

The Partnership Act, 1932

(Act No.IX of 1932)

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PREAMBLE

[IX OF 1932]

(IN ITS APPLICATION TO THE STATE OF MAHARASHTRA)

(Received the assent of the Governor-General on 8th April, 1932)

AMENDED BY MAH. 29 OF 1984 (1-1-1985) 1

AN ACT TO DEFINE AND AMEND THE LAW RELATING TO PARTNERSHIP.

WHEREAS it is expedient to define and amend the law relating to partnership; It is hereby enacted as follows :

Section1

SHORT TITLE EXTENT AND COMMENCEMENT.

(1) This Act may be called the Indian Partnership Act, 1932.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on the 1st day of October, 1932, except section 69 which shall come into force on the 1st day of October, 1933.

Section2

DEFINITIONS.

In the Act, unless there is anything repugnant in the subject or context,

(a) an "act of a firm" means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm;

(b) "business" includes every trade, occupation and profession;

(c) "prescribed" means prescribed by rules made under this Act;

(c-1) "Registrar" means the Registrar of Firms appointed under sub-section (1) of section 57 and includes the Deputy Registrar of Firms and Assistant Registrar of Firms appointed under sub-section (2) of that section;

(d) "third party" used in relation to a firm or to a partner therein means any person who is not a partner in the firm; and

(e) expressions used but not defined in this Act and defined in the Indian Contract Act, 1872, shall have the meanings assigned to them in that Act.

Section3

APPLICATION OF PROVISIONS OF ACT IX OF 1872.

The unrepealed provisions of the Indian Contract Act, 1872, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to firms.

Section4

DEFINITION OF "PARTNERSHIP", "PARTNER", "FIRM" AND "FIRM-NAME".

"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.

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".

Section5

PARTNERSHIP NOT CREATED BY STATUS.

The relation of partnership arises from contract and not from status; and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business.

Section6

MODE OF DETERMINING EXISTENCE OF PARTNERSHIP.

In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

Explanation I : The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

Explanation II : The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not itself make him a partner with the persons carrying on the business;

and, in particular, the receipt of such share or payment -

(a) by a lender of money to persons engaged or about to engage in any business

(b) by a servant or agent as remuneration,

(c) by the widow or child of a deceased partner, as annuity, or

(d) by a previous owner or part-owner of the business, as consideration for the sale of the goodwill or share thereof,

does not of itself make the receiver a partner with the persons carrying on the business.

Section7

PARTNERSHIP-AT-WILL.

Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership-at-will".

Section8

PARTICULAR PARTNERSHIP.

A person may become a partner with another person in particular adventures or undertakings.

Section9

GENERAL DUTIES OF PARTNERS.

Partners are bound to carry on the business of the firm to greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner, his heir or legal representative.

Section10

DUTY TO INDEMNIFY FOR LOSS CAUSED BY FRAUD.

Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

Section11

DETERMINATION OF RIGHTS AND DUTIES OF PARTNERS BY CONTRACT BETWEEN THE PARTNERS.

(1) Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing.

Such contract may be varied by consent of all the partners, and such consent may be express or may be implied by a course of dealing.

(2) AGREEMENTS IN RESTRAINT OF TRADE.

Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

Section12

THE CONDUCT OF THE BUSINESS.

Subject to contract between the partners -

(a) every partner has a right to take part in the conduct of the business;

(b) every partner is bound to attend diligently to his duties in the conduct of the business;

(c) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners;

(d) every partner has a right to have access to and to inspect and copy any of the books of the firm;

(e) in the event of the death of a partner, his heirs or legal representatives or their

duly authorised agents shall have a right of access to and to inspect and copy any of the books of the firm.

Section13

MUTUAL RIGHT AND LIABILITIES.

Subject to contract between the partners -

(a) a partner is not entitled to receive remuneration for taking part in the conduct of the business;

(b) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;

(c) where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits;

(d) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent. per annum;

(e) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him

(i) in the ordinary and proper conduct of the business; and

(ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and

(f) a partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.

