IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11442 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL
and
HONOURABLE MR.JUSTICE D.N.RAY

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Approved for Reporting	Yes	No
	✔	

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PRATIMABEN VINODBHAI PATEL
Versus
NARENDRAKUMAR KANAIYALAL SHAH

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Appearance:
MR SP MAJMUDAR(3456) for the Petitioner(s) No. 1
MR VEDANT AVADHOOT SUMANT(13736) for the Petitioner(s) No. 1

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CORAM:**HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**
and
HONOURABLE MR.JUSTICE D.N.RAY

Date : 17/08/2026

ORAL JUDGMENT
(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

1. Heard learned Counsel for the petitioner.

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2. By means of the present petition, the petitioner seeks to invoke extraordinary supervisory jurisdiction of the High Court under Article 227 of the Constitution of India to seek interference in the order passed by the Commercial Court in Commercial Appeal No. 2 of 2025 upholding the challenge to the judgment and decree dated 31.12.2024 passed by the Judge, Commercial Court, Vadodara in Commercial Civil Suit No.48 of 2023.

3. It was sought to be argued by the learned Counsel for the petitioner that the order of the appellate Court suffers from jurisdictional error and manifest illegality, while relying upon Section 69(1) of the Indian Partnership Act, 1932 *(hereinafter referred to as 'the Act' 1932')* to hold that a partner of an unregistered partnership firm cannot file a suit to assert any right from a contract or the provisions of the Act' 1932 unless the firm is registered and listed in the register of firms.

4. The submission is that while saying so, the appellate Court in the Commercial Appeal under Section 13 of the Commercial Courts Act' 2015, has failed to take note of the settled law that creation of partnership is not necessarily to be by a written document. Oral partnership is well recognized in the legal parlance, once it is given effect to and acted upon.

5. The petitioner claims that the partnership was one-at-

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will and the unregistered status of the partnership firm does not have any bearing on the case of the plaintiff/appellant herein. The appellate Court has completely ignored the exception under sub-section 3(a) of Section 69 of the Act' 1932 which permits the petitioner/original plaintiff to realize its money through the commercial recovery proceedings.

6. The submission is that the appellate Court has failed to consider that the legal notice dated 24.02.2022 issued by the petitioner produced along with the list of documents filed with the plaint in the commercial suit, fulfilled the requirements of Section 43 of the Act' 1932, which has been completely ignored by the appellate court. Reliance is placed on the decision of the Calcutta High Court in ***Monojit Das Vs. Sujit Roy Chowdhury & Anr [2017 SCC OnLine Cal3781]*** to substantiate the said point.

7. To deal with the submission of learned Counsel for the petitioner, we may note the relevant provisions contained in Section 43 and 69 of the Act' 1932 as under:-

> ***43. Dissolution by notice of partnership at will.—***
>
> *(1)Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm. (2)The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.*

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69. Effect of non-registration.—

(1)No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2)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 persons suing are or have been shown in the Register of Firms as partners in the firm.

(3)The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect,—

(a)the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(b)the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920) to realise the property of an insolvent partner.

(4)This section shall not apply,—

(a)to firms or to partners in firms which have no place of business in the territories to which this Act extends, or whose places of business in the said territories, are situated in areas to which, by notification under section 56, this Chapter does not apply, or

(b)to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882 (5 of 1882), or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

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8. Sub-section (1) of Section 69 of the Partnership Act provides that the bar therein is to institute a suit to enforce a right arising from a contract or conferred by the Partnership Act by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm. Meaning thereby that a suit arising from a contract or deed of partnership, if instituted by any person against the firm or any partner in the firm, the said suit to enforce such right is prohibited unless the firm is registered and the person suing has been shown in the Register of Firms as a partner in the firm. The prohibition, thus, is upon a person instituting a suit against the firm or a partner of firm to enforce his right as a partner arising from an unregistered contract or a partnership deed.

9. Sub-section (2) of Section 69 prohibits institution of a suit to enforce right arising from a contract by or on behalf of a firm against a third party unless the firm is registered and persons suing are shown in the Register of Firms as partners in the firm.

10. Sub-section (3)of Section 69 is in the nature of exception which provides that the provisions of sub-sections (1) and (2) shall also apply to a claim of set-off or other proceeding to enforce a right arising from a contract.

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However, they shall not affect the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realize the property of a dissolved firm. Clause (b) of sub-section (3) and sub-section (4) of Section 69 are not relevant for our purposes.

11. Section 43 of the Act' 1932 provides the manner in which the partnership at will may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

12. In the instant case, the Commercial Civil Suit No. 48 of 2023 was filed with the assertion that;

(a) The plaintiff and the defendants are partners of 'Raj Rajeshwari Juice and Ice-Cream Parlour' firm.

(b) The contention is that the plaintiff is a tenant in the property known as Shop No.B/21 situated in 'Eastern Co-operative Housing Society' since 1981 and is engaged and carries business in the said property till date.

(c) During the year 1981, a partnership firm was formed between the plaintiff's husband and one Rameshbhai Sanabhai Patel, which was dissolved on 28.04.1983. However, the plaintiff's husband was still having tenancy right in the aforesaid property as he was carrying business in the suit property after 1983 and was regularly paying the rent to the owner of the said property.

(d) It is contended that the plaintiff's husband was carrying

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on business of juice center in the name of 'Aswad Juice Parlour' in the suit property.

