

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8715 OF 2022

M/s Magic Properties Pvt. Ltd & Ors ... Petitioners

V/s.

Rahul Ramesh Modi & Ors ... Respondents

WITH

WRIT PETITION NO.8716 OF 2022

M/s Magic Properties Pvt. Ltd & Ors ... Petitioners

V/s.

Saroj Shriram Gupta & Ors ... Respondents

WITH

WRIT PETITION NO.8712 OF 2022

M/s Magic Properties Pvt. Ltd & Ors ... Petitioners

V/s.

Utsav Shriram Gupta & Ors ... Respondents

WITH

WRIT PETITION NO.8651 OF 2022

M/s Magic Properties Pvt. Ltd & Ors ... Petitioners

V/s.

Rajeshwari Ramesh Modi & Ors ... Respondents

WITH

WRIT PETITION NO.8711 OF 2022

M/s Magic Properties Pvt. Ltd & Ors ... Petitioners

V/s.

Ketan Dhirajlal Barai & Ors ... Respondents

SHABNOOR
AYUB
PATHAN
Digitally signed by
SHABNOOR AYUB
PATHAN
Date: 2023.11.09
15:56:39 +0530

**WITH
WRIT PETITION NO.8916 OF 2022**

M/s Magic Properties Pvt. Ltd & Ors	... Petitioners
V/s.	
Ekta Ankit Agarwal & Ors	... Respondents

**WITH
WRIT PETITION NO.8717 OF 2022**

M/s Magic Properties Pvt. Ltd & Ors	... Petitioners
V/s.	
Rohit Ramesh Modi & Ors	... Respondents

**WITH
WRIT PETITION NO.12679 OF 2022**

M/s Magic Properties Pvt. Ltd & Ors	... Petitioners
V/s.	
Ramesh Kedarmal Modi & Ors	... Respondents

**WITH
WRIT PETITION NO.12678 OF 2022**

M/s Magic Properties Pvt. Ltd & Ors	... Petitioners
V/s.	
Ankita Agarwal & Ors	... Respondents

Mr. Atul Damale, Sr. Advocate a/w Ms. Angeline Rodrigues a/w Ms. Payal Vardhan & Akanksha Kadam i/by Ms. Kranti S. Anand, for Peititoners.

Mrs. Suananda Kumbhat a/w Mr. Kunal Kumbhat, for Respondent No.1.

Mr. C. D. Mali, AGP for State/Respondent.

Mr. Shriram Gupta, P. A. of Respondent No.1 in WP Nos.8916/2022, 8716/2022 & 8712/2022.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 7, 2023

P.C.:

1. Since common questions of law are involved in all the writ petitions and parties are the same, this common judgment disposes of all writ petitions.

2. Respondent No.1 filed commercial summary suits for claiming the amount as follows:

Writ Petition No.	Summary Suit No.	Notice & BOE dishonour date	Claim amount
12678 of 2022	28 of 2021	30/06/2020	43,70,363
8916 of 2022	24 of 2021	23/06/2020	23,57,633
8711 of 2022	26 of 2021	10/12/2020	44,37,857
8715 of 2022	16 of 2021	13/11/2020	31,84,346
8651 of 2022	18 of 2021	13/11/2020	51,65,598
12679 of 2022	30 of 2021	13/11/2020	75,10,534
8717 of 2022	31 of 2021	13/11/2020	11,87,839
8716 of 2022	23 of 2021	23/06/2020	56,75,784
8712 of 2022	22 of 2021	23/06/2020	24,49,755

3. According to respondent No.1 (plaintiff), defendant No.1 is a registered partnership firm of which defendant Nos.3 to 13 are the partners. Petitioners Nos.1 and 2 are defendants Nos. 5 and 8, and petitioners Nos.3 and 4 are defendants Nos.14 and 15 in the suit. According to him, various amounts, as mentioned below, were advanced to defendant No.1/firm. The loan amount and the date of disbursed of the loan as mentioned in the suit:

Writ Petition No.	Summary Suit No.	Date of loan disbursed	Loan amount
12678 of 2022	28 of 2021	29/03/2016	25,00,000
8916 of 2022	24 of 2021	09/02/2010-04/12/2012	13,50,000
8711 of 2022	26 of 2021	02/04/2014	25,00,000
8715 of 2022	16 of 2021	02/05/2014 & 09/02/2018	19,00,000
8651 of 2022	18 of 2021	17/10/2023 & 23/07/2015	30,00,000
12679 of 2022	30 of 2021	30/06/2014 & 13/07/2015 & 08/02/2018	31,00,000
8717 of 2022	31 of 2021	05/08/2014	7,00,000
8716 of 2022	23 of 2021	18/01/2010 & 04/12/2012	32,50,000
8712 of 2022	22 of 2021	18/01/2012 & 04/12/2012	14,00,000

4. According to the plaintiff, defendant No.1 made part payment of the amounts as mentioned in the suit, which are as follows:

Writ Petition No.	Summary Suit No.	Part-payment
12678 of 2022	28 of 2021	3,75,000+ 25,000
8916 of 2022	24 of 2021	2,02,500 + 13,500
8711 of 2022	26 of 2021	(P+I)
8715 of 2022	16 of 2021	1,35,000 & 9,000
8651 of 2022	18 of 2021	4,50,000 + 30,000
12679 of 2022	30 of 2021	2,40,000 + 20,000
8717 of 2022	31 of 2021	1,05,000

8716 of 2022	23 of 2021	4,87,500 + 32,500
8712 of 2022	22 of 2021	2,10,000 + 14,000

5. Towards acknowledgement of balance liability, defendant No.1 issued various cheques, and the last cheques and dates of dishonoured cheques are as follows:

Writ Petition No.	Summary Suit No.	Date of Last Cheque	Amount	Date of dishonour
12678 of 2022	28 of 2021	30/09/2017	21,25,000	29/12/2017
8916 of 2022	24 of 2021	02/05/2017	11,47,500	27/07/2017
8711 of 2022	26 of 2021	31/01/2018	28,95,634	25/04/2018
8715 of 2022	16 of 2021	31/07/2020	7,56,000	20/10/2020
8651 of 2022	18 of 2021	31/07/2020	25,20,000	20/10/2020
12679 of 2022	30 of 2021	31/07/2020	13,44,000	20/10/2020
8717 of 2022	31 of 2021	31/07/2020	5,69,625	20/10/2020
8716 of 2022	23 of 2021	02/05/2017	29,12,333	27/07/2017
8712 of 2022	22 of 2021	02/05/2017	27,62,500	27/07/2017

6. According to the plaintiff, defendant No.1 issued the last bills of exchange amount as follows:

Writ Petition No.	Summary Suit No.	The last bills of exchange amount
12678 of 2022	28 of 2021	21,25,000
8916 of 2022	24 of 2021	2,50,000 & 5,00,000 & 1,00,000 & 5,00,000
8711 of 2022	26 of 2021	25,00,000
8715 of 2022	16 of 2021	9,00,000 & 10,00,000
8651 of 2022	18 of 2021	30,00,000
12679 of 2022	30 of 2021	6,00,000 & 5,00,000 & 5,00,000 & 15,00,000

8717 of 2022	31 of 2021	7,00,000 dated 05/08/2014
8716 of 2022	23 of 2021	2,50,000 & 3,50,000 & 1,50,000 & 5,00,000 & 10,00,000 & 7,50,000
8712 of 2022	22 of 2021	3,00,000 & 2,00,000 & 1,50,000 & 7,50,000

7. On refusal of defendant No.1, the plaintiff issued notices as follows:

Writ Petition No.	Summary Suit No.	Notice and BOE dishonour date
12678 of 2022	28 of 2021	30/06/2020
8916 of 2022	24 of 2021	23/06/2020
8711 of 2022	26 of 2021	10/12/2020
8715 of 2022	16 of 2021	13/11/2020
8651 of 2022	18 of 2021	13/11/2020
12679 of 2022	30 of 2021	13/11/2020
8717 of 2022	31 of 2021	13/11/2020
8716 of 2022	23 of 2021	23/06/2020
8712 of 2022	22 of 2021	23/06/2020

8. Despite the issuance of notices, defendant No.1 failed to pay the amount and, therefore, the original plaintiff has filed commercial summary suits referred to above.