Section14

THE PROPERTY OF THE FIRM.

Subject to contract between the partners, the property of the firm includes all property and rights and interest in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interest in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

Section15

APPLICATION OF THE PROPERTY OF THE FIRM.

Subject to the contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

Section16**PERSONAL PROFITS EARNED BY PARTNERS.**

Subject to the contract between the partners, -

(a) if a partner derives any profits for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm-name, he shall account for that profit and pay it to the firm;

(b) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

Section17**RIGHTS AND DUTIES OF PARTNERS AFTER A CHANGE IN THE FIRM.**

Subject to contract between the partners, -

(a) where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;

(b) AFTER THE EXPIRY OF THE TERM OF THE FIRM.

where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, and so far as they may be consistent with the incidents of partnership-at-will; and

(c) WHERE ADDITIONAL UNDERTAKINGS ARE CARRIED OUT.

where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.

Section18**PARTNER TO BE AGENT OF THE FIRM.**

Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm.

Section19**IMPLIED AUTHORITY OF PARTNER AS AGENT OF THE FIRM.**

(1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his "implied authority".

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to -

- (a) submit a dispute relating to the business of the firm to arbitration,
- (b) open a banking account on behalf of the firm in his own name,
- (c) compromise or relinquish any claim or portion of a claim by the firm,
- (d) withdraw a suit or proceeding filed on behalf of the firm,
- (e) admit any liability in a suit or proceeding against the firm,
- (f) acquire immovable property on behalf of the firm,
- (g) transfer immovable property belonging to the firm, or
- (h) enter into partnership on behalf of the firm.

Section20

EXTENSION AND RESTRICTION OF PARTNER'S IMPLIED AUTHORITY.

The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner.

Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

Section21

PARTNER'S AUTHORITY IN AN EMERGENCY.

A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

Section22

MODE OF DOING ACT TO BIND FIRM.

In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm-name, or in any other manner expressing or implying an intention to bind the firm.

Section23

EFFECT OF ADMISSION BY A PARTNER.

An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

Section24

EFFECT OF NOTICE TO ACTING PARTNER.

Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Section25

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

Section26

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.

Section27

LIABILITY OF FIRM FOR MISAPPLICATION BY PARTNERS.

Where -

(a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or

(b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Section28

HOLDINGOUT.

(1) Anyone who by words spoken or written or by conduct represent himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

(2) Where after partner's death the business continued in the old firm-name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

Section29

RIGHTS OF TRANSFeree OF A PARTNER'S INTEREST.

(1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or, by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the

business or to require accounts or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners, to receive the share of the assets of the firm to which the transferring partner is entitled and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

Section 30

MINORS ADMITTED TO THE BENEFITS OF PARTNERSHIP.

(1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

(2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.

(3) Such minor's share is liable for the acts of the firm but the minor is not personally liable for any such act.

(4) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in section 48 :

Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the Court shall proceed with the suit as one for dissolution and for settling accounts between the partners and the amount of the share of the minor shall be determined along with the shares of the partners.

(5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm :

Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

(6) Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the person asserting that fact.

(7) Where such person becomes a partner -

(a) his rights and liabilities as a minor continue upto the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and

(b) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

(8) Where such person elects not to become a partner, -

(a) his rights and liabilities shall continue to be those of a minor under the section upto the date on which he gives public notice;

(b) his share shall not be liable for any acts for the firm done after the date of the notice; and

(c) he shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section (4).

(9) Nothing in sub-sections (7) and (8) shall affect the provisions of section 28.

CHAPTER V INCOMING AND OUTGOING PARTNERS.

Section 31

INTRODUCTION OF A PARTNER.

(1) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

(2) Subject to the provisions of section 80, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

Section 32

RETIREMENT OF A PARTNER.

(1) A partner may retire -

(a) with the consent of all the other partners,

(b) in accordance with an express agreement by the partners, or

(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public

notice is given of the retirement

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

Section 33

EXPULSION OF A PARTNER.

