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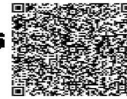


157 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**RSA-2432-2016 (O&M)**
**Reserved on 29.10.2025**
**Pronounced on : 23.01.2026**
**Uploaded on : 23.01.2026**

*Whether only operative part of the judgment is pronounced?* *No*

*Whether full judgment is pronounced?* *Yes*

Vishal Dhingra ....Appellant

Versus

Rajinder Kumar ....Respondent

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

*****

**Present:-** Mr. Shailendra Jain, Senior Advocate with
Mr. Munish Kumar, Advocate and
Mr. Rahul, Advocate
for the appellant.

Mr. Prateek Sodhi, Advocate
for the respondent.

***

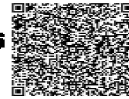
**PANKAJ JAIN, J.**

1 Defendant is in second appeal aggrieved of judgement and decree passed by both the Courts below whereby suit filed by the plaintiff seeking dissolution of the partnership and rendition of the accounts stands decreed. For convenience, parties hereinafter are referred to by their original position in the suit, i.e. the appellant as defendant and respondent as plaintiff.

2 Parties to the *lis* are real brothers. As per plaintiff, he along with defendant entered into a partnership business. They executed a partnership deed. Both of them became partners to 1/2 share each. Partnership firm was

registered. Defendant at the time of execution of partnership deed was working with LIC at New Delhi. A plot was purchased by the plaintiff in their joint name. The same was mortgaged to raise loan of Rs.3.00 lakhs from PNB, Civil Lines, Rohtak. Father as well as brother-in-law of the parties to the *lis* signed the loan documents as guarantors. Building was constructed by the plaintiff. Defendant after leaving his service joined plaintiff.

3 Plaintiff claims to have discovered that defendant was misappropriating the funds of firm and diverting the same to his own account clandestinely. A dispute arose between the parties. The same was initially settled by the family members. The settlement could not be effectuated. Plaintiff filed a suit seeking decree of prohibitory injunction against defendant from carrying on business and from acting as his agent. On the interim application filed by the plaintiff, Court appointed Receiver. Under the order of Court , Receiver gained control of the affairs of the firm. Factory premises were sealed. Plaintiff claims that on 11.05.2001, a compromise was arrived at between the parties. In terms thereof, defendant paid a sum of Rs.2.15 lakhs to Ashok Kumar Khanna, the brother-in-law of the parties, who stood as a guarantor to the loan availed by the partnership firm. Another sum of Rs.4.00 lakhs was paid to the plaintiff. The balance amount could not be paid. Amount already paid stands forfeited as per terms of the compromise. Plaintiff, however, undertakes to get the same adjusted while settling the accounts. In the earlier suit filed by the plaintiff their elder brother namely Krishan Lal was impleaded vide order dated 15.01.1999. The suit, however, was dismissed vide judgment and decree dated 09.08.2001. The suit was dismissed holding that the suit for prohibitory injunction was not maintainable




as the plaintiff should have sued defendant for dissolution of partnership and rendition of accounts. As per plaintiff, defendant is bound to render accounts of the partnership business and the amount received by firm by letting out the shop constructed over a joint plot.

4 Suit was contested by the defendant claiming that the suit was not maintainable being barred under Order II Rule 2 CPC. Defendant further claimed that in the earlier round of litigation, a compromise was arrived at between the parties on 11.05.2001. The same was acted upon. Defendant paid a sum of Rs.2,15,000/- to their brother-in-law, the guarantor, in addition to Rs.3.00 lakhs paid to the plaintiff. Sum of Rs.8,50,000/- was to be paid towards full and final settlement by the defendant to the plaintiff, but the same could not be paid after their brother became party to the present suit. The defendant has always been ready and willing to pay balance amount of Rs.8,50,000/- to the plaintiff and also moved an application seeking disposal of the suit in terms of compromise. However, the same was dismissed. Earlier suit was dismissed vide judgment and decree dated 09.08.2004. The defendant further pleaded that the suit was barred by limitation.

