

Course Name- LL.B 2nd sem
Subject- Special Contract Law
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Concept –Registration of Firm

Section 57 APPOINTMENT OF REGISTRAR OF FIRMS AND DEPUTY AND ASSISTANT REGISTRARS OF FIRMS.

- (1) The State Government may, by notification in the Official Gazette, appoint a Registrar of Firms who shall exercise, perform and discharge the powers, functions and duties of the Register under this Act throughout the State of Maharashtra.
- (2) The State Government may likewise appoint one or more Deputy Registrars of Firms and Assistant Registrars of Firms who shall exercise, perform and discharge all or such of the powers, functions and duties of the Registrar and in such areas as the State Government may, by notification in the Official Gazette, specify.
- (3) The officers appointed under sub-section (1) and sub-section (2) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

APPLICATION FOR REGISTRATION

Section 58

(1) Subject to the provisions of sub-section (1A), the registration of a firm effected by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee and a true copy of the deed of partnership stating :

(a) the firm-name

(aa) the nature of business of the firm;

(b) the place or principal place of business of the firm,

(c) the names of any other places where the firm carries on business,

(d) the date when each partner joined the firm,

(e) the names in full and permanent addresses of the partners, and

(f) the duration of the firm. The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm shall not have any of the names or emblems specified in the Schedule to the Emblems and Names (Prevention of Improper Use) Act, 1950, or any colourable imitation thereof, unless permitted so to do under that Act, or any name which is likely to be associated by the public with the name of any other firm on account of similarity, or any name which, in the opinion of the Registrar, for reasons to be recorded in writing, is undesirable : Provided that nothing in this sub-section shall apply to any firm registered under any such name before the date of the commencement of the Indian Partnership (Maharashtra Amendment) Act, 1984.

(4) Any person aggrieved by an order of the Registrar under sub-section (3), may, within 30 days from the date of communication of such order, appeal to the officer not below the rank of Deputy Secretary to Government authorised by the State Government in this behalf, in such manner, and on payment of such fee, as may be prescribed. On receipt of any such appeal, the authorised officer shall, after giving an opportunity of being heard to the appellant, decide the appeal, and his decision shall be final.

REGISTRATION

Section 59

- (1) When the Registrar is satisfied that the provisions of section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement. On the date such entry is recorded and such statement is filed, the firm shall be deemed to be registered.
- (2) The firm, which is registered, shall use the brackets and word (Registered) immediately after its name.

LATE REGISTRATION ON PAYMENT OF PENALTY

Section 59A

- If the statement in respect of any firm is not sent or delivered to the Registrar within the time specified in sub-section (1A) of section 58, then the firm may be registered on payment, to the Registrar, of a penalty of one hundred rupees per year of delay or a part thereof.

DELETION AND ADDITION OF CERTAIN ENTRIES RELATING TO CERTAIN FIRMS, BY REASON REORGANISATION OF STATES

Section 59 (1A)

- (1) Notwithstanding anything contained in this Chapter, a Registrar of Firms appointed for any area by the Government of Bombay may, by order in writing, amend the Register of Firms maintained by him by deleting there from the entries relating to any firm, whose place of business has, by reason of the reorganization of States under the States Reorganization Act, 1956, ceased to be situated in the State of Bombay. The Registrar may likewise and without any charge or fee there for amend the Register by adding thereto the entries relating to any firm included in the Register of another State but whose place of business has, by reason of such reorganization, become part of the area within his jurisdiction in the State of Bombay : Provided that the Registrar shall, before passing any order under this sub-section, make such inquiry as he deems necessary and give notice to the firm and the Registrar of the State concerned.
- 2) After such amendment, the Registrar shall cease to perform the functions of a Registrar in respect of any firm the entries relating to which have been deleted as aforesaid and shall perform all the functions of a Registrar in respect of any firm the entries relating to which are added as aforesaid.

RECORDING OF ALTERATIONS IN FIRM-NAME, NATURE OF BUSINESS AND PRINCIPAL PLACE OF BUSINESS. Section -60

- (1) When an alteration is made in the firm name or in the nature of business of a firm or in the location of the principal place of business of a registered firm, a statement shall be sent to the Registrar, within a period of 90 days from the date of making such alteration, accompanied by the prescribed fee, specifying the alteration and signed and verified in the manner required under section 58.
- (2) When the Registrar is satisfied that the provisions of subsection (1) have been duly complied with, he shall amend the entry relating to the firm in the Register of Firms in accordance with the statement, and shall file it along with the statement relating to the firm filed under section 59.

- (3) Any person aggrieved by an order under sub-section (1) may appeal to such authority, and within such time, as may be specified in this behalf by the Government of Bombay notification in the Official Gazette; and such authority shall pass such order on the appeal as it thinks fit.
- (4) An order of a Registrar under sub-section (1), or when an appeal has been preferred against it under sub-section (3), the order of the appellate authority, shall be final.
- (5) The provisions of this section shall cease to be in force from such date as the Government of Bombay may, by notification in the Official Gazette, appoint.

