IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on : 31..10..2023
Judgement Pronounced on : 30..11..2023

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Civil Suit No.491 of 2019

Mr.Rajkumar,
S/o Mr.Harichand,
Proprietor,
Raj Yamaha,
No.6, T.Villa, M.G.R.Salai,
Palavakkam, Chennai 600 041.

..... Plaintiff

-Versus-

Raj Yamaha,
a Registered Partnership
Rep. By its Partners

[1] Mr.A.Jagadish
S/o Mr.Arunachalam

[2] Mrs.J.Loga,
W/o Mr.A.Jagadish,

Having one of the Office at
S-4, Besant Avenue,
Adayar, Chennai 600 020.

..... Defendant

Suit filed under Order VII, Rule 1 of the Madras High Court Original Side Rules r/w Order XXXVII, Rule 1 of CPC and Order IV of the Madras High Court Original Side Rules praying for a decree and judgment against the defendant for recovery of a sum of Rs.4,59,50,225/- [Rupees Four Crore Fifty Nine Lakh Fifty Thousand Two Hundred and Twenty Five only] together with interest at 24% per annum on the principal sum of Rs.4,18,00,000/- [Rupees Four Crore and Eighteen Lakh only] from the date of plaint to till date of realization and for the cost of the suits.

For Plaintiff	:	*Mr.K.V.Babu*
For Defendant	:	*K.Bijai Sundar for Mr.A.Balasingh Ramanujam*

JUDGEMENT

Suit is filed for recovery of a sum of Rs.4,59,50,225/- [Rupees Four Crore Fifty Nine Lakh Fifty Thousand Two Hundred and Twenty Five only] from the defendant partnership firm together with interest at 24% per annum on the principal sum of Rs.4,18,00,000/- [Rupees Four Crore and Eighteen Lakh only] from the date of plaint till date of realization and for costs of the suit.

2. The suit is based on dishonored cheques.

3. The case of the plaintiff in brief is as follows:- The plaintiff was originally the Proprietor of Raj Yamaha which was carrying on the business of dealing in Two-Wheelers viz., Yamaha model motorcycles and was an authorized dealer for sales and services of Yamaha Model motorcycles. The plaintiff was running his business at Adayar, Thoraipakkam, Palavakkam,

Velachery and Navalur in the City of Chennai. The plaintiff desired to retire from the business activities as his son has been settled in United States of America (USA). The partners of the defendant firm one A.Jagadish and Mrs.J.Loga approached the plaintiff with an intent to take over the entire business activities and for the purpose of convenient documentation, discussed and decided to enter into a Deed of Partnership whereby A.Jagadish and Mrs.Loga along with the plaintiff would constitute a partnership firm, so that the business activity shall be carried on further without any issue with the manufacturing company. Accordingly, a partnership deed was entered into on 17.07.2018 between the plaintiff-H.Rajkumar, and A.Jagadish & Mrs.J.Loga. Though the document styled as deed of partnership, the intent between the parties was that plaintiff shall handover the entire business activities to the defendant on certain consideration and upon receipt of the entire consideration, the plaintiff shall get relinquished from all the business activities besides other liabilities.

4. It is the further case of the plaintiff that for the purpose of settlement of amounts for selling away the entire business activities at 5 different showrooms as already mentioned, the plaintiff and the partners of the defendant firm have entered into an agreement of sale on 17.08.2018 whereby it was agreed that the plaintiff shall be settled a sum of Rs.4.25 crore by the

partners of the defendant firm as the purchase value. A sum of Rs.1.40 crore was paid as advance by way of RTGS transfer on 24.05.2018, 08.06.2018 and 15.06.2018 from Axis Bank to the plaintiff's Account. Further, another sum of Rs.1.25 crore was paid by way of bank transfer on 17.07.2018 and for the balance of Rs.1.60 cores, the partners of the defendant firm have issued 4 different cheques as under:-

(1) Cheque bearing No.672392 for a sum of Rs.50,00,000/- drawn on Vijaya Bank;

(ii) Cheque bearing No.000020 for a sum of Rs.50,00,000/- drawn on HDFC Bank;

(iii) Cheque bearing No.672393 for a sum of Rs.15,00,000/- drawn on Vijaya Bank; and

(iv) Cheque bearing No.000021 for a sum of Rs.45,00,000/- drawn on HDFC Bank.