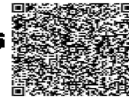
5 Suit was put to trial by the Court of the First Instance framing following issues:-

> *"1) Whether the plaintiff is entitled to the decree for rendition of accounts, as prayed for? OPP*
> *2) Whether the suit is barred under Order 2 Rule 2 CPC? OPD*
> *3) Whether the suit is barred by limitation? OPD*
> *4) Whether the suit is not maintainable in the present form? OPD*
> *5) Whether the suit is bad for non- joinder of necessary party? OPD*
> *6) Whether the plaintiff has concealed the material facts from the court? OPD*

*7) Whether the plaintiff is estopped to file the present suit by his own act and conduct? OPD*
*8) Relief.”*

6 The Court of the First Instance held that neither any dissolution deed between the partners was ever written, nor any accounts were ever rendered. Ex.P19 partnership deed shows that both the partners contributed to the capital of the firm and availed loan jointly. In terms of the partnership deed Ex.P19 if the firm was to be dissolved, it could be so dissolved by any partner willing to retire by giving three months prior notice. The accounts were to be settled as per the balance outstanding in the capital account by making necessary adjustment of profit/losses**.** Plaintiff never desired to retire from the partnership business. The partnership deed having not been dissolved in terms of the covenants contained in the partnership deed, the plaintiff was within his right to maintain the present suit for rendition of accounts. Rejecting the plea raised by defendant claiming the suit to be barred by provisions of Order II Rule 2 CPC, the Trial Court found that the two suits having been based on different cause of actions, the present suit cannot be held to be barred by the principle of constructive *res judicata*.

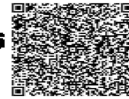
7 Rejecting the defense raised by the defendant regarding the suit being barred by limitation, the Trial Court observed that once defendant Vishal Dhingra has paid amount in terms of compromise Ex.D10 and moved an application Ex.D8 seeking decision of the earlier suit as per the compromise on 25.09.2002 the present suit instituted on 28.08.2004 cannot be said to be barred by limitation.





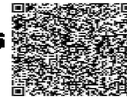
8 Dissatisfied defendant preferred appeal. Lower Appellate Court dismissed the same affirming findings recorded by the Court of First Instance.

9 Learned senior counsel appearing for the defendant has assailed the findings recorded by the Courts below. A two-fold submission has been raised. Senior counsel asserts that the present suit is barred under the provisions of Order II Rule 2 CPC. In the earlier suit plaintiff claimed decree of permanent prohibitory injunction even though he had a right to file a suit seeking rendition of accounts. He having omitted to sue defendant for rendition of accounts in the earlier suit, plaintiff is barred from maintaining the present suit for the said relief. Mr. Shailendra Jain, Senior Advocate further submits that in the earlier *lis,* a finding of fact has been returned by the Courts that the partnership firm was a partnership at will and the same stood dissolved upon service of notice by plaintiff upon defendant on 01.12.1998. Thus, the present suit having been filed beyond prescribed period of limitation of three years, from the date of dissolution of firm is barred by limitation. He further submits that the question of rendition of account between the parties will not lie in view of compromise Ex.D1 in the previous suit. The parties not only compromised but also acted thereupon though in part. The Courts below fell in error in decreeing a suit which is not *per se* maintainable under law. In order to hammer forth his contentions he relies upon ***M/s Raptakos, Brett & Co. Ltd. Vs. M/s Ganesh Property, 2017 AIR Supreme Court 4574, State Bank of India Vs. Gracure Pharmaceuticals Ltd., 2014 AIR Supreme Court 731, Shankar Sitaram Sontakke and another Vs. Balkrishna Sitaram Sontakke and others 1954 AIR Supreme Court 352, Vurimi Pullarao S/o Satyanarayana Vs. Vemari Vyankata Radharani W/o Dhankoteshwarrao &***




***anr., 2020 AIR Supreme Court 395, Dadu Dayalu Mahasabha, Jaipur (Trust) Vs. Mahant Ram Niwas and Another, 2008 AIR Supreme Court 2187, Manohar Lal & others Vs. Moti Lal & ors., 1974 PLR 251, Haris Vs. Chathu, 2013 (25) RCR (Civil) 310, M.Vijayalakshmi Vs. T.Shanmugam, 2011 AIR Madras 88*** and ***Cuddalore Powergen Corporation Ltd. Vs. Chemplast Cuddalore Vinyls Limited and another, 2025 SCC OnLine SC 82.***

10 *Per contra* counsel for the plaintiff submits that both the Courts below after appreciating the evidence on record rightly concluded that the plea raised by the defendant regarding maintainability of the suit relying upon Order II Rule 2 CPC *sans* merit. He contends that the earlier suit instituted by the plaintiff was based upon legal notice dated 01.12.1998 wherein the plaintiff sought decree of prohibitory injunction against the defendant and claimed that he was not authorized to act as an attorney holder of the plaintiff. The defendant was called upon to stop the working of the firm till the same was dissolved. Thus, it cannot be said that the earlier suit was based upon the same cause of action on which the present suit has been instituted. A conjoint reading of averments raised in the notice dated 01.12.1998 as well as the plaint of the earlier suit would reveal that the same was based upon totally different cause of action as compared to the present plaint. He submits that the defendant himself relies upon the compromise Ex.D10 effected between the parties during the earlier suit. It was one of the covenants in the said compromise that in case the balance amount is not paid by the defendant to the plaintiff, the amount already paid shall stand forfeited and the parties shall assume status as if they were in the partnership business. He submits that in



