

(3) The only objection raised in the Regular Second Appeal is that the partnership firm was not a party defendant to the suit and that it is not proved that the partnership firm was registered. Indisputably, the parties to the suit are partners of the firm. The constitution of the partnership firm is not denied. The objection that a suit, against an unregistered firm or that the firm having been not made a party to the suit is not maintainable, cannot be sustained for the reason that the partnership is admitted. The partnership firm is a compendious name for the partners constituting it. The partners are parties to the suit. Non-impleading of the firm does not render the suit bad for non-joinder of parties. The suit for dissolution or rendition of accounts is maintainable even against an unregistered firm. Reliance can usefully be made to *D. C. Upreti v. B. D. Karnatak* (1), where it was held thus :—

“In the instant case it is obvious that it was a suit for dissolution and accounts of an unregistered partnership Firm and such a suit is well protected by sub-section (3)(a) of section 69 of the Partnership Act. This exception excluded such suit from the operation of the General Rule as laid in section 69, sub-section (2) of the aforesaid Act.

Under the circumstances the finding that such type of suit is saved by the aforesaid exception and is not barred by Section 69 of the partnership Act is correct.”

(4) For the aforesaid reasons, the appeal is devoid of any merit and is dismissed.

J.S.T.

Before : S. S. Sodhi & Ashok Bhan, JJ.

KURUKSHETRA UNIVERSITY, KURUKSHETRA AND ANOTHER.
—Appellants.

versus

SHAILENDER DHAWAN.—Respondents.

Letters Patent Appeal No. 548 of 1990.

22nd August, 1991.

Letters Patent, 1919—Cl. 10—Petitioner-respondent found guilty of using unfair means—Only incriminating material found from his possession was some matter written on question paper of subject he

(1) A.I.R. 1986 Allahabad 32.

was appearing in—No allegation that he got some outside help or smuggled some material into examination hall—Not enough evidence to sustain the order of disqualification passed by University.

Held, that when there is no allegation against the petitioner that he got some outside help or smuggled some material which could be of use to him while attempting the question paper, respondent-petitioner could not be held guilty of using the unfair means only on the ground that he had done some rough work on the blank space of the question paper supplied to him at the examination centre while sitting in the examination hall. There is no evidence on the record worth the name to sustain the order of disqualification passed by the University.

(Para 3)

Appeal under Clause X of the Letters Patent against the Judgment of C.W.P. No. 18 of 1990 dated 12th March, 1990, delivered by Hon'ble Mr. Justice M. R. Agnihotri.

Balram Gupta, Advocate with Subhash Ahuja, Advocate, for the petitioners.

R. L. Sharma, Advocate, for the respondent.

JUDGMENT

Ashok Bhan, J.

This letters patent appeal has been filed by Kurukshetra University against the order of learned single Judge whereby the order disqualifying the respondent petitioner by the University has been quashed.

(2) Respondent-petitioner was admitted in the Regional Engineering College, Kurukshetra, for the course of B.Sc. (Mechanical) in the year 1988. While appearing in second semester in Math Paper-II on 13th May, 1989, respondent-petitioner was involved in unfair means case. He was called by the Unfair Means Committee of the University for appearing before it in order to explain the position. The allegations against the respondent-petitioner was that some incriminating material was found written on the question paper which was supplied to him in the examination hall. He was found guilty of using unfair means by the Unfair Means Committee and,—*vide* impugned order dated 14th December, 1989, he was disqualified from passing the aforesaid examination and appearing in the said examination till May/June, 1990. Petitioner successfully impugned the order by which he was disqualified and the learned single Judge quashed the impugned order being arbitrary and based on no evidence and directed the University to declare the result of second semester examination of the respondent-petitioner.

In case he was declared successful then the University was directed to permit the respondent-petitioner to attend the sixth semester class and on the basis of that admission also allowed him to appear in the next examination. Kurukshetra University, has come up in appeal.

(3) The only incriminating material found from the possession of the petitioner in the examination hall was some matter written by him on the question paper of the subject in which the petitioner was appearing on the date of examination. No other material was found from his possession. The 4th page of the question paper supplied to the respondent-petitioner was blank and he had done some rough work on the blank page of the question paper regarding one of the questions which was to be attempted on the answer-sheet later on. Writing on the back of the question paper was in the hand of the respondent-petitioner himself. Learned single Judge had gone through the entire record of the University and we have also gone through the entire record which has been placed before us by the learned counsel appearing for the University. There is no allegation against the petitioner that he got some outside help or smuggled some material which could be of use to him while attempting the question paper. Respondent-petitioner could not be held guilty of using the unfair means only on the ground that he had done some rough work on the blank space of the question paper supplied to him at the examination centre while sitting in the examination hall. There is no evidence on the record worth the name to sustain the order of disqualification passed by the University.

(4) Accordingly, we concur with the findings of the learned Single Judge and uphold the judgment passed by him. Consequently, this appeal fails and is dismissed with no order as to costs.

J.S.T.

Before : A. L. Bahri & H. S. Bedi, JJ.

IN THE MATTER OF THE COMPANIES ACT, 1956,—*Petitioner.*

versus

UNITED COMMERCIAL BANK, JAMMU,—*Respondent.*

Company Appeal No. 2 of 1988.

29th October, 1991.

(1) *Companies Act (1 of 1956)—S. 446(1)—Meeting of creditors held for voluntary winding up of Company—Even if petition for*