-

F "The second condition laid down in Section 69(2) is also satisfied. The persons now suing i.e. the present partners are shown in the Register of Firms as partners of the firm, though the same Register shows two other partners, one of whom died and than other retired. It may be that the fact of retirement of one of the partners and the death of another should have been notified to the Registrar under Section 63(1) as the said events effected change in the constitution of the firm. But the default made by the firm is not, in not so notifying, of any relevance in considering the question of the maintainability of the suit under Section 69(2). There is the essential distinction between the constitution of a firm and its dissolution. Non-compliance with the provisions of S. 63(1) may

have other consequences, but under S. 69(2) only two conditions should be complied with by a firm to enforce a right arising from a contract and those two conditions are complied with in the present case.

The above view is supported by the decisions of this Court and various other High Courts. In *Firm Girdhar Mal Kapur Chand* (supra), this Court held that "once there was registration under the Indian Partnership Act that registration, in our opinion, continues to operate as registration under that Act and continues to be effective - in other words, valid registration in the eye of law as administered in India so long as the registration is not cancelled in accordance with law."

In *Pratapchand Ramchand & Co.* (supra), the Bombay High Court observed as follows :

"Dealing in particular with S.63(1), that sub-section among other things provides that when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorized in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof, and 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 along with the statement relating to the firm filed under S.59. Pausing there, that Section evidently contemplates in the case of a dissolution of a firm by death that notwithstanding the death the firm should still be treated for the purpose of the Act as still registered. Mr. Davar has argued that by reason of the death and the dissolution of the firm the firm ceased to be registered, and in his argument he went so far as to say that the firm ought to have been registered again. No doubt it would have been logical having regard to S.42 if the Act had so provided. But in fact it has not. The Act does contemplate notwithstanding dissolution by death that so far as registration is concerned the firm is to be deemed still to be registered, and it empowers any person who was a partner immediately before the dissolution to give notice of the change and requires the Registrar to record that notice in the entry relating to the registration of the firm and to file it along with the original statement which had been

A filed. The next Section requiring notice is S.69(2). That is in these terms :

B 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.

C Applying that sub-section to the present case the firm was registered and in my opinion continued to be registered at the date of the institution of this suit on 26th October 1939. There is no time limit fixed in any of the Ss.60 to 63 as to when notice of alterations or changes should be given. Mr. Davar argued that the word "when" with which each of those Sections begins involves an obligation upon the person proposing to give notice of the change to give it immediately upon the change occurring. The Sections do not say so. The position therefore, is this : The firm was registered at the time of the institution of the suit. The firm then consisted of Chhogamal Dhanaji and Chunilal Idanji, two of the original partners whose names were shown on the register at the date of registration and were shown on the register at the date of the institution of the suit. The fact that the firm was registered at the date of the institution of the suit and that the names of the person suing (the firm being a compendious name for the persons suing) were shown in the register at the date of the institution of the suit appears to me to be a compliance with S.69(2) of the Act.

F It would seem that the Legislature introduced the words with which that sub-section concludes, viz. "and the persons suing are or have been shown in the Register of Firm as partners in the firm advisedly. If additional partners had come into the firm as partners since the date of registration and their names had not been entered on the register in accordance with notice of a change in the constitution of the firm given to the Registrar, it may well be that the firm as then constituted could not sue, because although it was a registered firm some of the persons then suing would not be shown in the Register of Firms as partners in the firm at the date of the suit. That is not this case. The partners who are suing were

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shown in the register originally and are still shown, and the firm according to my construction of the Act remained registered notwithstanding the death of one of the original partners."

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The above view of the Bombay High Court was followed and applied by the Calcutta High Court in *Jogendra Chunder Goopta* (supra), Punjab High Court in *M/s. Durga Das Janak Raj* (supra) and the Rajasthan High Court in *Kesrimal & Anr.* (supra).

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In our opinion, the view taken by the Bombay High Court and followed by the other High Courts is the right view.