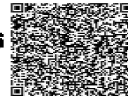

view of the aforesaid facts, the only inference that can be drawn is that the parties continued to be partners as per the compromise Ex.D10 relied upon by the defendant. He submits that in both the suits the defendant has denied there being any partnership between the parties. He contends that the land on which the firm has its operations is still joint and the defendant has till date not rendered or settled the accounts *qua* the same with the plaintiff. He relies upon ***Shreedhar Govind Kamerkar Vs. Yesahwant Govind Kamerkar & anr. 2007 (1) Law Herald (SC) 307*** to contend that the cause of action for maintaining suit for rendition of account does not perish. He submits that there is ample evidence led by the plaintiff to prove that the defendant is still running firm and business in the name of Vishal Industries and thus the present suit having been filed for rendition of accounts cannot be held to be barred under Order II Rule 2 CPC.

11 Lastly, he submits that the defendant having failed to render the accounts and there being ample evidence on record to prove that the firm is still running, the present suit cannot be held to be barred by limitation.

12 I have heard learned counsel for the parties and have carefully gone through records of the case.

13 Even though defendant in the pleadings denied the factum of partnership between the parties. However, during the course of arguments Mr. Shailendra Jain, Senior counsel candidly admitted that the partnership deed having been admitted by the defendant, the partnership can not be denied.

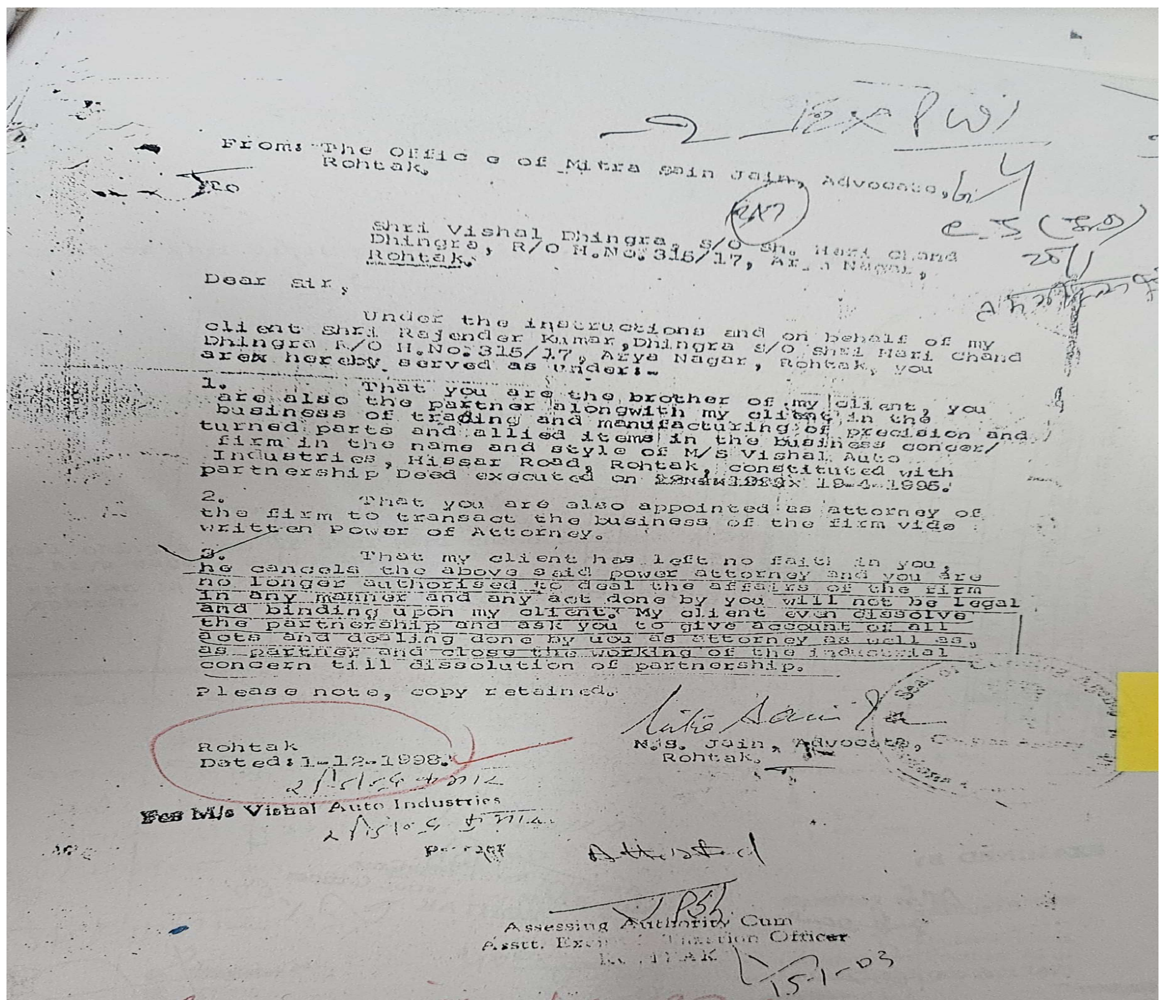
14 The parties who are real brothers entered into a written partnership deed which came into effect on 19.04.1995. There is a term with




