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

**RSA No.351 of 2016 (O&M)
Decided on: 29.08.2017**

M/s Radha Raman IndustriesAppellant

versus

M/s Manoj Trading CompanyRespondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Adarsh Jain, Advocate,
for the appellant.

Rajbir Sehrawat, J.(Oral)

This is an appeal filed by the defendant against the concurrent findings of both the Courts below and their judgments and decrees whereby the suit for recovery filed by the plaintiff-respondent herein was decreed and the appeal filed by the present appellant-defendant was also dismissed.

The facts mentioned, in brief, are that the plaintiff is a firm dealing in food grains, cereals, oil seeds etc. at New Anaj Mandi Palwal and the defendant is a firm being in the business of oil etc. The defendant-firm purchased mustard seed from the plaintiff for a total amount of ₹5,45,376/-. The defendant paid only a sum of ₹45,000/- on 15.03.2005, vide a pay order, and the remaining amount of ₹5,00,376/- was not paid by the defendant. Therefore, the plaintiff-firm filed a suit for recovery along with interest.

The defendant filed a written statement. It did not dispute the supply of the material through the bills, Ex;P3 to P;13. However, it took the defence that it had paid the money against the valid receipts and therefore, nothing is due towards it which the plaintiff might be entitled to recover. Hence, the prayer for dismissal of the suit.

The parties led their respective evidence, to prove their case. The plaintiff proved the bills on record and understanding its onus to prove the payments, the defendant also examined DW-2 besides proprietor/partner. Both the parties examined the Hand Writing Expert also to prove/disprove the disputed signatures on the alleged receipts of payment. Both the Hand Writing Expert gave their contradictory reports regarding the signatures on the said receipts of payment.

The trial Court decreed the suit by believing the evidence of the plaintiff.

Aggrieved against the judgment and decree passed by the trial Court, the present appellant preferred an appeal before the lower Appellate Court. However, the lower Appellate Court also dismissed the appeal filed by the present appellant. Hence, the present appeal.

The lower Appellate Court while appreciating the evidence on file, recorded a finding that the alleged payment receipts were not proved as per the law. It was further observed by the lower Appellate Court that the evidence of the present appellant was contradictory even to the pleadings taken by the present appellant in the written statement. It was recorded by the lower Appellate Court

that in the pleadings the present appellant/defendant had taken a plea that the payments from the defendant were received by Manoj Kumar through his *munim*-Ashok Kumar. However, DW-2, Mohan Lal Goyal, the witness examined by the present appellant/defendant, has deposed that receipts were signed by Mukesh Kumar, the brother of Manoj Kumar and he signed in the presence of witnesses. Therefore, as per the learned lower Appellate Court, the statement being in contradiction to even the pleadings of the defendant, cannot be relied upon. Learned lower Appellate Court also recorded a finding that even on perusal, the signatures on the receipts do not tally with the signatures of the person alleged to have signed these receipts. Hence, the appeal was dismissed.

On perusal of the file, it is clear that there is no discrepancy, illegality or perversity in the findings recorded by the lower Appellate Court. Since the present appellant had admitted the receipt of goods and the liability to make the payment, therefore, it was for it to prove that the payment of the amount has been duly made to the plaintiff. For that purpose, it could have pleaded and proved before the Court that either the money was received by the plaintiff/firm or its proprietor/partner or by some person authorised by the firm or the proprietor/partner. However, there is no evidence led by the present appellant/defendant to prove this fact. The sole evidence led by the defendant is in the form of the alleged receipts of the payment of money; signed by some unknown persons. No name is mentioned in the receipts with the alleged signatures. The present appellant had claimed in the written statement that the

money was received by Ashok Kumar on behalf of the firm/proprietor and that Ashok Kumar had put signatures on the receipts. However, the witness examined by the present appellant has deposed that the receipts were signed by one Mukesh Kumar. Therefore, the defendant itself is not clear as to whom it had made the payment, if at all, it made any payment. Otherwise, also the signatures on the receipts have rightly been disbelieved by the learned Courts below because the same is at variance in different aspects.

Even if it is proved that the signatures on the receipts are of a particular persons, whether he is Ashok Kumar or Mukesh Kumar; then also there is neither any pleading nor any proof to show that either Ashok Kumar or the said, Mukesh Kumar was ever authorised by the firm or its proprietor/partner to receive the money on behalf of the firm or its proprietor/partner. In the absence of such authority being proved by the present appellant; even if the payments are made by him to some person, the same cannot be said to be the payments made to the plaintiff/firm or its proprietor/partner. By any means, the present appellant/defendant had failed to rebut any aspect of the case of the plaintiff. Therefore, both the Courts below have rightly decreed the suit against the present appellant-defendant.

