ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.643 of 2004

28.01.2008

Mr. Mansoor A. Sheikh, Advocate for Defendant.

None present for the Plaintiff.

On 20.4.2006 a legal issue was framed which reads as under: -

> "Whether the present suit, in view of the provisions as contained in Section 69 of the Partnership Act, is maintainable in law?"

Thereafter, the case was fixed for several times, but neither the Partnership Registration Certificate has been produced nor the learned counsel for the plaintiff has addressed the legal issue with regard to the maintainability of the suit.

Sub-section (2) of Section 69 of the Partnership Act provides that 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 person suing is or has been shown in the register of firm as partner in the firm.

The learned counsel for the defendant submits that the suit was filed for recovery of an amount on account of breach of contract and in view of the above provision, no such suit can be filed by an unregistered firm.

I have perused the record and considered the submissions made by the learned counsel for the defendant.

The defendant has taken the objection in the written-statement that the suit as framed is not maintainable. Alongwith the plaint, no Registration Certificate of the Partnership has been produced. Even since 20.4.2006 no such certificate has been produced, it appears that the suit has been filed by a non-registered firm for recovery of damages on account of delayed delivery of consignment of defendant. From the contents of the plaint it appears that there is a contract of delivery of consignment between the plaintiff and the defendant and the suit has been filed for recovery of damages on account of breach of contract. Section 69 of the Partnership Act, 1969 bars a suit for enforcing a right arising out of a contract by an unregistered firm against third party. The effect of non-registration is that any firm which is not registered will be unable to enforce its claims against third parties in the civil Courts. Provision of Section 69 of the Partnership Act appears to be mandatory and the registration of firm is a condition precedent to the right to institute the suit. The onus to prove that the plaintiff’s firm is registered is upon the plaintiff and without production of registration certificate the plaintiff cannot claim that the firm is registered.

In view of the above, it appears that the suit is hit by Section 69 of the Partnership Act, 1969 and the plaint is rejected under Order VII Rule 11 CPC.

JUDGE

Farhan