
THE REGISTRATION OF FIRM: OPTIONAL OR OBLIGATORY

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ABSTRACT

Partnership is a form of business organization, where two or more persons join together by a contract to carry on a business. These types of organizations are governed by Indian Partnership Act, 1932. It deals with diverse situations in formation and dissolution of a partnership firm. Chapter VII of the Act specifically deals with the registration of firms and effect of non-registration. The question basically is whether the registration of firm is compulsory or optional. In India, it is not compulsory to register the partnership and no penalty is being imposed for non-registration but in English law it is compulsory to register partnership firm and if it is not registered then the penalty is imposed. Non-registration leads to a certain disability in accordance with Section 69 of the Act. Unlike English Precedent contained in Business Names Registration Act, 1916 the Indian Partnership Act, 1932 neither adopt compulsory registration of partnership firm nor the punishment for non-registration.

Registration of Firm: Optional or Obligatory

Under the Indian Partnership¹ Act, 1932² registration of a firm is optional and not obligatory and the Act also does not impose any penalties for non-registration. Section 69 of the Act lays down certain disabilities which can be regarded as indirect compulsions and inducements³ on unregistered firms and their partners. “These disabilities⁴ have to be considered in two contexts: (1) the firm may be an unregistered firm. In such case all its partners are persons whose names do not appear on the Register of firms; and (2) the firm might have been registered, but the entry of a new partner or the exit of an existing partner might not have been recorded on the Register as provided by Section 63” (Ponnuswami 1964: 57). The phrase “unregistered firm” may be used to denote a firm not registered under Section 59 and “unregistered partner” to denote a partner of an unregistered firm whose name has not been mentioned in the Register of Firms. “Under Clause 1 of Section 69 no suit can be instituted to enforce rights arising from a contract or conferred by the Partnership Act by any partner against his co-partners or against the firm” (Bangia 2017: 306). Similarly under Clause 2 no suit can be instituted to enforce any right arising from a contract by an unregistered firm against any third party.⁵ However, Section 69 will not bar a suit which had accrued before Section 69 came into force having regard to Section 74 of the Act. The Act bars the partners of an unregistered firm to sue which makes the partners incapable of enforcing their rights against firm or the third party and in turn this disability induces a firm to get registered and partners to get registered in the Register of Firms as partners. The purpose behind section 69(2) was to impose a liability on the unregistered firm or its partners to enforce rights arising out of contracts entered into by the plaintiff firm with the third party defendant in the course of the firm’s business transaction. This situation has been laid down in plethora of cases.

In *Ram Adhar v. Rama Kiral Tiwari*⁶ it was ruled that an unregistered firm cannot sue any person for the price of goods supplied by it. The plaintiff sold bricks to the defendant. The defendant not having paid price of bricks to the partnership firm, the plaintiff sued the defendant for the recovery of the price of bricks. The Allahabad High Court held that such a suit is barred by section 69(2) and as such the suit was not maintainable. This disability is too great a

¹ 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.

² ACT IX of 1932

³ Section 69 (which come into force one year after the rest of the act).

⁴ Disability in respect of enforcing a contract or enforcing rights conferred by this Act

⁵ Id.

⁶ *Ram Adhar v. Rama Kiral Tiwari* AIR 1981 All 405

compelling force to bring the firm to the Register (Singh 2018: 156). The Apex Court in *Krishna Motors Service v. H. B. Vittala Kamath*⁷ the effect of Section 69 is to render a suit by a partner in respect of a right vested in him or acquired under a contract which he entered into as a partner to be maintainable.

Registration provides protections to the third party also with regard to false denials of partnership and evasion of liability. In *V. Subramaniam v. Rajesh Raghuvendra Rao*⁸ it was held that the registration constitutes a conclusive proof against persons shown as partners and of the composition of the firm.⁹ The burden of proving that the firm is registered as required under the Act is on the firm or the partner suing.¹⁰ To bring about a suit against a partner or the firm all such partners suing must be registered in the Register of Firms. This was held in the case of *Chimanlal v. Firm New India Traders*¹¹ where a suit between partners or between partners and the firm if the firm is unregistered is barred. Even if the firm is registered, only such partners can sue whose names appears in the Register of firms. Therefore, if some partners join after the firm with certain other partners who have already been registered, unless the newly introduced partners are also shown in the Register of firms, they suffer from the disability because only the registered partners can get benefit of the decree. Similarly in the case of *Gandhi & Co. v. Krishna Glass Pvt. Ltd*¹² the Court held that if the name of one of the partners had not been shown in the Register of firms, the suit filed by the partnership firm must fail. Thus it is clear from the above judgments that the name of all the partners shall be registered in the Register of Firms and it is one of the most essential elements to bring about a suit in the dispute with the other partner or the firm. A partner of an unregistered firm cannot sue the firm or his present or past co- partners for the enforcement of any right.¹³ Action of an unregistered firm is liable to be dismissed and cannot be rectified by subsequent registration.¹⁴

