# HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Special Appeal (Writ) No. 957/2022

In

S.B. Civil Writ Petition No. 798/2011

Shri Nath Lohiya S/o Late Sh. Jamna Dass Lohiya, Aged About 80 Years, C-3/1 Ground Floor, Rana Pratap Bagh, Delhi.

----Appellant

Versus

1. State Of Rajasthan, Ministry Of Agriculture Through Secretary, Secretariat, Jaipur.
2. The Director, Agriculture Marketing Board, Krishi Bhawan, Jaipur.
3. The Regional Assistant Director, Agriculture Marketing Department, Jodhpur.
4. The Secretary, Krishi Upaj Mandi Samiti (Anaj), Jodhpur.
5. M/s Jamna Dass Gangadass And Co., B-5, Mandore Krishi Upaj Mandi Samiti, Jodhpur.
6. Legal Heir Of Late Smt. Madhu Lodhiya, W/o Sh. Pukhraj Lohiya, R/o 10 Nehru Park, Jodhpur.

6(1). Ashok Lohiya S/o Pukhraj Lohiya, 10 Nehru Park, Jodhpur.

6(2). Alok Lohiya S/o Pukhraj Lohiya, 10 Nehru Park, Jodhpur.

6(3). Amit Lohiya S/o Pukhraj Lohiya, 10 Nehru Park, Jodhpur.

6(4). Bharat Lohiya S/o Pukhraj Lohiya, 10 Nehru Park, Jodhpur.

7. Jamnadass Gangadass, B-5, Krishi Mandi Mandore, Jodhpur.
8. Pukhraj Lohiya S/o Shri Jamnadass Lohiya, 10 Nehru Park, Jodhpur.

----Respondents

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| For Appellant(s) | : | Mr. Shri Nath Lohiya, appellant, present in person |
| For Respondent(s) | : | Mr. Hemant Kumar Ballani<br>Mr. Loonkaran Purohit<br>Mr. Hemant Joshi for |

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Ms. Neelam Sharma
Mr. Pawan Bharti for
Mr. I.R. Choudhary, AAG

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**HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA**
**HON'BLE MR. JUSTICE CHANDRA SHEKHAR SHARMA**

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|---|---|---|
| **Date of conclusion of Arguments** | **:** | **14/05/2026** |
| **Date on which judgment was reserved** | **:** | **14/05/2026** |
| **Whether the full judgment or only the operative part is pronounced** | **:** | **Full judgment** |
| **Date of pronouncement** | **:** | **22/06/2026** |

**(Per Hon'ble the Acting Chief Justice):-**

1. The present appeal has been filed by the appellant who appears in person against the judgment and order passed by the learned Single Judge dated 05.08.2022 wherein, the learned Single Judge has rejected his writ petition, relying on the judgment passed by the Court earlier whereby the earlier Writ Petition[1] filed by the petitioner/appellant was dismissed, the review petition was also dismissed, a Special Appeal Writ[2] was dismissed and the Supreme Court too had dismissed a Special Leave Petition.

2. In order to understand the controversy raised by the appellant in the writ petition before the learned Single Judge and before us in Division Bench, we must note down some facts before adverting to the questions of law involved.

3. Brief list of events as mentioned in the writ petition are that a firm was established by the father of the writ-petitioner/appellant named as M/s Jamnadass Gangadass, which was dealing in agricultural products. The

1 S.B. Civil Writ Petition No. 1134/1996
2 D.B. Civil Special Appeal (W) No.598/2006

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petitioner/appellant and respondent No. 8 (Pukhraj Lohiya), (who are brothers) were included in the joint partnership in place of their father to the firm M/s Jamnadass Gangadass. The Krishi Upaj Mandi Samiti allotted Shop No. B-5 in Mandore Mandi, Jodhpur to the firm M/s Jamnadass Gangadass on 11.07.1975 and also allotted godown E2-14 at Mandore Mandi on 18.11.1975 to another partnership firm M/s. Jamnadass Gangadass & Co. where the petitioner joined as a partner on 29.11.1979. M/s. Jamnadass Gangadass & Co. was registered as a partnership firm on 11.01.1980 with the Registrar of Firms (bearing Registration No. 131/1980), while the first firm, namely, Jamnadass Gangadass had been registered with Registration No. 431 on 03.10.1951 under the Indian Partnership Act, 1932 (hereinafter referred to as the 'Act of 1932') and rectification of partners including the father of the petitioner Jamnadass Ji and his brother Gangadass Ji was done on 20.07.1957 and the petitioner was admitted on 20.09.1967. In the firm M/s. Jamnadass Gangadass & Co., the partners were Shri Nath Lohiya, i.e., the petitioner/appellant son of Jamnadass and Smt. Madhu Lohiya wife of Sh. Pukhraj Lohiya, who joined the firm on 29.11.1979.