NOTING OF CLOSING AND OPENING OF BRANCHES

Section -61

When a registered firm discontinues business at any place or begins to carry on business at any place, such place not being its principal place of business, any partner or agent of the firm shall send intimation thereof to the Registrar, within a period of 90 days from the date of such discontinuance or, as the case may be, from the date on which the firm begins to carry on business at such place. The Registrar shall then make a note of such intimation in the entry relating to the firm in the Register of Firms, and shall file the intimation along with the statement relating to the firm filed under section 59.

NOTING OF CHANGES IN NAMES AND ADDRESSES OF PARTNERS (Section 62)

When any partner in a registered firm alters his name or permanent address, an intimation of the alteration' shall be sent, within a period of 90 days from the date of making such alteration, by any partner or agent of the firm to the Registrar, who shall deal with it in the manner provided in section 61.

RECORDING OF CHANGES IN AND DISSOLUTION OF A FIRM (Section -63)

When a change occurs in the constitution of a registered firm, every incoming, continuing or outgoing partner, and when a registered firm is dissolved, every person who was a partner immediately before the dissolution, or the agent of every such partner or person specially authorised in this behalf shall, within a period of 90 days from the date of such change or dissolution, given notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall a record of the notice in the entry relating to the firm in the Registrar of Firms and shall file the notice along with statement relating to the firm filed under section 59.

(1A) Where a change occurs in the constitution of a registered firm, all persons, who after such change are partners of the firm, shall jointly send an intimation of such change duly signed by them, to the Registrar, within a period of 90 days from the date of occurrence of such change and the Registrar shall deal with it in the manner provided by section 61.

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, shall within a period of 90 days from the date of his election, 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).

RECTIFICATION OF MISTAKES

Section-64

- (1) The Registrar shall have power at all time to rectify any mistake in order to bring the entry in the Register of Firms relating to any firm into conformity with into documents relating to that firm filed under this Chapter.
- (2) On application made by the all parties who have signed any document relating to a firm filed under this Chapter, the Registrar may rectify any mistake in such document or in the record of note thereof made in the Register of Firms.

AMENDMENT OF REGISTER BY ORDER OF COURT (Section -65)

A Court deciding any matter relating to a registered firm may direct that the Registrar shall make any amendment in the entry in the Register of Firms relating to such firm which is consequential upon its decision; and the Registrar shall amend the entry accordingly.

INSPECTION OF REGISTER AND FILED DOCUMENTS

Section -66

(1) The Registrar of Firms shall be open to inspection by any person on payment of such fee as may be prescribed.

(2) All statements, notices and intimations filed under this Chapter shall be open to inspection, subject to such conditions and on payment of such fee as may be prescribed.

GRANT OF COPIES

Section-67

The Registrar shall on application, furnish to any person, on payment of such fee as may be prescribed, a copy, certified under his hand, of any entry or portion thereof in the Register of Firms.

RULES OF EVIDENCE

Sec. 68

- (1) Any statement, intimation or notice recorded or noted in 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.

EFFECT OF NON-REGISTRATION (Section 69)

- (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 a behalf of any persons 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 : Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of the firm or to realise the property of 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.

2A) No suit to enforce any right 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 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 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 : Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of a dissolved firm or to realise the property of a dissolved firm.

(3) The provisions of sub-sections (1), (2) and (2A) shall apply also to a claim of setoff or other proceedings to enforce a right arising from a contract but shall not affect (a) the firms constituted for a duration upto six months or with a capital upto two thousand rupees; or; (b) the powers of an official assigned, receiver or Court under the Presidency Towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, to realise the property of an insolvent partner.

- (4) This section shall not apply (a) to firms or partners in firm 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, or outside the Presidency towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

- Section 69A PENALTY FOR CONTRAVENTION OF SECTION 60, 61, 62, OR 63. If any statement, intimation or notice under sections 60, 61, 62 or 63 in respect of any registered firm is not sent or given to the Registrar, within the period specified in that section, the Registrar may, after giving notice to the partners of the firm and after giving them a reasonable opportunity of being heard, refuse to make the suitable amendments in the records relating to the firm, until the partners of the firm pay such penalty, not exceeding ten rupees per day, as the Registrar may determine in respect of the period between the date of expiry of the period specified in sections 60, 61, 62 or as the case may be, 63 and the date of making the amendments in the entries relating to the firm.

- **Section 70 PENALTY FOR FURNISHING FALSE PARTICULARS.** Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particulars which he knows to be false or does not believe to be true, or containing particulars which he knows to be incomplete or does not believe to be complete, shall, on conviction, be punished with imprisonment for a term which may extend to one year, or with fine, or with both : Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the fine shall not be less than one thousand rupees.

Section 72

MODE OF GIVING PUBLIC NOTICE. A public notice under this Act is given

- (a) Where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of Firms under section 63, and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates, has its place or principal place of business, and
- (b) in any other case, publication in the Official Gazette, and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.