(1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.

(2) The provisions of sub-sections (2), (3) and (4) of section 32 shall apply to an expelled partner as if he were a retired partner.

Section 34

INSOLVENCY OF A PARTNER.

(1) Where a partner in a firm is adjudicated insolvent, he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.

(2) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as insolvent, the estate of a partner so adjudicated is not

liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

Section 35

LIABILITY OF ESTATE OF DECEASED PARTNER.

Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

Section 36

RIGHTS OF OUTGOING PARTNER TO CARRY ON COMPETING BUSINESS.

(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) **AGREEMENT IN RESTRAINT OF TRADE.**

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, such agreement shall be valid if the restrictions imposed are reasonable.

Section37

RIGHT OF OUTGOING PARTNER IN CERTAIN CASES TO SHARE SUBSEQUENT PROFITS.

Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent. per annum on the amount of his share in the property of the firm :

Provided that where by contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits, but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

Section38

REVOCATION OF CONTINUING GUARANTEE BY CHANGE IN FIRM.

A continuing guarantee given to a firm, or to a third party in respect of the transactions of a firm, is in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

Section39

DISSOLUTION OF A FIRM.

The dissolution of a partnership between all the partners of a firm is called the "dissolution of the firm".

Section40

DISSOLUTION BY AGREEMENT.

A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

Section41

COMPULSORY DISSOLUTION.

A firm is dissolved

(a) by the adjudication of all the partners or of all the partners but one as insolvent, or

(b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership :

Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings

Section42

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.

Section43

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.

Section44

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, 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 other ground which renders it just and equitable that the firm should be dissolved.

Section45

LIABILITY FOR ACTS OF PARTNERS 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.

Section46

RIGHT OF PARTNERS TO HAVE BUSINESS WOUND UP AFTER DISSOLUTION.

On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or which representatives according to their rights.

Section47

CONTINUING AUTHORITY OF PARTNERS FOR PURPOSES OF WINDING UP.

After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise :

Provided that the firm is in no case bound by the acts of a partner who had been adjudicated insolvent, but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

Section48

MODE OF SETTLEMENT OF ACCOUNTS BETWEEN PARTNERS.

In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed :

(a) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;

(b) the assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order :

(i) in paying the debts of the firm to third parties;

(ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;

(iii) in paying to each partner rateably what is due to him on account of capital; and

(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

Section49

PAYMENT OF FIRM'S DEBTS AND OF SEPARATE DEBTS.

Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in payment of the debts of the firm.

Section50

PERSONAL PROFITS EARNED AFTER DISSOLUTION.

Subject to contract between the partners, the provisions of clause (a) of section 16 shall apply to transactions by any surviving partner or by the representatives of deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up :

Provided that where any partner or his representative has bought the good will of the firm, nothing in the section shall affect his right to use the firm-name.

Section51

RETURN OF PREMIUM ON PREMATURE DISSOLUTION.

Where a partner has paid a premium on entering into partnership for a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, he shall be entitled to repayment of the premium or of such part thereof as may be reasonable, regard being had to the terms upon which he became a partner, and to the length of time during which he was a partner, unless -

(a) the dissolution is mainly due to his own misconduct, or

(b) the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.

Section52

RIGHTS WHERE PARTNERSHIP CONTRACT IS RESCINDED FOR FRAUD OR MISREPRESENTATION.

Where a contract creating partnership is rescinded on the ground of fraud or misrepresentation of any of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitle -

(a) to a lien on, or right of retention of, the surplus of the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him;

(b) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and

(c) to be indemnified by the partner or partners guilty of fraud or misrepresentation against all the debts of the firm.

Section53

RIGHT TO RESTRAIN FROM USE OF FIRM-NAME OR FIRM-PROPERTY.

After a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm-name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up :

Provided that where any partner or his representative has brought the goodwill of the firm, nothing in this section shall affect his right to use the firm-name.

Section54

AGREEMENTS IN RESTRAINT OF TRADE.

Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a 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, such agreement shall be valid if the restrictions imposed are reasonable.

Section55

SALE OF GOODWILL AFTER DISSOLUTION.

(1) In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.

(2) RIGHTS OF BUYER AND SELLER OF GOODWILL.

Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but,

subject to agreement between him and the buyer, 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 its dissolution.

(3) AGREEMENTS IN RESTRAINT OF TRADE.

Any partner may upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner 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 such agreement shall be valid if the restrictions are reasonable.

Section56

POWER TO EXEMPT FROM APPLICATION OF THIS CHAPTER.

The State Government of any State may, by notification in the Official Gazette, direct that the provisions of this Chapter shall not apply to that State or to any part thereof specified in the notification.

Section57

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.

Section58

APPLICATION FOR REGISTRATION.

(1) Subject to the provisions of sub-section 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.

(1A) The statement under sub-section (1) shall be sent or delivered to the Registrar within a period of one year from the date of constitution of the firm :

Provided that in the case of any firm carrying on business on or before the date of commencement of the Indian Partnership (Maharashtra Amendment) Act, 1984, such statement shall be sent or delivered to the Registrar within a period of one year from such date.

(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.

Section 59

REGISTRATION.

(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. [19 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.

Section 59A-1

LATE REGISTRATION ON PAYMENT OF PENALTY.

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.

Section 59A

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

(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 therefrom the entries relating to any firm, whose place of business has, by reason of the reorganisation of States under the States Reorganisation Act, 1956, ceased to be situated in the State of Bombay. The Registrar may likewise and without any charge or fee therefor 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 reorganisation, 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.

(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.

Section 59B

DELETION OF ENTRIES RELATING TO CERTAIN FIRMS BY REASON OF FORMATION OF GUJARAT STATE.

(1) Notwithstanding anything contained in this Chapter, a Registrar of Firms appointed for any area by the Government of Maharashtra may, by order in writing, amend the Register of Firms maintained by him by deleting therefrom the entries relating to any firm, whose place of business has, by reason of the formation of the State of Gujarat by the Bombay Reorganisation Act, 1960, ceased to be situated in the State of Maharashtra :

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 of Gujarat.

(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.

(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 Maharashtra, by 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 where an appeal has been preferred against it under sub-section (3), the order of the appellate authority shall be final.

Section60

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

(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 sub-section (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 alongwith the statement relating to the firm filed under section 59.

Section61

NOTING OF CLOSING AND OPENING OF BRANCHES.

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 alongwith the statement relating to the firm filed under section 59.

Section62

NOTING OF CHANGES IN NAMES AND ADDRESSES OF PARTNERS.

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.

Section63

RECORDING OF CHANGES IN AND DISSOLUTION OF A FIRM.

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.

(2) RECORDING OF WITHDRAWAL OF A MINOR.

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).

Section64

RECTIFICATION OF MISTAKES.

(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.

Section65

AMENDMENT OF REGISTER BY ORDER OF COURT.

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.

Section66**INSPECTION OF REGISTER AND FILED DOCUMENTS.**

(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.

Section67**GRANT OF COPIES.**

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.

Section68**RULES OF EVIDENCE.**

(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.

Section69**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 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 set-off 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.

Comment: "...Thus, the persons suing, namely, the current partners as on the date of the suit were not shown as partners in the Register of Firms. The result is that the suit was not maintainable in view of the provisions of sub-sec. (2) of S. 69 of the said Partnership Act..." *M/s. Shreeram Finance Corporation, Appellants v. Yasin Khan AIR 1989 SUPREME COURT 1769*

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.

Section70**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 judgement of the Court, the fine shall not be less than one thousand rupees.

Section70A**MAXIMUM FEES AND POWER TO AMEND SCHEDULE I.**

(1) The fees payable under this Act and the rules made thereunder shall not exceed the maximum fees as specified in Schedule I.