4. Upon disputes having arisen between the brothers, their mother attempted to resolve the issue by making a family settlement on 06/07.09.1987. However, she had withdrawn the said family settlement alleging the same to have been prepared by fraud *vide* a letter dated 05.10.1987. The family settlement dated 06/07.09.1987 was not registered or notarized. The mother and the present appellant/petitioner stated that their signatures and thumb impressions were taken on blank papers. A letter in this

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regard was sent to respondent No. 8, who upon receiving the letter, responded, alleging that he would initiate civil proceedings for compensation, if the concerned family settlement is not followed. On the basis of the settlement which stood withdrawn, respondent No. 4 changed the partnership firm licence to a sole proprietorship licence in favour of Smt. Madhu Lohiya so far as M/s. Jamnadass Gangadass & Co. is concerned and in the name of Pukhraj Lohiya so far as firm Jamnadass and Gangadass is concerned. The basis for conversion of the firm as a sole proprietorship firm was the so called family settlement and the petitioner/appellant submits that as the family settlement was a fraud played on the petitioner/appellant, and the same could not have been a basis for the change of licence as the concerned sole proprietorship.

5. He submits that the firm continue to remain as a partnership firm with the Registrar of Firms and Companies and in fact it is only after the death of Smt. Madhu Lohiya that the registration has been now transferred in the name of sole proprietorship firm of headed by the petitioner/appellant by the Registrar of Companies also. It is his further submission that status of the firm and licence allotted to a partnership firm could not have been changed merely on the basis of an application moved by one of the partners without giving an opportunity of hearing or verifying the correct facts.

6. He also submits that the entire basis was on account of forged documents prepared by his brother and his wife. He submits that in fact, even before the alleged family settlement, the respondent had obtained a single proprietorship licence for the

firm in the year 1985 from respondent No. 4. The petitioner/appellant submits that all these actions were done behind his back and he was ousted from the firm where he had put in his hard earned money and was entitled for claiming the same.

7. The petitioner/appellant submits that he made a representation before the Secretary, Krishi Upaj Mandi Samiti challenging the licences issued in favour of the respondent(s) and by filing a complaint before the Consumer Forum, which was dismissed as not maintainable on account of availability of an alternate remedy under Section 16(1) of the Rajasthan Agricultural Produce Markets Act, 1961 (hereinafter referred to as the 'Act of 1961'). Another complaint was filed on 29.08.1991, which was rejected with liberty to file a case before the appropriate Court and whereafter, an appeal was filed before the Secretary, Krishi Upaj Mandi Samiti, who after the reply and objections of the respondent(s), rejected the appeal *vide* order dated 06.10.1995. An appeal was further made to the Assistant Director on 11.03.1996, which was also rejected where after he preferred a Civil Writ Petition[3] before this Court, with the following prayers:

> *"(i)the judgments passed by the Secretary, Krishi Upaj Mandi Samiti dated 6.10.1995 (Anx.5) and by the Assistant Director dated 11.3.1996 (Anx.9) may please be quashed and set aside;*
>
> *(ii)it may be declared that Shri Shrinath Lohiya petitioner is a partner in the firm M/s Jamnadas Gangadas & Co. & Jamnadas Gangadas and rights to do all work and business in the partnership firms and entitled to use godown E2-14 and Shop B-5 also to use for business the said Godown & Shop;*
> *(iii)it may please be ordered to the Secretary, Krishi Upaj Mandi Samiti to issue permanent licence of firms Jamnadas Gangadas & Co. of E2-14 in the name of Smt. Madhu Lohiya*

3 S.B. Civil Writ Petition No. 1134/1996

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*and the petitioner Shrinath Lohiya as a partner and to M/s Jamnadas Gangadas B-5 in the name of Shri Pukhraj Lohiya & the petitioner Shrinath Lohiya as a partner;*
*(iv)and in the alternative it is prayed that the matter may please be remanded back to the Regional Assistant Director, Agriculture Marketing Department, Jodhpur for fresh disposal after calling from the record since 1975 of both the firms from the Secretary, Krishi Upaj Mandi Samiti and to consider the documents of the petitioner after giving opportunity to the petitioner afresh."*