respect to retirement of a partner from the firm. Covenant No.13 reads as under :-

> *"13. This partnership business is at will and can be dissolved as and when decided by the partners hereto mutually in the Case if dissolution of the firm the net assets whatever would be available after meeting out all the business liabilities including loans shall be distributed among the partners in the proportion to their profit sharing ratio as referred above the Clause No. 5."*

15 From the records, it is discernible that the relation amongst partners ran into rough weather and the plaintiff served legal notice dated 01.12.1998 upon the defendant to the following effect :-



From: The Office of Mitra Sain Jain, Advocate,
Rohtak.

To

Shri Vishal Dhingra, S/O Sh. Hari Chand
Dhingra, R/O H.No.315/17, Arya Nagar,
Rohtak.

Dear Sir,

Under the instructions and on behalf of my client Shri Rajender Kumar,Dhingra S/O Shri Hari Chand Dhingra R/O H.No.315/17, Arya Nagar, Rohtak, you are hereby served as under:-

1. That you are the brother of my client, you are also the partner alongwith my client in the business of trading and manufacturing of precision and turned parts and allied items in the business concer/firm in the name and style of M/S Vishal Auto Industries, Hissar Road, Rohtak, constituted with partnership Deed executed on 19-4-1995.

2. That you are also appointed as attorney of the firm to transact the business of the firm vide written Power of Attorney.

3. That my client has left no faith in you, he cancels the above said power attorney and you are no longer authorised to deal the affairs of the firm in any manner and any act done by you will not be legal and binding upon my client. My client even dissolve the partnership and ask you to give account of all acts and dealing done by you as attorney as well as, as partner and close the working of the industrial concern till dissolution of partnership.

Please note, copy retained.

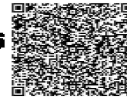
Rohtak
Dated: 1-12-1998.

N.S. Jain, Advocate,
Rohtak.

For M/s Vishal Auto Industries

Attested

Assessing Authority Cum
Asstt. Excise & Taxation Officer
ROHTAK




16 Subsequently, plaintiff filed suit seeking decree of prohibitory injunction. The Trial Court framed following issues:-

> *"1. whether the suit is not maintainable in the present form? OPD*
>
> *2. whether the plaintiff is entitled for discretionary relief as claimed? OPD*
>
> *3. whether the plaintiff has concealed material facts and relevant facts from the court, if so to its effect?0PD*
>
> *4. whether the firm is a joint Hindu Family firm, if so its effect? OPD"*

17 During the pendency of the said suit, the parties entered into compromise dated 11.05.2001, the terms and conditions thereof read as under :-

> *"In the present case, the parties with the intervention of the Hon'ble court and other respectables compromised on the following terms & conditions:-*
>
> *1- That the parties constituted a partnership firm on 19-4-95 in the name of M/s Vishal Auto Industries, Hissar road Rohtak and started running business in the same but due to one reason or others the matter came before the Hon'ble court. On the basis of settlement/compromise arrived at between the parties, the plaintiff has relinquished/surrendered all his rights, title, interest in the partnership business, building, land, machinery etc. and in consideration thereof the defendant has agreed to pay sum of Rs.12,50,000/- in full and final settlement of the partnership business.*
>
> *2- That Sh. Ashok Kumar Khanna who is the brother in law of both the parties had guaranteed the loan availed by the parties in the name of M/s Vishal Auto Industries from PNB Civil lines Rohtak. The loan could not be paid by the firm which necessitated the depositing of the amount by the guarantor i.e.Sh.Ashok Kumar. He has deposited a sum of Rs.2,00,000/- from 4-11-99 to 2-3-2001. The parties have settled that the defendant shall pay to him in court, the sum of Rs.2,00,000/- plus Rs.15000/- as interest on this amount to him.*