9. The liability pleaded in the suit against the petitioner is that petitioners Nos.5 & 8, being partners of defendant No.1, and defendant Nos.14 & 15, being directors of defendant Nos.5 & 8, are liable for the liability of defendant No.1/partnership firm. The Trial Court granted conditional leave to the petitioner on deposit

of the amount as follows:

Writ Petition No.	Summary Suit No.	Date of conditional leave	Conditional leave amount
12678 of 2022	28 of 2021	05/07/2022	21,00,000
8916 of 2022	24 of 2021	05/05/2022	11,34,000
8711 of 2022	26 of 2021	06/05/2022	28,95,634
8715 of 2022	16 of 2021	04/05/2022	17,56,000
8651 of 2022	18 of 2021	06/05/2022	25,20,000
12679 of 2022	30 of 2021	06/05/2022	28,44,000
8717 of 2022	31 of 2021	06/05/2022	5,95,000
8716 of 2022	23 of 2021	05/05/2022	27,30,000
8712 of 2022	22 of 2021	04/05/2022	11,76,000

10. The petitioners have, therefore, filed present writ petitions challenging the order passed by the Trial Court granting conditional leave on deposit of the amount mentioned in the impugned order.

11. Learned Senior Advocate, on behalf of petitioners, submitted that the defendants had denied their status as partners of defendant No.1. However, the Trial Court construed such denial as an admission of the petitioners' status as partners of defendant No.1 and, therefore, the impugned order deserves to be quashed and set aside. It is submitted that petitioner Nos.1 & 2 had retired from defendant No.2 with effect from 1 April 2015. The extract of the register of forms indicates that such an entry was made on 25 April 2017. It is further submitted that defendants Nos.14 & 15 become directors of defendants Nos.5 & 8 in the year 2019, i.e.

after the date of transactions; hence, they are not liable.

12. Per contra, learned, Advocate for respondent No.1/original plaintiff submitted that petitioners Nos.1 & 2 were partners of defendant No.1 firm on the date of receipt of amount from plaintiff and thereafter, on the date of issuance of cheques towards an acknowledgement of liability. The retirement of petitioner Nos.1 & 2 having not been notified under Section 32 (3) of the Indian Partnership Act, 1932, such retirement is not binding on the third parties. Therefore, petitioner Nos.1 & 2 is liable for the amount paid to the partnership firm being partners of defendant No.1/firm.

13. On consideration of submissions made on behalf of both sides, in my opinion, no interference in the impugned order is called for.

14. In his writ petition, the petitioner has made a positive statement in paragraph 7 that petitioner Nos.1 & 2 have retired with effect from 1 April 2015. Such a statement amounts to an admission of the fact that the petitioners were partners of defendant No.1/firm on relevant dates. Therefore, unless the decision of retirement is published under Section 32 (3) of the Indian Partnership Act, 1932 and unless the creditors, retired partners agree to a waiver of the right to recover an existing partner, a retiring partner would continue to be liable for the liability of the partnership for the transaction when the retiring partners were partners of the partnership firm.

15. On perusal of the relevant dates mentioned above, in my

opinion, petitioners Nos.1 & 2 *prima facie* appear to be partners on the relevant dates and, therefore, are liable for partnership dues. It is the creditor's choice against whom he wants to proceed, i.e., against the partnership firm or the rest of the partners.

16. In so far as petitioner Nos.3 & 4 are concerned. *Prima facie*, they became directors of the partnership firm in 2019. Even otherwise, petitioners Nos.1 & 2 are the companies registered under the provisions of the Companies Act, 2013, and petitioners Nos.3 & 4 are the directors of such companies. It is, therefore, not proper to direct the directors of the company personally to pay the amount of liability of partnership dues of which the company is a partner.

17. Learned Advocate for the plaintiff, on instructions of the plaintiff who is present in the Court, states that defendants Nos.14 and 15 shall be deleted from the array of defendants in all the suits and Commercial Suit No.26 of 2021, Defendant Nos.14, 15 and 19 shall be deleted from the array of defendants. The statement is accepted.

18. In view of the aforesaid reasons, no interference in the impugned order is called for.

19. All the writ petitions are, therefore, dismissed. No costs.

(AMIT BORKAR, J.)