taken of the first two points referred to above, it is not necessary to deal with this point any further.

Regarding the want of service of notice referred to in rule 33, it has been averred on behalf of the respondents in their respective written statements in these cases that such a notice was given. This is in reply to a definite allegation to the contrary made in the writ petitions. No particulars of the alleged notice have been given in the return. Nor has a copy of the notice been produced. Learned counsel for the respondents contends that the original records are with him and it can be ascertained from them whether a notice was in fact given or not in each case. For the reasons already recorded by me, however, it is not necessary for me to go into this matter in these cases.

In the three cases other than Civil Writ 2329 of 1963, the method of calculating the period of unauthorised supply of water (from the date of last inspection) is rather arbitrary and in the absence of some statutory justification behind it—appears to be opposed to principles or equity and justice. Imposition under section 33 of the Act is penal in nature. Benefit of doubt of liability or its quantum under such provisions of law must at each stage go to the subject. Since the reverse process has been adopted in these three cases, the impugned orders therein have to be set aside for that additional reason.

All these writ petitions are, therefore, allowed without any order as to costs and the impugned orders of imposition and recovery are set aside.

K. S. K.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

J. C. GUPTA ALIAS JAGDISH LAL GUPTA AND OTHERS,—*Petitioners*

versus

M/S WAZIR CHAND-VIR BHAN,—*Respondents.*

Civil Revision No. 65 of 1967

May 5, 1967

Partnership Act (IX of 1932)—Ss. 4 and 69—Firm carrying on business not in the firm name but in a trade name—Whether entitled to sue for the amount due to the business carried on in the trade name—Firm constituted of four

partners at the time purchases were made from it but constituted of seven partners at the time suit is filed for the recovery of the price—Whether competent to file suit.

Held, that a partnership firm is only a compendious name for certain persons who carry on business and there is no prohibition in the Partnership Act that a firm cannot carry on business in a trade. A firm which carries on business in a trade named other than the firm name is entitled to recover the amounts due to it from its customers. The customers cannot plead that they did not deal with the plaintiff firm but with a different business house and so the plaintiff firm has no right of suit against them.

Held, that the requirement of section 69 of the Partnership Act is that not only should the firm be registered, but also that all the persons, who were partners of that firm on the date of the institution of the suit, should have been shown in the register of firms as partners of the firm. It is the common case of the parties that on the date of the institution of the suit, there were seven partners in the plaintiff-firm and all of them had been shown as such in the register of firms. It may be true that at the time when the defendants were purchasing the cloth, there were only four partners of this firm. Later on, the number increased and at the time when the suit was filed, the firm was constituted of seven partners. The fact, however, remains that the defendants were having their dealings with the firm as such and not with the individual partners. Indisputably, under the law of partnership, there is no dissolution of the firm by the mere incoming or outgoing of the partners. A partner can retire with the consent of the other partners and a person can be introduced in the partnership by the consent of the other partners. The reconstituted firm can carry on its business in the same firm name till dissolution. It is not necessary to see as to how many partners were in the firm when the cause of action arose. It is only at the time of the institution of the suit that one has to find out if the firm is registered, who its partners are, and whether the names of all of them have been mentioned in the register of firms.

Petition under section 115, *Code of Civil Procedure, for revision of the order of the Court of Shrimati Bakhshish Kaur, P.C.S., Sub-Judge, 1st Class, Jullundur, dated 9th December,* 1966, *deciding preliminary issues against the defendants.*

M. L. Sethi and K S. Saini, Advocates, for the Petitioners.

K. C. Nayar, C. M. Nayar and V. P. Prasher, Advocates, for the Respondents.

ORDER

PANDIT, J.—M/s. Wazir Chand Vir Bhan, a registered partnership firm, brought a suit through one of its partners, Wazir Chand, for the recovery of Rs. 4,561.95 nP., against J. C. Gupta and three others on the allegations that the defendants purchased cloth worth the amount in dispute from the plaintiff firm on different dates. The suit was resisted by the defendants on a number of grounds. They also raised some preliminary objections to the effect that they had purchased cloth from Chawla Cloth House which was not a registered firm, and not from the plaintiff firm. That being so, the plaintiff firm had no *locus standi* to file the present suit.