*3- That henceforth the defendant who has taken over all the assets and liabilities of the firm shall be liable to and entitled to pay all the debts, income tax, sale tax, insurance charges and all other incidental charges that may or might have become due and payable to the firm on account of this business including payment to any labourers etc.*

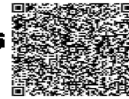
*4- That likewise all the loan amounts standing in the name of the firm shall be paid by Vishal Dhingra, the defendant and he shall be entitled to receive all the firm outstanding on account of credit to the firm from any person whatsoever. In short, the matter stand settled for all intends and purposes in consideration of the payment of Rs.12,50,000/- to the plaintiff and deriving all rights and title in the partnership business by the defendant, and have nothing to do with the land, building machinery etc. etc. in any manner whatsoever which shall be exclusively owned, possessed and acted upon by defendant.*

*<u>5- That the defendant has paid a sum of Rs. One Lac in the court to the plaintiff out of the remaining amount sum a sum of Rs. Three Lacs shall be paid on 30.5.2001 whereas the remaining amount of Rs. Eight Lacs fifty thousand sha11 be paid by the defendant to the plaintiff by way of cheque, cash, draft against duly executed receipt on or before 30.7.2001 and in case of default the amount already stand paid to the plaintiff shall stand forfeited and the parties shall be as they were in the partnership business and during this period the defendant shall have no right to charge/alienate the land, building, machinery etc. In any manner whatsoever.</u>*

*6. That on the basis of the compromise arrived at the case may please be decided."*

18 The same was acted upon but only in part. Defendant moved an application for deciding the suit as per compromise. The application was dismissed by the Trial Court vide order dated 25.09.2002. Operative part of the order reads as under :-

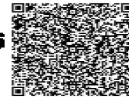
*"18. From the perusal of the file, it is observed that the present applicant i.e. the defendant No.1 and the plaintiff entered into a compromise dated 11.5.2001 and the statement to this effect was also*




*recorded and the applicant had made the total payment of Rs.6.15,000/- to the plaintiff and to another person namely Ashok Kumar and Rs.8,50,000/- were to be paid on 30.7.2001 but on 30.7.2001 the proceedings of the present case were stayed by the Hon'ble High Court in Civil revision 3460 of 2001 and in these circumstances, I am of the considered opinion that the applicant was not at fault for not making payment of Rs. 8,50,000/-. It is also to be noted here that the defendant No.3 has been impleaded as party in this case and in these circumstances the suit cannot be decided as per compromise because the compromise was entered between the plaintiff and the defendant No.1 only and in these circumstances I am of the considered opinion that the plaintiff should make the payment of Rs. 6,15,000/- to the defendant No.1 i.e. the applicant and as such the application stands partly allowed."*

19 Suit was finally dismissed holding that by issuing legal notice plaintiff intended to dissolve the partnership business. The same being partnership at will stood dissolved by issuance of notice and the plaintiff ought to have filed suit seeking decree for rendition of accounts. Matter came before this Court in RSA No.1784 of 2005. On 12.08.2005 this Court passed the following order **:-**

*"It has virtually been agreed between the parties that they shall finish their all disputes, which are pending. It has further been agreed that the respondent, Vishal Dhingra, shall pay Rs. 8,50,000/- along with 6% interest per annum (simple) for the period from August 1, 2001, to January 31, 2003. Amount shall be paid in three equal instalments. To show his bonafide, respondent shall bring first instalment in Court on the next date of hearing in the shape of demand draft in the name of the appellant. It has further been agreed between the parties that they shall put up written compromise in Court on or before*




*September 15, 2005. Subject to fulfilling undertaking by the respondent Vishal Dhingra, this Court is of the opinion that it is desirable at this stage to hand over keys of the factory to him. Accordingly, order dated May 12, 2005, stands modified to that extent. Trial Court is directed to hand over key of the factory in dispute to respondent Vishal Dhingra forth-with. If Vishal Dhingra fails to fulfil his undertaking, key of the factory shall be taken back from him and he shall be burdened with heavy costs."*

20 It seems later on the compromise again got aborted. Finally the RSA was dismissed vide order dated 31.10.2006 by this Court observing as under :-

*"The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit for injunction restraining the defendant from interfering in the joint possession of the plaintiff in the premises and functioning and dealing with the partnership in any manner was declined.*

*It has been found that the said partnership was dissolved vide notice dated 1.12.1998 Exhibit PW1/4 issued by the plaintiff to the defendant. The said notice has been reproduced verbatim by the learned first Appellate Court in its judgment. A perusal thereof leaves no manner of doubt that the partnership was dissolved at the instance of plaintiff. The finding that the partnership stood dissolved is a finding of fact based upon proper appreciation of evidence.*

*Consequently, I do not find any patent illegality or material irregularity in the impugned order which may raise substantial question of law for consideration by this Court in second appeal.*

*Dismissed*."