8. The learned Single Judge, on the basis of documents produced during the course of hearing, dismissed the writ petition by relying on the family settlement. A review petition was filed by the writ petitioner alleging that the family settlement which was made as a basis for rejection of the writ petition was a disputed document and does not exist, and the Court proceeded to reject Review Petition[4] on 01.08.2006 and whereafter, a Special Appeal Writ[5] was dismissed *vide* order dated 19.12.2006, holding that the petitioner must choose other appropriate forum if he wants to get out of the earlier settlement or impinging their validity and get his rights viz-a-viz respondents No. 5 and 6 declared and that the remedy for settling those inter se private disputes between family or partners indirectly by challenging the order of Krishi Upaj Mandi Samiti would not lie.

9. A challenge was further made to the order before the Supreme Court which too was dismissed[6] *vide* order dated 11.02.2010. The petitioner/appellant thereafter filed a fresh appeal before the Director, Agriculture Marketing Board which was registered, wherein the order passed by the Mandi Samiti was challenged alleging the non-compliance of the provisions of the Act of 1961 and its Sections 39, 41, 14 & 4 as well as Section 36 of the Act of 1932. It was submitted that the licence of the

4 S.B. Civil Review Petition No. 34/2006
5 D.B. Civil Special Appeal (W) No. 598/2006
6 Special Leave To Appeal (Civil) No. 22427/2009

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partnership firm could not have been cancelled and the firm could not have been declared as a proprietorship firm by the Committee solely on the basis of the family settlement. The Appellate Authority noticed the facts as noted by us above and held that the earlier appeal had been rejected on 11.03.1996 and the second appeal thereafter against the said order was also rejected on 04.04.1996, thereafter, another appeal was filed which too was rejected on 21.07.2003. The fresh appeal filed by the appellant, therefore, was found to be not maintainable and could not have been considered and the same was accordingly rejected.

10. Feeling aggrieved and treating it as a fresh cause of action, the present writ petition was filed which came up before the learned Single Judge, who *vide* his judgment, dismissed the writ petition. The petitioner/appellant present in person has again reiterated the facts which we have noted above. We notice that the entire case set up now by the appellant is that fraud has been played in producing a family settlement which stood rejected and was not enforced. In fact, the registration as a proprietorship firm had already been done even before the family settlement document was signed on 07.09.1987. He relies on the document, Annexure-3 to the writ petition where it has been stated to the Secretary, Krishi Upaj Mandi Samiti by the respondent(s) that the Firm-M/s. Jamnadass Gangadass & Co. had been declared as a proprietorship firm from 1985 onwards. It is his submission that the petitioner is not required to challenge the settlement agreement as the settlement agreement was not accepted by the mother who wrote a letter on 05.10.1987 to the respondent(s) not to use the said document and the respondent(s) have also replied

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*vide* their letter dated 09.10.1987 threatening that he would initiate legal proceedings for not accepting the settlement agreement. Thus, the petitioner/appellant submits that since there has been a fraud played by the respondent(s) in getting the registration of licence as sole proprietorship concern, the litigation earlier decided by this Court would not come in his way in taking of the matter afresh. He has relied on several judgments in support thereto.

11. He further submits that on the basis of oral contention of respondent No. 4 that there had been a settlement entered into between the parties, the earlier judgments have been pronounced. Petitioner/appellant submits that the mandatory provisions of Sections 40 to 44 of the Act of 1932 are required to be observed for converting a partnership firm to a sole proprietorship firm. There was no entry made under Section 63 of the Act of 1932 dissolving the partnership firm. In view thereto, the authority did not lie with the Mandi Samiti to convert the licence of a registered partnership firm to a sole proprietorship firm merely on the basis of Form No. 7 filed by the respondent(s).