It was also agreed between the parties that upon realization of the said amount of Rs.1.60 crore, the defendant shall become the absolute owner of the company by name Raj Yamaha, which includes the showrooms and service stations in all 5 locations referred to above along with the entire staff including the different models of two wheelers and its spares and accessories.

5. It is the further case of the plaintiff that during the relevant point of

time, the partners of the defendant firm approached the plaintiff for financial assistance for a sum of Rs.1.20 crore to meet out their urgent business needs. As the relationship was cordial between the plaintiff and the partners of the defendant firm during the relevant point in time and also believing the representation of the defendant in good faith, the plaintiff transferred a sum of Rs.1.20 crore by way of RTGS transfer to the defendant. Thereafter despite repeated requests for return of amount, besides requesting them to inform as to when the cheques for the value of Rs.1.60 crore could be presented in the plaintiff's account, the defendant was not forthcoming to honour their commitments and after several rounds of meetings and discussions, the amounts payable by the defendant to the plaintiff was reworked and the defendant finally agreed to settle the entire claim of the plaintiff at Rs.4.18 crore and have accordingly issued the following 8 cheques in favour of “Raj Yamaha”, Proprietary concern of the plaintiff.

(i) Cheque bearing No.000017 dated 10.10.2018 for a sum of Rs.75,00,000/- drawn on City Union Bank, Chennai.

(ii) Cheque bearing No.000018 dated 15.10.2018 for a sum of Rs.50,00,000/- drawn on City Union Bank, Chennai.

(iii) Cheque bearing No.000025 dated 27.10.2018 for a sum of Rs.50,00,000/- drawn on City Union Bank, Chennai.

(iv) Cheque bearing No.000026 dated 27.10.2018 for a sum of Rs.50,00,000/- drawn on City Union Bank, Chennai.

(v) Cheque bearing No.000027 dated 27.10.2018 for a sum of Rs.50,00,000/- drawn on City Union Bank, Chennai.

(vi) Cheque bearing No.000028 dated 27.10.2018 for a sum of Rs.50,00,000/- drawn on City Union Bank, Chennai.

(vii) Cheque bearing No.000029 dated 27.10.2018 for a sum of Rs.50,00,000/- drawn on City Union Bank, Chennai.

(viii) Cheque bearing No.000030 dated 27.10.2018 for a sum of Rs.43,00,000/- drawn on City Union Bank, Chennai.

After having issued the cheques, the partners of the defendant firm requested the plaintiff not to present the cheques for collection until they inform the plaintiff and believing the words of the partners of the defendant firm in good faith, the plaintiff waited patiently. Since the cheques were getting lapsed, the plaintiff had no other option except to present the cheques for collection. On presentation, the cheques were returned by the defendant's banker for the reason "funds insufficient" on 14.01.2019. The plaintiff issued a legal notice dated 13.02.2019 calling upon them to settle the entire liability of Rs.4.18 crore. As the legal notice was returned, the plaintiff issued another legal notice on 18.03.2019. That notice was served on the defendants. However, the defendants had not come forward to settle their liability of Rs.4.18 crore. Hence, the suit.