21 During the pendency of the RSA before this Court plaintiff filed present suit. Senior counsel appearing for the defendant asserts that the present suit is barred under Order II Rule 2 CPC as the plaintiff in the earlier

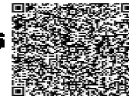
suit failed to incorporate prayer regarding rendition of accounts even though he had cause of action to do so.

22 In order to appreciate the argument raised by the learned senior counsel appearing for the defendant, it will be apt to peruse Order II Rule 2 CPC.

> ***"2. Suit to include the whole claim****.—(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish and portion of his claim in order to bring the suit within the jurisdiction of any Court. (2) Relinquishment of part of claim.—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. (3) Omission to sue for one of several reliefs.—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.*
> *Explanation.—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."*

23 The provision came up for consideration before Constitution Bench of Supreme Court in the case of ***Gurbux Singh v. Bhooralal, AIR 1964 SC 1810*** wherein Supreme Court held as under :-

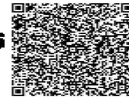
> ***"6.*** *In order that a plea of a Bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out; (i) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the*




*plaintiff, without leave obtained from the Court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of the bar. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential reasoning. It is for this reason that we consider that a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits. It is common ground that the pleadings in CS 28 of 1950 were not filed by the appellant in the present suit as evidence in support of his plea under Order 2 Rule 2 of the Civil Procedure Code. The learned trial Judge, however, without these pleadings being on the record inferred what the cause of action should have been from the reference to the previous suit contained in the plaint as a matter of deduction. At the stage of the appeal the learned District Judge noticed this lacuna in the appellant's case and pointed out, in our opinion, rightly that without the plaint in the previous suit being on the record, a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code was not maintainable.*

*Learned Counsel for the appellant, however, drew our attention to a passage in judgment of the learned Judge in the High Court which read:*

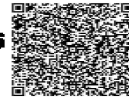
> *"The plaint, written statement or the judgment of the earlier court has not been filed by any of the parties to the suit. The only document filed was the judgment in appeal in the earlier suit. The two courts have, however, freely cited from the record of the earlier suit. The counsel for the parties have likewise done so. That file is also before this Court."*




*It was his submission that from this passage we should infer that the parties had, by agreement, consented to make the pleadings in the earlier suit part of the record in the present suit. We are unable to agree with this interpretation of these observations. The statement of the learned Judge. "The two courts have, however, freely cited from the record of the earlier suit" is obviously inaccurate as the learned District Judge specifically pointed out that the pleadings in the earlier suit were not part of the record and on that very ground had rejected the plea of the bar under Order 2 Rule 2 of the Civil Procedure Code. Nor can we find any basis for the suggestion that the learned Judge had admitted these documents at the second appeal stage under Order 41 Rule 27 of the Civil Procedure Code by consent of parties. There is nothing on the record to suggest such an agreement or such an order, assuming that additional evidence could legitimately be admitted in a second appeal under Order 41 Rule 27 of the Civil Procedure Code. We can therefore proceed only on the basis that the pleadings in the earlier suit were not part of the record in the present suit.*

24 The same was followed in ***Bengal Waterproof Ltd. v. Bombay Waterproof Manufacturing Co. Ltd., (1997) 1 SCC 99*** observing as under :-

*"xxx xxx xxx before the second suit of the plaintiff can be held to be barred by the same it must be shown that the second suit is based on the same cause of action on which the same in both the suits and if in the earlier suit plaintiff had not sued for any of the reliefs available to it on the basis of that cause of action, the reliefs which it had failed to press in service in that suit cannot be subsequently prayed for except with the leave of the Court. It must, therefore, be shown by the defendants for supporting their plea of bar of Order 2 Rule 2 sub-rule (3) that the second suit of the plaintiff filed in 1982 is based on the same cause of action on which its earlier suit of 1980 was based and that because it had not prayed for any relief on the ground of*




*passing off action and it had not obtained leave of the court in that connection, it cannot sue for that relief in the present second suit. xxx xxx xxx"*

25 Thus in light of the settled proposition of law, the defendant has to establish that both the suits were filed on the same cause of action. Question is what '*Cause of action'* means? Cause of action is not defined under CPC. As per binding precedents, the cause of action consists of bundle of facts which give cause to enforce the legal inquiry for redressal in a Court of law.