(2) Subject to the provisions of this section, the State Government may, having regard to the expenditure incurred or to be incurred for carrying out the purposes of this Act, from time to time, by notification in the Official Gazette, vary any of the amounts of maximum fees and other particulars specified in Schedule I, and, thereupon, the said Schedule shall be deemed to be amended accordingly.

(3) Every notification issued under sub-section (2) shall take effect from the date of its publication in the Official Gazette, unless some other date is specified therein for this purpose.

(4) Every notification issued by the State Government under sub-section (2) shall be laid, as soon as may be after it is issued, before each House of the State Legislature, while it is in session, for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, and notify such decision in the Official Gazette, the notification shall, from the date of publication of such decision, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done in pursuance of that notification.

Section71**POWER TO MAKE RULES.**

(1) Subject to the provisions of section 70A, the State Government may, by notification in the Official Gazette, make rules prescribing the fees which shall accompany documents sent to the Registrar or which shall be paid in respect of any intimation, notice or application given to the Registrar or which shall be payable for the inspection of documents in the custody of the Registrar or for copies from the Register of Firms or which shall be paid for supply of any prescribed forms.

(2) The State Government may also make rules

(a) prescribing the form of statement submitted under sub-section (1) of section 58 and of the verification thereof;

(aa) prescribing the manner of filing an appeal under sub-section (4) of section 58;

(b) requiring statements, intimations and notices under sections 60, 61, 62 and 63 to be in prescribed form, and prescribed the form thereof;

(c) prescribing the form of the Register of Firms, and the mode in which entries relating to firms are to be made therein, and the mode in which such entries are to be amended or notes made therein;

(d) regulating the procedure of the Registrar when dispute arises;

(e) regulating the filing of documents received by the Registrar;

(f) prescribing conditions for the inspection of original documents;

(g) regulating the grant of copies;

(h) regulating the elimination of registers and documents;

(i) providing for the maintenance and form of an Index to the Register of Firms

(j) generally, to carry out the purposes of this Chapter.

(3) All rules made under this section shall be subject to the condition of previous publication.

(4) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature, while it is in session, for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall, from the date of publication of such decision, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done in pursuance of that rule.

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.

Section73 REPEALS.

Repealed by the Repealing Act, 1938, (1 of 1938), s. 2 and Sch.

Section74 SAVINGS.

Nothing in this Act or any repeal affected thereby shall affect or be deemed to affect -

- (a) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or
- (b) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or anything done or suffered before the commencement of this Act, or
- (c) anything done or suffered before the commencement of this Act, or
- (d) any enactment relating to partnership not expressly repealed by this Act, or
- (e) any rule of insolvency relating to partnership, or
- (f) any rule of law not inconsistent with this Act.

THE SCHEDULES

Sch.I I MAXIMUM FEES.

SCHEDULE-I

MAXIMUM FEES

(See sections 70A and 71)

Document or act in respect of which the fee is payable, Maximum fee

- (1) Statement under section 58(1) Fifty rupees.
- (2) Memorandum of appeal under section (4) Twenty-five rupees.
- (3) Statement under section 60 Fifteen rupees.
- (4) Intimation under section 61 Fifteen rupees.

- (5) Intimation under section 62 Fifteen rupees.
 - (6) Notice under section 63(1) Fifteen rupees.
 - (7) Intimation under section 63(1A) Fifteen rupees.
 - (8) Notice under section 63(2) Fifteen rupees.
 - (9) Application under section 64 Fifteen rupees.
 - (10) Inspection of the Register of Firms under Seven rupees sub-section (1) of section 66, for inspection and fifty of one volume of the Register of Firms paise.
 - (11) Inspection of documents relating to a firm Seven rupees under sub-section I(2)D of section 66, and fifty for the inspection of all documents relating paise. to one firm
 - (12) Copies from the Register of Firms under Two rupees. section 67, for each hundred words or part thereof.
 - (13) Price of Forms prescribed under the rules One rupee per Form.
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Sch.-II

ENACTMENTS REPEALED - BY REPEALING ACT, 1938 (1 OF 1938) SECTION 2 AND SCHEDULE