The suit filed by partner of an unregistered firm is not maintainable and is liable to be thrown out. The name of the partner must be shown in the Register of the Firms on the date of the suit. In *Balaji Enterprises v. Geeta Enterprise*¹⁵ it was held that when the name of the person signing

⁷ *Krishna Motors Service v. H. B. Vittala Kamath* (1996) 10 SCC 88

⁸ *V. Subramaniam v. Rajesh Raghuvendra Rao* (2009) 5 SCC 608

⁹ *Id.*

¹⁰ *Andhra Pradesh Coop. Wool Spg. Mills Ltd. v. Mahanandi & Co.*, (2003) 3 BC 313

¹¹ *Chimanlal v. Firm New India Traders* AIR 1962 Pat 25

¹² *Gandhi & Co. v. Krishna Glass Pvt. Ltd* AIR 1987 Bom 348.

¹³ *Uduman v. Aslum*, (1991) 2 SCC 412

¹⁴ *Haldiram Bhujawala v. Anand Kumar Deepak Kumar*, AIR 2000 SC 1287

¹⁵ *Balaji Enterprises v. Geeta Enterprise* AIR 2007 (NOC) 48 (Mad.)

the plaintiff and claiming as partner in the firm, is not shown in the Register of Firms, the firm though registered, the suit by the firm was held not maintainable. Similarly in the case of *Kishore Kumar B. Zaveri v. Navinchandra H. Somaiya*¹⁶ the Bombay High Court after a perusal by section 69(2) and (2A) of the Indian Partnership Act, 1932 observed that the bar under section 69(2) can be raised when a suit is instituted in the name of a firm. The suit may be filed by the firm or on behalf of the firm by some other individuals. If the suit is filed by some individuals, then it would be necessary that the names of the persons suing are shown in the Register of firms as partners of the firm. The crux of the problem is the meaning of the words “the persons suing” in section 69(2). It is significant, however to note the section uses the words “the persons suing” and not “the names of all the persons who are partners of the firm” (Ponnuswami 1964: 57). Thus it is immaterial that whether all the partners of the firm is named in the Register of firm or not what is to be looked upon is whether the person suing is named in the Register of firm or not.

There are certain benefits of registration¹⁷;

- Benefits to the firm: The firm gets an unmitigated right towards the third parties in civil suits for getting its rights discharged. In the non-existence of registration, the firm is not entitled to sue outside partners in courts.
- Benefits to the creditors: A creditor can employ any partner for recuperating his money due from the firm. All partners whose names are set in the registration are personally accountable to the unknowns. So, creditors can restore their money from any partner of the firm.
- Benefits to partners: The partners can seek the help of a court of law against each other in case of disagreement among partners. The partners can sue external parties also for restoring their amounts, etc.
- Benefits to incoming partners: A new partner can contest for his rights in the firm if the firm is registered. If the firm is not registered then he will have to rely upon the trustworthiness of other partners.
- Benefits of outward-bound partners: The registration of a firm acts as an advantage to the outward-bound partners in numerous ways. The outward-bound partners may be divided into two categories:

¹⁶ *Kishore Kumar B. Zaveri v. Navinchandra H. Somaiya* AIR 1998 Bom 153

¹⁷ <https://blog.iplers.in/registration-firms-indian-partnership-act/>; Sun Oct 16, 20: 50: 2022

- i. On the demise of a partner,
- ii. On the superannuation of a partner.

On the demise of a partner his heirs are not accountable for the obligations acquired by the firm after the date of his demise. In case of a superannuation partner, he remains to be accountable up to the time he does not give public notice. The public notice is not recorded with the Registrar and he terminates his liabilities from the date of this notice. So, it is vital to get a firm registered for getting this benefit.

All these benefits are denied to the partners if the firm is unregistered and even if it is registered the partners are not registered in the Register of Firms. One important point is to be noted in connection with this rule that this section does not affect the right of a third party to proceed against the firm or its partners even though unregistered, nor does it affect the right of the official assignee to realize the property of an insolvent partner. It is also important to note that the Act does not lay down that any transaction of an unregistered firm will be invalid, it merely says that a firm will not be allowed to take the assistance of a civil court, except upon the condition precedent that it is registered. Registration may be affected by a firm at any time before filing a suit or taking other civil proceedings in a court against third parties. In the case of *Union of India v. Durgadutta*¹⁸ also it was ruled that when a suit is filed without registration, it is liable to be dismissed and cannot be rectified by subsequent registration.