26 In ***Y. Abraham Ajith v. Inspector of Police, (2004) 8 SCC 100 : 2004 SCC (Cri) 2134 : 2004 SCC OnLine SC 896*** Supreme Court discussed entire series of law on the issue to observe as under :-

> ***14.*** *It is settled law that cause of action consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.*
>
> ***15.*** *The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously, the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action".*
>
> ***16.*** *The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more*

*comprehensive sense, it has been used to denote the whole bundle of material facts.*

***17.** The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person. In Black's Law Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In Words and Phrases (4th Edn.), the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.*

***18.** In Halsbury's Laws of England (4th Edn.) it has been stated as follows:*

*" 'Cause of action' has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."*

27 The facts of the present case need to be gazed from the prism of afore-stated proposition. The averments made in plaint of both the suits need to be evaluated to ascertain whether both the suits are based upon same cause of action or not.

28 In the plaint filed in the earlier suit plaintiff sought decree of prohibitory injunction pleading as under :-

*"5- That on 30-11-98 the parties quarrelled over the matter and the matter came to police in Indira colony Rohtak chowici and City police Rohtak, Sh. Ashok Kumar Khanna and Sh.Inderjit Taneja brother in-laws of the parties and 3h. Chiraj Budhiraja and Sh.Ram Parkash*

2026:PHHC:010266

*Khurana and Sh.Hari Chand father of the parties intervened and asked the parties to jointly run the factory and settle the firm account amicably.*

*6- That even after the intervention and direction of otherhood, the defendant does settle account of firm the plaintiff and interfere in the entry of plaintiff in the premises of firm.*

*7- That as per terms no.14 of partnership agreement the plaintiff asked the defendant to appoint arbitrators /Empire to settle all disputes of partnership but he is hesitant and does not appoint the arbitrator for the purpose as per agreement, for which the plaintiff will file seperato petition under arbitration Act for the appointment of arbitrators by court.*

*8-That the plaintiff asked the defendant not to exclude him from the joint possession, in the affairs of the working of factory and dealing the affairs of firm, but the defendant being strong and influential party is adamant illegally and refused a few days back giving cause of action.*

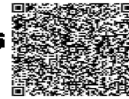
*9-That by the acts and conduct of defendant the plaintiff was to bear heavy loss and the defendant is misappropriating the profits the assets and others gains of the firm.*

*10- That no other similar suit is pending or decided.*

*11- That the parties reside and business concern is situated at Rohtak, so this court has jurisdiction.*

*12- That the value of the suit for purposes of court fee & jurisdiction is fixed at s. 200/- and fixed court fee of Rs.25/-is paid.*

*It is, therefore, prayed that a decree for prohibitory injunction restraining the defendant from interfering and excluding*

*the joint possession of the plaintiff in the premises and functioning and dealing with the partnership in any manner and further restraining the defendant from maxing any deal on behalf of the firm without the permission of plaintiff in any manner be passed in favour of the plaintiff against the defendant, it is further prayed that a receiver be appointed to run the factory and business of the firm till decision of suit or the factory be ordered to be locked under the court authority so that the machinaries and other goods etc. be saved from misappropriation by the defendant. Costs and other relief to which the plaintiff in the present circumstances is entitled in law and equity may also be awarded."*

29 In the subsequent suit i.e. in the present suit plaintiff pleaded as under :-

*"17. That the defendant is bound to render the accounts of all kinds of the partnership business and that of the rent received and the amount of deposits and interest over the same. The notice has already been served upon him and the findings arrived at has further given the cause of action to the plaintiff to ask for the dissolution of partnership firm and rendition of accounts by the defendant.*

*18. That after the decision of the case, the plaintiff has called upon the defendant to dissolve the partnership firm and render the accounts of the firm to the plaintiff as claimed above. But he has refused to show the accounts books, and settle and render the accounts a week ago. Hence, this suit.*

*19. That the cause of action has arisen to the plaintiff partly on 9-8-2004 when the suit of the plaintiff for permanent prohibitory injunction was dismissed and it was held that the plaintiff should go for dissolution of partnership and rendition of accounts and a week ago from the refusal of the defendant to render the account as stated above. Hence, this suit.*

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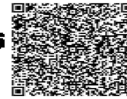
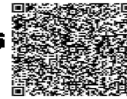


> *20. That the partnership business is at Rohtak and the accounts books are with the defendants. The amount recovered by the defendants of the partnership business from various parties prior to the filing of the earlier suit and during the pendency of that suit is with the defendant besides the rent received from various tenants of the portion of the factory premises which was purchased by the plaintiff from his own sources in equal share in the name of plaintiff and defendant. Therefore, the Hon'ble court has jurisdiction to try the present suit."*