12. He submits that the argument advanced by the respondent(s) relating to another property whereby the settlement document was relied upon to convert the partnership firm to a sole proprietorship firm cannot act as a precedent or bind down the appellant. He submits that if there has been any illegality committed in converting the said firm namely Shri Laxmi Traders, the same illegality cannot be allowed to be perpetuated. The petitioner/appellant also relies on the reply received under the Right to Information Act, 2005 which reflects that the document

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which were produced before the Court had no relation whatsoever with the two registered partnership firms involved in the present litigation and was with respect to another firm altogether and therefore, he contends that respondent No. 4 played fraud upon the Hon'ble Court by making the Court rely on false, forged and wholly unrelated documents. Resultantly, the petitioner/appellant has been deprived of his legal and constitutional right to fair adjudication. He submits that the documents which had been received subsequently reflect that in another civil suit filed for recovery by the respondent(s), claiming themselves to be a sole proprietorship concern, was dismissed by the Civil Court holding that the claim of the firm to be a family settlement were found to be unjustified and rejected. The civil suit held the firm to continue to operate as a partnership firm. The verdict of the Civil Court would, therefore, have to be considered by the concerned authority and the appeal filed by the appellant therefore, has to be decided on merits by the concerned appellate authority.

13. The petitioner/appellant also has invited our attention to Condition No. 6 of the licence and Rule 69(6) of the Rajasthan Agricultural Produce Markets Rules, 1963 to submit that for constitution of a firm as a proprietorship firm, a dissolution deed was required to be furnished along with Form No. 7 specifying the names of the partners and proprietors which were required to be recorded by the respondent No. 4 in their official register. The findings in the Civil Suit by the Court of the learned Civil Judge (Senior Division), Jodhpur and the findings of the learned Additional District Judge No. 3, Jodhpur[7] dated 12.07.2001 need

7 Civil Original Suit No.66/1997

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to be noticed and the same were all withheld by the respondent(s) during the earlier litigation. The petitioner/appellant submits that the Appellate Authority was bound by the findings of the Civil Court. However, the appeal has been decided merely on the basis of the earlier decisions taken by themselves as well as by the Court and he, therefore, prays that the matter should be again remanded back. He also points out that as per Condition Nos. 6 and 8, as soon as there is a change or alteration in the constitution of a registered partnership firm, the same was mandatorily required to be intimated to the Market Committee in accordance with law. He also submits that the Samiti has relied on a photocopy of the family settlement and the concerned applicant did not inform that the family settlement has not been carried out. It is also pointed out that the family settlement was to be carried out subject to payment of an amount by the respondent(s) to the petitioner/appellant which was also never paid and the conditions of family settlement were to be operative subject to the said payment. He therefore, submits that he has been subjected to fraud committed at the level of the Officers of the respondent(s)-Company.

14. Having deeply considered all the aspects, we find that in the ordinary course, we would have relegated the petitioner/appellant to a suit for declaration. However, we find that it was for the respondent(s) to have got the family settlement implemented by probate or otherwise specially when the mother of the appellant and respondent had recalled her consent for the family settlement and the respondent had himself implored upon her to keep her promise as mentioned in the family settlement, failing which, he

has threatened his mother for civil proceedings and consequences. We notice that the Court on the other hand has directed the petitioner/appellant to file the civil suit which in our opinion was wrongful and unjustified.

15. The following issues are required to be adjudicated by this Court:

(a) Whether the writ petition preferred by the appellant is not maintainable and is barred by principles of *res judicata*?

(b) Whether order passed by respondent No.4 was contrary to the relevant statutory provisions?

(c) Whether respondent No.4 had the authority to convert the partnership firm to a sole proprietorship firm by a single licence existing earlier in the name of the partnership firm to the sole proprietorship firm and if not what relief can be granted to the appellant?

16. We are conscious of the earlier litigation having been decided up to the Division Bench and approved by the Supreme Court was essentially with respect to all the contentions which the petitioner/appellant is raising here. The only aspect which the Court notices are that some documents which were not produced during disposal of earlier writ petition have now been produced.

17. We have carefully noted the observations of the Division Bench, wherein, the Division Bench has observed that the appropriate remedy lies before the Civil Court.

18. We find that the principles of *res judicata* barring a second writ petition on the same grounds is not applicable to the facts of the present case. In the present writ petition, the petitioner/appellant challenges the order passed by the Appellate

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Authority of the Agriculture Marketing Board, namely, the Director. The order of rejection of the appeal of the petitioner/appellant is based on the earlier round of litigation taken up by the petitioner/appellant. However, at no point of time, the Courts have examined that letter of settlement had not been operated upon and the conditions of settlement were not fulfilled. The mother of the petitioner/appellant and the respondent(s) had refuted the settlement which was in knowledge of the respondent(s), who has responded to the letter issued by the mother. He therefore, was having full knowledge of the settlement of agreement not duly operational but by playing a fraud, he moved Form No. 7 for converting the partnership firm into a sole proprietorship firm on account of issuance of licence existing earlier for the dual partnership firms to singular sole proprietorship firms.