The courts tried to clarify all the matters related to the partnership firm. The court focused on the issue in the case of *Ramavtar Surajmal Modi v. Banarasibai Moolchand Modi*¹⁹ where a partnership was reconstituted but was not registered whereas the original partnership was registered, the court finding that the dispute related to the original partnership, allowed the case about it to be filed (Singh 2018: 69). In case of declaratory suit filed by a partner of the firm for declaration of his absolute right, title and interest in respect of the suit property. The declaration was sought against other partners. The court said that registration of the firm was a condition precedent for maintaining such a suit. The firm being not registered, the suit was barred by Section 69(1). If a newly introduced partner fails to register he will incur a grave risk of being unable to claim his dues from his partners and will have to rely solely on their good faith or sue for dissolution. On the other hand, the third party who deals with a firm and knows that a new partner has been introduced can either make the registration of the new partner a

¹⁸ Union of India v. Durgadutta AIR 1961 Ass 2

¹⁹ Ramavtar Surajmal Modi v. Banarasibai Moolchand Modi AIR 2007 Bom 71 (DB)

condition precedent for further dealings or content himself with the certain security of the other partners and the chance of proving by other evidence the partnership of the new but unregistered partner. A third party who deals with a firm without knowing a addition of a new partner counts on the credit of the old partners only, and will not be prejudiced by the failure of the new partner to register. When a firm is not registered, the defaulters are all the partners; when change in the constitution is not notified; the defaulter is the concerned incoming or outgoing partner. The scheme of the Act seems to be to disable the defaulter or defaulters concerned from enforcing his or their rights.

In the case of *S. Prakashchand v. Sha Harakchand Misrimull*²⁰ a suit was filed on behalf of a registered firm for recovery of a loan. The names of two suing partners were not appearing in the registration of the firm. The court said that the suit was not maintainable. This difficulty once again can be overcome by getting the firm registered before an action is brought. The action of an unregistered firm is, however, liable to be dismissed and it cannot be rectified by subsequent registration. A fresh suit will have to be filed after registration provided that it is still within the period of limitation. This was laid down by the Supreme Court in the case of *Shreeram Finance Corporation v. Yasin Khan*²¹ that where on account of the admission of some new partners and of some minors into the benefit of the firm, there was a discrepancy between the names on the register and the names included in the suit, the suit was not maintainable. Such proceedings are not barred under Section 69, when the unregistered firm is the defendant.

Apart from these disabilities there are some exceptions to this section in which a suit is maintainable even if the firm is unregistered, these are;

- a) Actions for dissolution and accounts: An unregistered firm and its partners can bring an action for the dissolution of the firm or for accounts of a dissolved firm. The disability to sue disappears with the dissolution of the firm. In *S. Ahmed Khan v. Turup Mohd Hayat*²² the court held that the business having been closed on the sale, the action was for the realization of the assets of a dissolved firm and, therefore, maintainable.
- b) Recovery of insolvent's share: The official assignee, receiver or court acting for an insolvent partner may bring an action for realization of the insolvent's share, whether

²⁰ *S. Prakashchand v. Sha Harakchand Misrimull* AIR 2002 Mad 372.

²¹ *Shreeram Finance Corporation v. Yasin Khan* (1989) 3 SCC 476

²² *S. Ahmed Khan v. Turup Mohd Hayat*, AIR 1953 Mys 4.

the firm was registered or not.

- c) Statutory and non-contractual rights: Statutory and non-contractual rights are outside the scope of the disability inflicted by the section. If a person destroys the property of a firm, he can be sued whether the firm is registered or not.
- d) Suits by third parties: third parties can always sue a firm whether registered or not. The disability is that of the firm and not of the persons outside it.

Conclusion

Under Indian Partnership Act, 1932 registration of a firm is optional and not obligatory and the Act also does not impose any penalties for non-registration. The English precedent makes the registration of firms compulsory and also imposes penalty on the firms which are not registered and also if the names of the partners are not shown in the Register of firms. Under Indian Partnership registration is optional but for the purposes of the suit, registration is mandatory. A partner of an unregistered firm cannot sue the firm or his present or past co-partners for the enforcement of any right. Action of an unregistered firm is liable to be dismissed and cannot be rectified by subsequent registration. The registration of firm is sufficient to maintain the suit against any third party. The only requisite under section 69(2) of the Act is that a registered firm can only file a suit against third party and the persons suing have been in the Register of Firms as partners in the firm. A suit to enforce rights arising from contract brought by one partner against the other partners of an unregistered firm is expressly barred by the provisions of the Sec 69(1), Partnership Act. Thus the provision under this chapter bars a suit between partners and the firm if the firm is unregistered. Even if the firm is registered, only such partners can sue whose name appears in the Register of Firms. This qualification of unregistered firm makes the optional provision of registration an obligatory one.

References

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4. Bare Act, The Indian Contract Act, 1932; Universal Lexis Nexis, 2018 Pg 37-40.