30 Chapter VI of the 1932 Act deals with the dissolution of firm. Section 45, 46, 47, 48, 49 and 50 of the 1932 Act deal with rights, liabilities, continuing authority of partners after dissolution. The authority of a partner does not cease to exist merely upon dissolution of a firm. He continues to have authority till the affairs of the firm are wound up. He remains authorized to enforce his rights. Section 48 of the 1932 Act deals with mode of settlement of accounts between partners. Defendant cannot deny that during the pendency of the earlier suit, he admitted to pay for the rights of the plaintiff. Though the compromise was executed, but the same could be acted only in part. His application filed seeking disposal of the suit in terms of the compromise did not find favour with the Court. Even before Appellate Court, i.e. in RSA before this Court there was an attempt made to get the suit compromised and the defendant agreed to pay plaintiff, but the same could not fructify. Plaintiff as per the plaint has pleaded cause of action in his favour on the basis of that compromise. In view thereof, this Court does not find



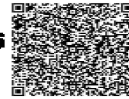

that bar under Order II Rule 2 CPC can be invoked by the defendant to claim suit for rendition of accounts being barred under Order II Rule 2 CPC.

31 Coming on to the issue of limitation suit for rendition of accounts is governed by Article 5 of the Limitation Act, 1963 (for short, 'the 1963 Act') which reads as under :-

| | | | |
|---|---|---|---|
| *5.* | *For an account and a share of the profits of a dissolved partnership.* | *Three years* | *The date of the dissolution.* |

32 In view of the fact that under Sections 45, 46, 47, and 48 of the 1932 Act, this Court finds that the plaintiff has a right subsisting till the affairs of the firm are wound up. It has come on record that the firm is still being run by the defendant under the same name and from the joint premise. Repeated acknowledgements by the defendant admitting the right of the plaintiff have an effect of extending the limitation under Section 18 of the 1963 Act. In written statement filed in the present suit also, defendant pleaded that :-

> *7. Para no.7 of the plaint is a matter of record. The plaintiff had chosen to file a permanent injunction which was 9.8.2004. Appeal against that a suit for dismissed on decree and Judgment too was rejected on 27.4.2005. Second appeal by plaintiff is lying in the High court and is yet under consideration for admission. Appointment of receiver order had lost in the light of dismissal of suit even.*
>
> *Let it be submitted here that the court of learned Additional Civil Judge Sr. Divn. In its judgment dated 9.8.2004 had clearly and categorically held that the partnership firm had stood dissolved on 1.12.1998 and that the plaintiff thus can not claim relief for dissolution of partnership. Anyhow, the plaintiff after assessing from all aspects had demanded a sum of Rs.12,50,000/- as his share in the land building, machinery and all other assets and business and the same was accepted by defendant. Compromise deed was executed and the parties had acted upon the same. Compromise deed is on the file of Suit No.194C of*




> *1999/2004 decided Anyhow, it is further submitted that the keys on 9.8.2004. were handed over to the defendant by the learned court under the orders of Hon'ble High court and the defendant is now re-running the factory as its sole proprietor after investing a lot from his pocket for its renovation and restart after it remaining closed for 3 long years."*

33 The difference between dissolution of firm and the winding up of affairs of the firm, though subtle is recognized by law under Chapter VI of the 1932 Act. Though the limitation prescribed under Article 5 of the 1963 Act, commences from the date of dissolution of the firm but where the defendant partner acknowledges his liability corresponding to the right of the plaintiff based upon Sections 45, 46, 47, and 48 of the 1932 Act, the limitation gets a fresh lease of life and has to be computed afresh from the time when such acknowledgement is executed. Thus, even if the partnership firm is held to have been dissolved on 01.12.1998 right of the plaintiff to sue continued in light of repeated agreements between the parties as the affairs of the firm were never wound up.

34 In the present case, defendant having repeatedly acknowledged his liability to settle the account cannot take refuge under law of limitation to plead that the suit is barred.

35 In view of above, this Court finds no reason to interfere in well-reasoned findings recorded by the Courts below *qua* decreeing a suit for rendition of accounts. Since the partnership firm was never wound up and is still continuing even though resolved on 01.12.1998, this Court finds no reason to interfere in the preliminary decree passed by the Courts below.

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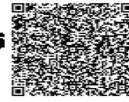

36 Finding no merits in the present appeal, the same is ordered to be dismissed.

37 Pending miscellaneous application, if any, also stands disposed off.

**( PANKAJ JAIN )**
**JUDGE**

**23.01.2026**
*Pooja Sharma-I*

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No