19. It is settled law that fraud vitiates any action done in pursuance or subsequent to the same and therefore, the forgery of the family settlement and the orders passed by Respondent No. 4, as well as the subsequent decisions on this issue stand vitiated. In this regard, the Apex Court in **Commissioner of Customs (Preventive) vs Aafloat Textiles India Private Limited And Others**[8] had held as under:

> *"**12.**.........*
>
> *30. A 'fraud' is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See S.P. Chengalvaraya Naidu v. Jagannath [(1994) 1 SCC 1].)*
>
> *31. 'Fraud' as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority*

8 (2009) 11 SCC 18

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*to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh v. Savitri Devi [(2003) 8 SCC 319].)*

*32...... In a leading English case i.e. Derry v. Peek [(1889) 14 AC 337 (1886-90) All ER Rep 1 (HL)] what constitutes 'fraud' was described thus:(AC p. 374)*

> *'... fraud is proved when it is shown that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false.'*
>
> *.................*
>
> *'20.... The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or Tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. [The] misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which [the] power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. "In a contract every person must look for himself and ensure that he acquires the information necessary to avoid bad bargain." [Ed. Anson's Law of Contract.] In public law the duty is not to deceive.' (See Shrisht Dhawan v. Shaw Bros. [(1992) 1 SCC 534], SCC p. 554, para 20.)*

*...................*

*35. Suppression of a material document would also amount to a fraud on the court. (See Gowrishankar v. Joshi Amba Shankar Family Trust [(1996) 3 SCC 310] and S.P. Chengalvaraya Naidu case [(1994) 1 SCC 1].)*

*36. 'Fraud' is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in Ram Preeti Yadav case [(2003) 8 SCC 311]."*

Thus Question No. 1 is answered in favour of the appellant and the writ petition is held to be maintainable.

20. It would also be apposite to quote the relevant provisions for the adjudication of this dispute:

(a) The Act of 1961:

> *"14. Power of market committee to issue Licence.-*
> *(1) Where a market is measurers, established under the provisions of this Act, the market committee may issue and renew Licence, In accordance with the rules and bye-laws, to traders, brokers, weighmen, processors, surveyors, warehousemen or other persons to operate in the market on payment of the prescribed fees.*
> *(2) The market committee may also grant Licence,*
> *(a) for direct purchase from the agriculturists for the following purposes, namely:-*
> *(i) to processor for processing;*
> *(ii) to exporters for export of agricultural produce;*
> *(iii) for trade of agricultural produce of particular specification; and*
> *(iv) for grading, packing and transacting in other way by value addition of agricultural produce:*
> *"Provided that no sale or purchase shall be permitted under this clause within the market proper except for the purposes specified in sub clause(i) and (iv).*
> *(b) for testing of chemical composition of agricultural produce"*

(b) The Act of 1932:

> ***"36. Rights of outgoing partner to carry on competing business. Agreements in restraint of trade.-****(1) An outgoing partner may carry on a business competing with that of the firm and he may advertise such business, but, subject to contract to the contrary, he may not-*
>
> *(a) use the firm name,*
> *(b) represent himself as carrying on the business of the firm, or*
> *(c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.*
> *(2) A partner may make an agreement with his partners that on ceasing to be a partner he will not*
> *carry on any business similar to that of the firm within a specified period or within specified local limits;*
> *and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such agreement shall be valid if the restrictions imposed are reasonable."*
>
> ***42. Dissolution on the happening of certain contingencies.****—Subject to contract between the partners a firm is dissolved—*
> *(a) if constituted for a fixed term, by the expiry of that term;*
> *(b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;*

*(c) by the death of a partner; and*
*(d) by the adjudication of a partner as an insolvent.*

***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.*

***44. Dissolution by the Court.****—At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely:—*
*(a) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;*
*(b) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;*
*(c) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;*
*(d) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;*
*(e) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), or has allowed it to be sold in the recovery of arrears of land-revenue or of any dues recoverable as arrears of land revenue due by the partner;*
*(f) that the business of the firm cannot be carried on save at a loss; or*
*(g) on any ground which renders it just and equitable that the firm should be dissolved.*
*………………………...*

