

# LIMITED LIABILITY PARTNERSHIP (LLP) CAN FORM A PARTNERSHIP FIRM WITH AN INDIVIDUAL OR OTHER PERSONS: KERALA HIGH COURT.

[NANDINI JAISWAL]

[BALLB]

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The High Court of Kerala held that a Limited Liability Partnership (LLP) can form a partnership with an individual or other persons.

## WHAT WAS THE CASE?

Name of the case:

### **Jayamma Xavier V. Registrar of Firms [WP(C)No.25741 OF 2020]**

In this case, a partnership deed was executed between an individual and an LLP. Registrar of Firms refused registration of the partnership firm on the ground that a LLP cannot be a partner of a firm. This was challenged before the High Court contending that the LLP is liable to be treated as a person and there cannot be any objection for registering a partnership with an LLP with a person.

The Registrar of Firms contended that **Section 25, 26 and 49** of the *Indian Partnership Act, 1932* makes the partners to be jointly and severally liable with all the other partners and also severally liable for the acts of the firm, of which such person is a partner.

Under **Section 28** of the *Limited Liability Partnership Act, 2008* the provisions regarding the liability of the partnership firm is restricted to the contents to the LLP agreement i.e., under the LLP Act, the liability of the partner is restricted only to the extent provided in the agreement; such a provision runs contrary to Section 25 and 49 of the Indian Partnership Act, Registrar stated.

**JUSTICE PV ASHA OBSERVED** “The liability of partners of LLP and liability of the LLP as a partner under the Partnership Act would be different. The liability of partners in an LLP cannot have any relevance

when the LLP itself becomes a partner, when it would be bound by the provisions in the Partnership Act. The liability of the LLP would be as in the case a company which joins a firm after entering into a partnership.”

**HELD:**

In this case the partnership deed was executed between an individual and an LLP which is a body corporate having a legal entity and coming within the definition of a person. The individual liability of the partners of LLP would not be relevant when the LLP itself would have liability independent of the liability of the partners. Therefore, the difference in the provisions under the Partnership Act relating to liability of the firm or the individual partners would not stand in the way of constitution of a partnership with an LLP. Hence I find that LLP cannot have a disqualification from entering into a partnership with an individual or other persons.

The Court also directed the registrar to reconsider the request for registration within a period of one month.