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Learned counsel for the appellants placed strong reliance on the Objects and Reasons for the amendments introduced in the Maharashtra Act. According to the learned counsel, if his contention is not accepted, the object with which Section 69(2A) was introduced will be lost. We do not think so. In this context, we wish to point out that Section 69(3)(a) of the Central Act enables the partners of both registered and unregistered firms to file a suit for dissolution and/or accounts. That being the position by introducing sub-section (2A) in Section 69, the Maharashtra Legislature has placed certain restrictions to the extent that even the suit for dissolution of a firm or for accounts, the suit can be filed only if the firm is registered and the 'person' suing as a partner is shown in the Register of Firms as a partner in the firm. In other words, a person, who is not shown in the Register of Firms by induction after registration even though the firm is registered, cannot file a suit for dissolution or accounts. This does not in any way mean that the registration given to the firm earlier will cease. In this case, the firm was registered and there was only a reconstitution of the firm and the first respondent, the plaintiff in this case, is a person whose name is shown in the Register of Firms along with the names of the appellants and, therefore, there is compliance of Section 69(2A). The contention to the contrary by the learned counsel for the appellants cannot be accepted.

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The decisions cited by the learned counsel for the appellants are distinguishable. In *Madho Prasad and Others v. Gouri Dutt Ganesh Lal* (supra), the principal question that arose for consideration was whether an incoming partner can be made liable for debts contracted by a firm before

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- A he joined it. In *Gouri Sankar Sheroff and Others v. Central Hindustan Bank Ltd. and Others* (supra), again a creditor's right to proceed against assets of partnership firm and not a suit by partners for accounts. In *Meenakshi Achi and Another v. P.S.M. Subramanian Chettiar and Others* (supra), again it was a case concerning the liability of partner for obligations incurred before his introduction. *M/s. Nandlal Sohanlal, Jullundur v. The Commissioner of Income-Tax, Patiala*, AIR (1977) Punjab & Haryana 320 also is not helpful to the appellants.
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- We are also not impressed by the arguments of the learned counsel for the appellants that if the definition of Section 4 is applied to Section 69(2A) then unless the names of all the partners find a place in the Register of Firm, the suit filed by the Plaintiff cannot be sustained. The fact that the firm was registered and Plaintiff's name finds a place in the Register of Firms are not in dispute. The name of the newly introduced partner, of course, does not find a place in the Register of Firms. That means the person whose name does not find a place in the Register of Firms may incur certain disabilities and that will not disable the Plaintiff to press the suit against the firm, which was registered against the persons whose names find a place in the Register of Firms. We are not called upon to decide what are the disabilities of the person, whose name does not find a place in the Register of Firms. For the purpose of Section 69(2A), the partnership firm will mean the firm as found in the certificate of registration and the partners as found in the register of firms maintained as per rule in Form 'G'. The present suit being one for dissolution and accounts by one of the partners, whose name admittedly finds place in the Register of Firms alongwith the names of all the appellants, the requirements of Section 69(2A) are satisfied. Section 4 of the Act is also complied with for this limited purpose.
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- Our conclusion is that on the induction of the second respondent, the existing firm was only reconstituted on the facts of this case and, therefore, there is no necessity to get a fresh registration. If by virtue of non-compliance of certain mandatory provisions in not informing the Registrar of Firms about the change in the constitution of the firm, certain penalties provided in the Act alone are attracted and that will not lead to the conclusion that the registration of the firm ceased. This conclusion is based on a conjoint reading of Sections 58-63 and the Forms prescribed
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thereunder. Further, this conclusion does not in any way militate the object A
of the Maharashtra Amendment introduced by Act 29 of 84.

In the result, we hold that the suit in question is not hit by Section
69(2A) of the Act and, therefore, the Division Bench is right in allowing
the Appeal. Consequently, the Appeal is dismissed. However, there will be
no order as to costs. B

R.K.S.

Appeal dismissed.