On the pleadings of the parties, the following preliminary issues were framed :—

(1) Whether the plaintiff-firm has got *locus standi* to file the suit in the name of Wazir Chand-Vir Bhan ?

(2) What is the effect of non-registration under section 69 of the Indian Partnership Act, of the firm Chawla Cloth House ?

(3) Whether the suit is bad for misjoinder of parties and causes of action ?

The trial Judge came to the conclusion that the defendants had been purchasing cloth from the Chawla Cloth House, which was only a trade name of the plaintiff-firm. The firm was duly registered, but a trade name could not be registered. Consequently, the plaintiff firm had *locus standi* to file the present suit. If the Chawla Cloth House was not registered, it could not affect the right of the plaintiff firm to maintain the suit. Issue No. 3 was, however, not pressed by the defendants. Against this decision, the defendants have came here in revision under section 115 of the Code of Civil Procedure.

Learned counsel for the petitioner raised two contentions before me. Firstly, he submitted that the trial Judge was in error in holding that a registered firm could have a trade name. The Firm's name was the name under which the business of the partnership was carried out. Chawla Cloth House was the name of the firm, with whom the defendants were having their dealings and that was admittedly not registered. Plaintiff firm, with whom no business was transacted by the defendants, could not file the present suit.

Secondly, he agreed that if his first contention failed, then in that case when the defendants were having their dealings with the Chawla Cloth House, there were admittedly four partners in the plaintiff-firm. That was the time when the cause of action arose to the plaintiff-firm to file a suit. Instead the suit was instituted in March, 1966, when undoubtedly there were seven partners of the plaintiff firm. Counsel contended that a new firm had been constituted in 1966 and it could not file the present action. It was only those four partners, who formed the plaintiff-firm in 1963, who could bring a suit.

There is no manner of doubt that the plaintiff firm is registered. The name of the firm is M/s Wazir Chand Vir Bhan. This firm was doing cloth business in the name of M/s Chawla Cloth House, from whom the defendants were admittedly making purchases and the amount in dispute, according to the plaintiffs, was due from them on account of those purchases. The owner of the Chawla Cloth House was the plaintiff firm. To put it differently, the plaintiff-firm, as already mentioned above, was doing cloth business in the name of the Chawla Cloth House, which was their trade name. There is no provision in the Indian Partnership Act, which prohibits a registered firm from having a separate trade name. All the partners of the registered firm are undoubtedly doing their business in the firm name, i.e., M/s Wazir Chand Vir Bhan. The moment it is found as a fact that the plaintiff-firm was the owner of the Chawla Cloth House, which fact does not appear to have been denied by the defendants, it has to be held that it could bring the suit for the recovery of the amount due. The defendents were actually doing their business with the plaintiff-firm, which in its turn was doing cloth business in its trade name of M/s Chawla Cloth House. Under these circumstances, the defendants cannot be heard to say that the plaintiff firm has no right to bring a suit for the recovery of the amount due from them. It was not necessary that the 'Chawla Cloth House' should be registered as such. Learned Counsel for the petitioners did not point out any provision of the Indian Partnership Act, under which a trade name has to be registered. It is enough if the firm, which was trading in that name, is registered under the Indian Partnership Act. After due registration, it is competent to bring the suit. It is note-worthy that in the partnership deed dated 24th September, 1958, it was clearly mentioned that the business of the firm M/s Wazir Chand Vir Bhan would be carried on in the firm name or in the trade name of M/s Chawla Cloth House or in any other name.