As the last resort, learned counsel for the appellant relied upon the judgment of Hon'ble Bombay High Court reported in **2003 (4)ALL MR 672** titled as ***Municipal Council, Tiroda Versus K. Ravindra and Company***; to contend that the proprietary firm could not have filed a suit for recovery and the suit has to be brought in the

name of the proprietor only. He has further referred to Order 30 Rule 1 and Rule 10 of Code of Civil Procedure to buttress his claim.

However, the judgment of Hon'ble Bombay High Court does not come to the rescue of the present appellant because that judgment related to a proprietary concern; the status and identity of which itself was not clear in the title of that suit. Resultantly, the Bombay High Court granted liberty to clear the identity of the plaintiff/firm by adding the name of proprietor in the title of the suit. In the present case, the identity of the plaintiff/firm is already clear; since the suit has been filed by the plaintiff/firm through its proprietor, Manoj Kumar. Such a clarified title of the suit was held to be maintainable even by the Bombay High Court.

The Hon'ble Bombay High Court based its judgment on a preposition that the suit cannot be brought by a person in his assumed name and even if he is working in his assumed name, like a firm, then also he has to bring the suit in his own name. Reliance appears to be upon Order 30 Rule 10 of Code of Civil Procedure, since no other provision is mentioned in the judgment to support it.

However, in view of this Court, the Order 30 Rule 10 does not create any bar against a person for bringing a suit in the name of a firm/proprietary concern or in the assumed business name of the sole proprietor.

For the purpose of proper appreciation of this preposition, it is relevant to have a reference of the provisions contained in Order 30 Rule 1 and Order 30 Rule 10 of Code of Civil Procedure. The provisions are reproduced herein below:-

Order XXX

1. "Suing of partners in name of firm.- (1) Any two or more persons claiming or being liable as partners and carrying on business in India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing the cause of action, and any party to a suit may in such case apply to the court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the court may direct.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

10. Suits against person carrying on business In name other than his own.- Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under any name, may be sued in such name or style as it were a firm name, and, In so far as the nature of such case permits, all rules under this Order shall apply accordingly."

A bare perusal of the above said provisions makes it clear that a firm or a partner of a firm can very well bring a suit as per the provisions of Order 30 Rule 1 of Code of Civil Procedure. There is no part of this provision which might be interpreted to be prohibiting a suit by a partner or the firm itself or even by a proprietary concern; in its own name. Rather, this provision only creates a statutory backing for a suit to be brought by the firm and the partner.

So far as Order 30 Rule 10 is concerned, this provision only relates to the proprietary concern being 'sued against' by a person having claim against such firm or concern. This provision

rather says that if a person is carrying business in a name or style other than his own name; then that person can be sued either in his own name or in his assumed business name and style; which he was holding out to the rest of world for the purpose of business. The intention of this provision is that if a person carries on a business in a name other than his own name, then that person should not be able to avoid the liability just by taking a plea that the assumed name does not belong to him. This provision entitles plaintiff; suing against such person; even in his assumed name so that such a person cannot take a plea to the contrary to avoid his liability. Hence, this provision has, in fact, created a legal person in the form of assumed business name or style of a person and has raised the assumed business name of a person to level of a firm.

However, this provision, by any means, cannot be read to mean that a person carrying on business through a proprietary concern cannot sue other person in the name of his proprietary concern for his entitlements from the business carried through the proprietary concern. Rather conversely, such a person suing through a firm gets support and locus standi to file a suit by virtue of Order 30 Rule 10 because if his assumed name and style is treated as a legal person for being sued against then as a natural extension thereof his assumed name has to be treated a legal person for filing a suit by him as well. Any other interpretation would go against the express provisions of the Code of Civil Procedure. To counter, this interpretation the learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court rendered in **(2012)2**

SCC 196 titled as ***Rasiklal Manikchand Dhariwal Versus M.S.S. Food Products***, wherein there is an observation that although Order 30 Rule 10 makes an enabling provision for a proprietary concern or assumed name to be sued against but the analogy of enabling provision in Rule 10 can not be extended to plaintiff filing suit in the name other than his own name.