***63. Recording of changes in and dissolution of a firm.****— (1) When a change occurs in the constitution of a registered firm any incoming, continuing or outgoing partner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorised in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice along with the statement relating to the firm filed under section 59.*
***Recording of withdrawal of a minor.-*** *(2) When a minor who has been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become a partner, and the firm is then a registered firm, he, or his agent*

*specially authorised in this behalf, may give notice to the Registrar that he has or has not become a partner, and the Registrar shall deal with the notice in the manner provided in sub-section (1)*
*……………………….*

***68. Rules of evidence.****—(1) Any statement, intimation or notice recorded or noted in the Register of Firms shall, as against any person by whom or on whose behalf such statement, intimation or notice was signed, be conclusive proof of any fact therein stated.*
*(2) A certified copy of an entry relating to a firm in the Register of Firms may be produced in proof of the fact of the registration of such firm, and of the contents of any statement, intimation or notice recorded or noted therein.*

(c) Condition 6 of the license:

*"The licensee shall inform the Market Committee of any change in partnership of his firm within a week of the change"*

(d) Rule 69(6) of the Rules of 1963:

*"**69. Licenced Traders, 'A' class brokers, Trader 'A' class brokers (Joint) 'B" class brokers and retailers.-***

*(1) xxxxxxx*
*(2) xxxxxxx*
*(3) xxxxxxx*
*(4) xxxxxxx*
*(5) xxxxxxx*
*(6) Whoever, does business as a trader, 'A' class broker trader 'A' class brokers (Joint) 'B' class broker and retailer in agricultural produce in any market without a permanent licence granted under this rule shall on conviction be punished in accordance with sub-section(1) of section 28 of the Act"*

21. Applying the aforesaid provisions, we find that both the firms namely M/s Jamnadass Gangadass and M/s. Jamnadass Gangadass & Co. were duly registered partnership firms and licences have been issued to them as partnership firms. Such licences could only be converted to sole proprietorship by following the aforesaid provisions which have admittedly not being followed.

22. The entire reply filed by respondent No. 4 accepts the aforesaid aspect but relies on a family settlement to state that the conversion of partnership firm was done to sole proprietorship firm on the basis of the settlement. We find that the provisions of Act do not allow any licence to be changed from partnership firm to

sole proprietorship firm without due process of law as laid down therein. Non compliance has not been explicitly denied by any of the respondents in their replies, and therefore, the order dated 04.11.1987 allowing the conversion and the subsequent appellate decisions fail the test of non-arbitrariness and non compliance of the provisions of law. There has been no deed of dissolution of firm as required under the Act of 1932 nor the same was produced before the concerned authorities of the Mandi Samiti. The Appellate Authorities have failed to take notice of such aspects. The ROC has only now dissolved the Firm No. 2 as a sole proprietorship firm and that too in the name of the appellant in the year 2010, after the other partner, namely, Smt. Madhu Lohiya expired.

23. The claim set up by the appellant is found to be legal and justified. On perusal of the so called settlement, it is apparent that the same was conditional in nature. It would have come into operation upon the payment of an amount of Rs 4,75,000/- by Pukhraj in favour of the appellant and it is only thereafter that the properties would, as per the settlement, be registered and mutated. However, it is an admitted position that the said settlement was recalled by the mother and communicated to the respondent, brother of the petitioner/appellant, who has also raised his objections relating to recall of the family settlement and threatened to initiate legal action, but it has come on record from the reply that the amount was not paid. Therefore, the settlement operation could not have been acted upon.

24. Having noticed the aforesaid, we are unable to uphold the view taken by the learned Single Judge.

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25. In view of above findings, we do not find it a case for relegating the petitioner/appellant again to filing civil suit and the Government Authorities' action is held to be illegal and unjustified.

26. Consequently, the order dated 05.08.2022 passed by the learned Single Judge and both the orders dated 04.11.1987 passed by the Secretary, Krishi Upaj Mandi Samti, Jodhpur are quashed and set aside and the respondents are directed to register the firm- Jamnadass Gangadass as partnership firm and issue licence accordingly upto 2010 and Firm No. 2, i.e. M/s. Jamnadass Gangadass & Co., be issued licence after 2010 in the name of appellant after the dissolution of the partnership firm.

27. The present appeal is accordingly, allowed.

28. No order as to costs.

29. All pending applications stand disposed of accordingly.

(CHANDRA SHEKHAR SHARMA),J (SANJEEV PRAKASH SHARMA),ACTING CJ

Amit/Gaurav/15

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