There is another way of looking at this matter. Suppose X alone was the sole proprietor of Chawla Cloth House with which the defendants were doing their business. It cannot be denied that in that case, X alone could bring a suit for the recovery of the amount due to the Chawla Cloth House from the defendants. Now, if instead of X, X and Y were the proprietors of this Cloth House, it cannot be urged that X and Y could not bring a similar suit against the defendants. Extending this principle a little further, if instead of X and Y, a number of persons were the owners of the Chawla Cloth House, they could also bring a similar action against the defendants. If all these persons were 'to form a regular partnership and get the same registered under the Partnership Act, it cannot be denied that they could instead of suing in their own individual names, file a suit in the name of the partnership firm. A partnership firm is only a compendious name for certain persons who carry on business. Precisely, this very thing has happened in the instant case. A registered partnership firm named M/s Wazir Chand Vir Bhan has brought the suit against the defendants and in the very first paragraph of the plaint, it was stated that the the plaintiff firm was doing the cloth business in the name and style of M/s Chawla Cloth House and was the sole owner of this House. I see no reason why the plaintiff-firm was not competent to bring the suit.

There is, thus no merit in the first point raised by the learned counsel for the petitinners.

Coming to the second contention, that also has no substance. The requirement of section 69 of the Partnership Act is that not only should the firm be registered, but also that all the persons, who were partners of that firm on the date of the institution of the suit, should have been shown in the register of firms as partners of the firm. It is the common case of the parties that on the date of the institution of the suit, there were seven partners in the plaintiff-firm and all of them had been shown as such in the register of firms. It may be true that at the time when the defendants were purchasing the cloth, there were only four partners of this firm. Later on, the number increased and at the time when the suit was filed, the firm was constituted of seven partners. The fact, however, remains that the defendants were having their dealings with the firm as such and not with the individual partners. Indisputably, under the law of partnership, there is no dissolution of the firm by the mere incoming or out-going of the partners. A partner can retire with the consent of the other partners and a person can be introduced in the partnership by the consent of

the other partners. The reconstituted firm can carry on its business in the same firm name till dissolution (see in this connection Commissioner of Income-tax, West Bengal v. Messrs, A. W. Figgis & Co. and others (1). It is not necessary to see as to how many partners were in the firm when the cause of action arose. It is only at the time of the institution of the suit that one has to find out if the firm is registered, who its partners are, and whether the names of all of them have been mentioned in the register of firms.

The result is that this petition fails and is dismissed, but with no order as to costs.

(1) A.I.R. 1953 S.C. 455.

B. R. T.

APPELLATE CIVIL

Before Daya Krishan Mahajan and R. S. Narula, JJ.

THE STATE OF PUNJAB,—*Appellant*

versus

ANAND SARUP SINGH,—*Respondent*

Regular First Appeal No. 453 of 1966

May 8, 1967.

Limitation Act (IX of 1908)—Articles 120 and 131—Government servant removed from service in 1949 by a void order and superannuated in 1955—Suit for recovery of pension for six years prior to the date of suit by him—Whether within time.

Held, that the limitation will start running as soon as a void order is enforced, though a void order has no existence in law and need not be set aside. But if in consequence of a void order, a person is removed from office, he cannot sit at home, if he wants not to forego the benefits which the void order, after enforcement, deprives him of. In the instant case, the void order was enforced in 1949 and the plaintiff was thrown out of office. No salary was paid to him and no work was taken from him. He sat at home for nearly sixteen years and after having superannuated for nearly six years he thought of the present suit. In these circumstances, it is idle to suggest that the present suit is not barred by limitation merely because the plaintiff need not sue to set aside the order. He can sit at home and just ignore it; bu if he wants any assistance of the Court by a suit, he has to come to Court within limitation, prescribed for a suit according to the nature of the relief claimed. Unless it is declared that the plaintiff continued to be in service in spite of the order of dismissal, the reliefs, which the plaintiff claims, will not accrue to him. The Court can only grant him the relief if it holds that the plaintiff continued in service. By merely ignoring the