

LLP CAN ENTER INTO A PARTNERSHIP WITH INDIVIDUAL OR OTHER PERSONS

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Jayamma Xavier Vs Registrar of Firms (Kerala High Court)

Section 4 of the Partnership Act permits Constitution of a firm or partnership between one or more persons. In this case the partnership deed was executed between an individual and an LLP which is a body corporate having a legal entity and coming within the definition of 'person'. The individual liability of the partners of LLP would not be relevant when the LLP itself would have liability independent of the liability of the partners. Therefore, the difference in the provisions under the Partnership Act relating to liability of the firm or the individual partners would not stand in the way of constitution of a partnership with an LLP. Hence I find that LLP cannot have a disqualification from entering into a partnership with an individual or other persons. The judgment in *Pulimood's* case (supra) where the Private Company was held entitled to be a partner would apply in the present case though the LLP is not a private company but is a *legal entity*.

FULL TEXT OF THE HIGH COURT ORDER /JUDGEMENT

Ext.P2 order passed by the Registrar of Firms declining registration of a partnership firm constituted by the petitioner is under challenge in this Writ Petition. The reason stated in Ext.P2 is that a LLP cannot be a partner of a firm.

2. Petitioner claims to be the designated partner of Sleeplock LLP which is a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (for short "LLP Act"). The Sleeplock LLP formed a partnership firm along with one Gourav Raj in the name and style of M/s.Morning Owl Sleep Solutions. A partnership deed was executed accordingly on 18.09.2020. The said deed -Ext.P1 was submitted for registration before the respondent. The respondent rejected the same on the ground that LLP cannot be a partner of a firm. Petitioner has stated that the partnership is formed in order to carry out the business of processing, manufacturing, trading, importing, exporting, distribution and sales of furnished and semi-furnished mattress, latex form cores, pillows, rubberised coir, coconut rubber, other rubber and coir products, through retail outlets and through online platforms.

3. Petitioner claims that a partnership along with an LLP is not prohibited under the Partnership Act and that LLP is a legal entity, as defined under the LLP Act and it is separate from its partners. It has perpetual succession and is having a common seal. Under Section 14 it is capable of suing and being sued, on its registration. It is also capable of acquiring, developing or disposing of movable or immovable properties. Therefore, petitioner claims that the LLP is liable to be treated as a person and there cannot be any objection for registering a partnership with an LLP which is a person. It is stated that the said LLP has been given Ext.P4 Certificate of Incorporation.

4. The respondent has filed a statement reiterating his stand in the impugned order. It is stated that some of the provisions of the Limited Liability Partnership Act 2008 are inconsistent with that of the Indian Partnership Act, 1932, pertaining to the liability. According to the respondent, Section 25, 26 and 49 of the Indian Partnership Act, 1932 makes the partners to be jointly and severally liable with all the other partners and also severally liable for the acts of the firm, of which such person is a partner. At the same time it is stated that under Section 28 of the LLP Act, 2008 the provisions regarding the liability of the partnership firm is restricted to the contents to the LLP agreement ie. under the LLP Act, the liability of the partner is restricted only to the extent provided in the agreement; such a provision runs contrary to Section 25 and 49 of the Indian Partnership Act. It is also pointed out that under LLP foreign investment is permissible whereas it is not permissible under the Partnership Act.

5. The learned Counsel for the petitioner relied on the judgment of this Court in **M.M.Pulimood vs. Registrar of Firm: 1984 KLT 420** in support of his contention that the rejection in Ext.P2 is illegal and without understanding the provisions contained in the LLP Act.

6. Relying on the judgment of the apex court in **Dulichand Laxminarayanan vs. Commissioner of Income Tax, Nagpur : AIR 1956 SC 354** the learned Government Pleader argued that a firm cannot enter into a partnership with LLP. It is their case that though LLP is a kind of partnership having the nature of company the provisions in the LLP are completely frustrating the purport of Section 25 and 49 of the Indian Partnership Act.

7. Heard Adv.Mohammed Al Rafi, learned counsel for the petitioner and Smt.Princy Xavier, learned Government Pleader.

8. The question to be considered is whether LLP can be treated as a person which can be permitted to form a partnership with an individual. In the judgment in **M.M.Pulimood's case** (supra) relied on by the petitioner, a learned Single Judge of this Court was considering a case where a partnership deed was executed with a Private Limited Company, incorporated by the Registrar of Companies, as one of the partners. After analyzing the provisions contained in Section 4 of the Partnership Act as well as the definition of person in Section 3 (42) of the General Clauses Act, this Court found that there was no impediment in executing a partnership with a Private Limited Company incorporated under the Companies Act which comes under the definition of Person.

9. At the same time in the judgment in **Duli Chand Laxmi Narayanan's case** (supra) relied on by the learned Government Pleader the Honourable Apex Court after analyzing the provisions contained in Section 26A of the Income Tax Act as well as the provisions contained in the Partnership Act and the definition of 'person' in Section 3(42) of the General Clauses Act arrived at a conclusion that a partnership cannot be formed between 3 firms, a Hindu Undivided Family and an individual. It was found that a firm is not a legal entity.

10. When the judgment in **Duli Chand Laxmi Narayanan's case** (supra) was rendered or when this Court rendered the judgment in **Pulimood's case** the Limited Liability Partnership Act had not come into force and hence there was no occasion to consider whether LLP can be a partner in a firm. Therefore, in order to examine the contentions raised by the learned Government Pleader it is necessary to have a look at the relevant provisions contained in the Indian Partnership Act, 1942 as well as in the LLP Act. Section 4 of Indian Partnership Act defines "partnership", "partner", "firm" and "firm name" which reads as follows:

4. Definition of "partnership", "partner", "firm" and "firm name".—"Partnership" is the relation between persons who have agreed to share the profit of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm" and the name under which their business is carried on is called the "firm name".