However, a bare perusal of this judgment also shows that the Hon'ble Supreme Court held the suit in that case to be legal although the same was in the name of the proprietary concern of the sole proprietor, but the concern had sued through its sole proprietor. Hence, that judgment of the Hon'ble Supreme Court cannot be interpreted to lay down, as absolute law, that the proprietary concern or the assumed name of person can not come before the Court as plaintiff. Otherwise also, the observation of the Hon'ble Supreme Court has come only qua the bare provision of Order 30 Rule 10, which of course, does not have enabling provision for the proprietary concern or the assumed name of a person to bring a suit. But the Hon'ble Supreme Court has not laid down it as a judicial precedent. Neither all the relevant provisions were argued before the Hon'ble Supreme Court nor has the Hon'ble Supreme Court considered the same for the purpose of creating a precedent on this point, because the Hon'ble Supreme Court had found the suit in that case to be, otherwise, legally brought and hence, maintainable.

A proprietary concern or assumed name of the sole proprietor, when arrayed as a defendant under Order 30 Rule 10, would also get a right to file a counter claim under Order 8 Rule 6 A

of Code of Civil Procedure, which is reproduced herein below:-

ORDER VIII

Rule 6A. Counter claim by defendant.- (1) *A defendant in a suit may, in addition to his right of pleading a set off under rule 6, set up, by way of counter claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of to suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter claim is in the nature of a claim for damages or not:*

Provided that such counter claim shall not exceed the pecuniary limits of the jurisdiction of the court.

(2) *Such counter claim shall have the same effect as a cross suit so as to enable the court to pronounce a final judgment in the same suit, both on the original claim and on the counter claim.*

(3) *The plaintiff shall be at liberty to file a written statement in answer to the counter claim of the defendant within such period as may be fixed by the court.*

(4) *The counter claim shall be treated as a plaint and governed by the rules applicable to plaints.*

A bare perusal of provision contained in Sub Clause (2) of Order 8 Rule 6A makes it clear that the counter claim filed by a defendant shall have the effect of a cross suit on behalf of the defendant. Therefore, if a proprietary concern, sued against Under Order 30 Rule 10; has got a right to file a cross suit as a defendant under the above said provision. In such a situation, it shall be totally irrational to hold that the proprietary concern cannot file a suit as plaintiff. If an entity is treated as a legal person and a plaintiff for the purpose of cross suit then there is nothing to prevent such an entity to come as plaintiff in the first instance. Otherwise, also no specific

provision in statutory law has been pointed out by the learned counsel prohibiting a suit by a proprietary concern or the assumed business name or style of a sole person. On the contrary it is well settled law that the suit by the proprietary concern is a suit by its sole proprietor and the suit by the sole proprietor is a suit by his proprietary concern. Both are the same thing for the purpose of the proceedings before the Court of Law. Any 'person' is entitled to file a suit for his or its entitlements against the defendant unless the suit is prohibited by some specific provision of law. As per General Clauses Act, Section 3 (42) even incorporation is not necessary for an entity to claim the status of a 'person' so even un-incorporated entity can file suit unless specifically prohibited by statutory law.

Hence, a suit by a proprietary concern of sole proprietor or by the assumed business name or style of a person is very much maintainable. However, since the sole proprietary concern or the assumed business name is owned by a single individual, so while filing a suit in the name of proprietary concern or assumed business name the complete details of the owner of the proprietary concern or assumed business name shall be required to be disclosed in the plaint as required Under Order 7 Rule 1 of the Code of Civil Procedure to establish the identity of the owner of the proprietary concern or the assumed business name.

In case of proprietary firm, if the relationship between the firm and the proprietor is clear and not in dispute then it does not matter whether the suit is brought in the name of the firm or the proprietor, which is one and the same thing. In the present case also

the suit by the proprietary firm is through sole proprietor giving complete details. So the suit by the proprietary concern in the present case is maintainable.

No other point was argued by the learned counsel for the appellant.

In view of the above, the present appeal fails and the same is hereby dismissed.

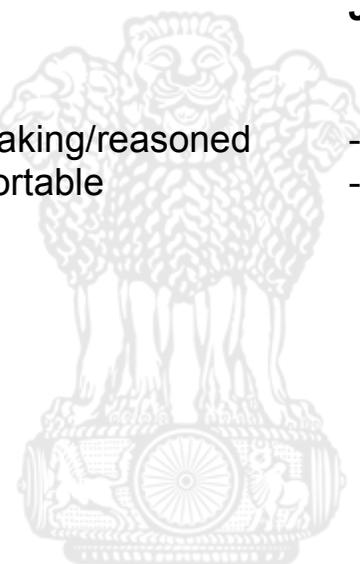
29th August, 2017

shabha

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned - Yes
Whether reportable - Yes



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