(e) Sometime in the year 2009, the defendant visited the plaintiff and requested to start the partnership business, as such a partnership deed came to be executed in the year 2011 upon various terms and conditions and a new business in the name of 'Raj Rajeshwari Juice and Ice-Cream Parlour' was started.

(f) The plaintiff procured machinery to run the business and it was agreed between the parties that the defendant shall pay Rs. 25,000/- per month as expressed in the partnership deed.

(g) It is the case of the plaintiff that the partnership deed was renewed from time to time by both the partners namely the plaintiff and the defendant and the plaintiff was paying rent of the property to the owner.

(i) The defendant had started new branches of the said business at different places in Vadodara without intimation and knowledge of the plaintiff.

(j) In the year 2021, the defendant's wife got a sale deed of the suit property executed in her favor and thereafter the defendant illegally restrained the plaintiff from entering the suit property, in spite of the plaintiff having tenancy right in the suit property.

13. The claim put forth by the plaintiff in the suit is that the defendant had failed to pay the full amount of Rs.25,000/- per month agreed under the partnership deed and later stopped

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giving any payment and restrained the plaintiff from entering into the suit property, on becoming owner of the same. The further averment in the plaint is that though the plaintiff was regularly paying the rent amount to the wife of the defendant after sale, but she has refused to accept the rent and as such a legal notice dated 13.10.2022 was given to the defendant's wife for acceptance of rent to which no reply has been given. A suit for declaration and permanent injunction has been filed in the Small Causes Court at Vadodara which is pending adjudication.

14. The reliefs sought in the plaint are for recovery of Rs.6,60,000/- towards outstanding amount the defendant has failed to pay as agreed between the plaintiff and defendant under the partnership deed dated 01.01.2011 and the interest @ 12% per annum on the outstanding sum from due date to the filing of the present suit and further interest @12% per annum from the date of filing of the suit till realization of the amount as may be awarded.

15. From the bare reading of the plaint, as noted hereinabove, the suit has been filed with the relief of recovery of money allegedly agreed between two partners to be paid by the defendant under the partnership deed dated 13.02.2011, which according to the plaintiff, had been renewed by the subsequent deeds of the years 2012, 2013, 2014, 2019 and 2021. Admittedly, none of these partnership deeds are registered documents nor the name of the plaintiff has been

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shown in the Register of Firms as a partner in the firm. From the relief claimed in the suit, it is evident that the suit is not for dissolution of firm or for accounts of a dissolved firm or enforcing any right or power to realize the property of a dissolved firm, which would fall within the exception incorporated in Clause (a) of sub-section (3) of Section 69 of the Act' 1932. The bar to file a suit to seek recovery of an amount arising from a contract against the alleged partner in the firm, is attracted for the fact that the firm is not registered and the person suing namely the plaintiff herein has not been shown as a partner in the register of firms.

16. The appellate Court has rightly referred to the provisions of Section 69(1) of the Act' 1932 to hold that in view of the said provision, which prohibits any partner in an unregistered firm from bringing legal action against another partner to enforce contractual rights, the suit for recovery of money cannot be entertained. The plaintiff is barred from seeking remedies for monetary recovery on the basis of unregistered partnership deed.

17. Besides that, it is noted that the defendant's wife is the owner and occupier of the property by virtue of the registered sale deed dated 01.04.2021. The documents such as municipal tax receipts and the electricity bills brought by the defendant on record prove that the suit property is in the ownership and occupation of the defendant's wife. A photocopy of the license under the Food Safety and Standards Act' 2006 has been

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brought on record which establishes that the wife of the defendant is running 'Shri Raj Rajeshwari Juice and Ice-Cream Parlour' in the disputed property. The photocopy of GST registration certificate further proves that the business known as 'Shri Raj Rajeshwari Juice and Ice-Cream Parlour' is of the proprietorship of the wife of the defendant.

18. Besides that the commercial appellate Court has categorically recorded that the plaintiff has failed to prove her tenancy rights over the suit property and, in any case, the money recovery claim is barred by Section 69(1) of the Act' 1932 owing to the firm's unregistered status.

19. In view of these findings of fact returned by the appellate Court and in view of the specific bar under sub-section (1) of Section 69 of the Act' 1932, the recovery claim made by the plaintiff against the alleged partner of the partnership deed, cannot be maintained.

20. For the above, no error much less manifest error of law or jurisdictional error can be said to have been committed by the appellate Court. The scope of interference under Article 227 of the Constitution of India into the findings of fact into the decision of the appellate Court is limited to the extent of jurisdictional error or manifest error of law apparent on the face of the record. Under Article 227 of the Constitution of India, supervisory jurisdiction has been conferred upon the

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High Court to keep the Trial Courts and the District Courts acting as appellate Courts, within their bounds and while exercising such jurisdiction, this Court cannot act as a court of appeal to substitute any finding of fact or even error of law, which may not be a manifest error or a jurisdictional error. It is settled that the High Court will invoke its extraordinary supervisory jurisdiction under Article 227 of the Constitution of India in rarest of rare cases and shall not invoke its extraordinary jurisdiction ordinarily. Reference may be made to paragraph '35' of the judgment of the Apex Court in the case of ***Nandi Infrastructure Corridor Enterprise Ltd. and Another Vs. B. Gurappa Naidu and Others, [2026 SCC OnLine SC 745.***

21. In view of the above, no case is made out for invoking our extraordinary supervisory jurisdiction under Article 227 of the Constitution of India. The present petition is accordingly, dismissed being devoid of merits. No order as to costs.

(SUNITA AGARWAL, CJ.)

(D.N.RAY, J.)

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