11. It is therefore necessary to find out the definition of 'person'. 'Person' is not defined either in the Partnership Act or in the LLP Act. Section 3(42) of the General Clauses Act, 1897 reads as follows:

3. **Definitions.**—In this Act, and in all General Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—

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(42) "person" shall include any company or association or body of individuals, whether incorporated or not;

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12. A partnership can be entered into between two persons. Such persons can be an incorporated body of individuals. LLP is a body corporate. It can be said to be a person, as defined in Section 3(42) of the General Clauses Act, 1897 in case there is no repugnancy in the subject or context. In order to examine the same it is necessary to have a look at some more provisions in both the Acts viz Partnership Act and LLP Act.

13. The definition of body corporate, LLP and LLP agreement are given under clause (d), (n) and (o) of Section 2 of the LLP Act as follows:\

2. **Definitions.**—(1) *In this Act, unless the context otherwise requires,—*

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(d) "body corporate" means a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956) and includes—

(i) a limited liability partnership registered under this Act;

(ii) a limited liability partnership incorporated outside India; and

(iii) a company incorporated outside India, but does not include—

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(n) "limited liability partnership" means a partnership formed and registered under this Act;

(o) "limited liability partnership agreement" means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership;

14. A Limited liability partnership shall be a body corporate, as per Section 3 which reads as follows.

3. *Limited liability partnership to be body corporate.*—(1) *A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.*

(2) *A limited liability partnership shall have perpetual succession.*

(3) *Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.*

The provisions of the Indian Partnership Act, 1932 (9 of 1932) shall not apply to a limited liability partnership.

But as per Section 4 of the Partnership Act, 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.

15. In the present case an individual agreed with an LLP to share the profits of the business. LLP is a body corporate, independent legal entity having a common seal and perpetual succession, capable of suing and of being sued. Once a partnership is formed the LLP, which is a partner would have to abide by the partnership Act. The respondent's objection is based on the liability of the partners of LLP, stating that the same is confined to the terms in the agreement. The extent of liability of limited liability partnership given in Section 27 reads as follows:

27. Extent of liability of limited liability partnership.—(1) *A limited liability partnership is not bound by anything done by a partner in dealing with a person if—*

(a) the partner in fact has no authority to act for the limited liability partnership in doing a particular act; and

(b) the person knows that he has no authority or does not know or believe him to be a partner of the limited liability partnership.

(2) The limited liability partnership is liable if a partner of a limited liability partnership is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the limited liability partnership or with its authority.

(3) An obligation of the limited liability partnership whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership.

(4) The liabilities of the limited liability partnership shall be met out of the property of the limited liability partnership.

16. Extent of liability of a partner in an LLP is given under Section 28 as follows:

28. Extent of liability of partner.—(1) *A partner is not personally liable, directly or indirectly for an obligation referred to in sub-section (3) of Section 27 solely by reason of being a partner of the limited liability partnership.*

(2) The provisions of sub-section (3) of Section 27 and sub-section (1) of this section shall not affect the personal liability of a partner for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the limited liability partnership.

17. Now it is necessary to have a look at the provisions contained in Section 25, 26 and 45 of the Partnership Act which read as follows:

25. Liability of a partner for acts of the firm.— *Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.*

26. Liability of the firm for wrongful acts of a partner.— *Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent*

as the partner.

45. Liability for acts of partner done after dissolution.—(1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution:

Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

(2) Notices under sub-section (1) may be given by any partner.

18. The liability of partners of LLP and liability of the LLP as a partner under the Partnership Act would be different. The liability of partners in an LLP cannot have any relevance when the LLP itself becomes a partner, when it would be bound by the provisions in the Partnership Act. The liability of the LLP would be as in the case a company which joins a firm after entering into a partnership.

19. In the judgment in *Dhuli Chand's* case, the Apex Court was considering a case where the Income Tax Officer rejected an application submitted under Section 26A of the Income Tax Act on the ground that the deed of partnership consisted of three firms, one Hindu undivided family business and one individual. Apex Court found that a firm cannot be treated as a person which can enter into a partnership with other firms or individuals or Hindu Undivided Family. It was held as follows:

“In our opinion, the word “persons” in Section 4 of the Indian Partnership Act, which has replaced Section 239 of the Indian Contract Act, contemplates only natural or artificial i.e. legal persons and for the reasons stated above, a firm is not a “person” and as such is not entitled to enter into a partnership with another firm or Hindu undivided family or individual. In this view of the matter there can arise no question of registration of a partnership purporting to be one between three firms, a Hindu undivided family business and an individual as a firm under Section 26-A of the Act.

20. Section 4 of the Partnership Act permits Constitution of a firm or partnership between one or more persons. In this case the partnership deed was executed between an individual and an LLP which is a body corporate having a legal entity and coming within the definition of “person”. The individual liability of the partners of LLP would not be relevant when the LLP itself would have liability independent of the liability of the partners. Therefore, the difference in the provisions under the Partnership Act relating to liability of the firm or the individual partners would not stand in the way of constitution of a partnership with an LLP. Hence I find that LLP cannot have a disqualification from entering into a partnership with an individual or other persons. The judgment in *Pulimood's* case (supra) where the Private Company was held entitled to be a partner would apply in the present case though the LLP is not a private company but is a legal entity.

21. Therefore, Ext.P2 order is set aside. There shall be a direction to the respondent to reconsider the request of petitioner for registration and to take appropriate action on the same within a period of one month from the date of receipt of a copy of the judgment.

The Writ Petition is accordingly allowed.