6. On the other hand, the defence of the defendant in brief is as follows:-

The defendant vehemently opposed the suit. Though the agreement of sale has been admitted, the defendant inter alia contended that they paid a sum of Rs.1.40 crore by way of RTGS transfer on 24.05.2018, 08.06.2018 and on 15.06.2018 through Axis Bank to the plaintiff. Further, on 17.08.2018, they paid further sum of Rs.1.25 crore by way of RTGS transfer to the plaintiff's bank account and on the very same day an unregistered partnership deed was signed by the plaintiff and the partners of the defendant firm in which as per the recital, the plaintiff was having 51% profit and loss and the other partners were having profit and loss of 35% and 14% respectively. The plaintiff contributed a sum of Rs.15.00 lakh towards capital and the other partners contributed Rs.25.00 lakh and Rs.10.00 lakh respectively towards their capital on the partnership firm and an unregistered partnership deed was also entered with the plaintiff and the other partners of the defendants on the very same day i.e., on 17.08.2018. As per clause 10 of the sale agreement, the plaintiff took full responsibility of informing India Yamaha Motors Private Limited and transferred all necessary documents including the dealership transfer in the name of Jagadish and Mrs.J.Loga. As per clause 7 of the sale agreement, partners Jagadish and Mrs.J.Loga have to take stock audit of all the vehicles and spares stocks and pay for them within a month time to the plaintiff separately apart from the mentioned amount.

7. It is the further contention of the defendant that though 4 cheques bearing Cheque No.672392 for Rs.50,00,000/-, Cheque No.672393 for Rs.15,00,0000/-, Cheque No.000020 for Rs.50,00,000/- and Cheque No.000021 for Rs.45,00,000/- were issued for the remaining sale consideration of Rs.1.60 crore, subsequently, the plaintiff collected cash for the cheque amount and returned all the original cheques to the defendants at the time of registration of partnership firm on 10.9.2018 and hence, sale price as agreed by the defendant was paid to the plaintiff. The plaintiff never allowed

the other partners to run the business and the plaintiff only continued to run the business as a proprietorship concern till the end of financial year citing the income tax problem. The other partners never objected the same and the plaintiff after receiving the entire money run the business in the name of the proprietorship concern only.

8. It is the further contention of the defendant that the plaintiff at the time of entering the sale agreement totally suppressed the fact in respect of the loan of Rs.13.25 crore which he had availed from Federal Bank as well as Deutsche Bank and he never mentioned anything in the sale agreement as well thereby the plaintiff played fraud upon the defendant by not disclosing the material fact.

9. It is the further contention of the defendant that the plaintiff after receiving the entire sale consideration of Rs.4.25 crore as per the sale agreement from the defendant, the plaintiff simply informed that Yamaha company is not allowing to sell the business and hence the plaintiff wanted to be a partner of the firm Raj Yamaha and accordingly partnership firm was registered on 19.09.2018 having principal place of business at No.4/74, OMR, Navalur, Chennai. On knowing that the defendant lodged a complaint against the plaintiff, the plaintiff finally came forward to settle the amount to the defendants by way of cheque drawn on HDFC Bank, Perungudi Branch vide

cheque No.000026 dated 26.01.2019 for Rs.4,32,00,000/- and assured that the cheque would be honoured on its presentation whereas on presentation for collection it was returned dishonored for want of funds. In this regard the defendant already filed a complaint against the plaintiff under Section 138 of the Negotiable Instruments Act which was taken cognizance in C.C.No.1030 of 2019 by the learned Judicial Magistrate at Tambaram and the same is pending. To counter blast the same, the plaintiff filed the present suit. The plaintiff who is also a partner of Raj Yamaha misused the signed blank cheques in the name of drawee as Raj Yamaha and instituted the present suit based on such dishonored cheques. The suit is not maintainable either in law or on facts and the same is liable to be dismissed with costs.

10. On the basis of the above pleadings, the following issues were framed for trial:-

(1) Whether the plaintiff is entitled for the relief of recovery of a sum of Rs.4,59,50,225/- together with interest at 24% per annum on the principal sum of Rs.4,18,00,000/- from the date of plaintiff till the date of realization;

(2) Whether the suit cheques issued by the defendants firm in favour of Raj Yamaha can be used

by the plaintiffs being one among the partner of the firm as against the partnership firm for enforceability of any debt or liability?

11. During trial, on the side of the plaintiff, who was said to be Proprietor of Raj Yamaha, the then proprietary concern, examined himself as P.W.1 and marked Ex.P.1 to Ex.P.17. On the other side, the defendant firm examined one of its partner viz., A.Jagadish as D.W.1 and marked Ex.D.1 to D.15.

12. This court has heard the arguments of the learned counsel on either side.

13. Though the partnership firm by name Raj Yamaha is the defendant, for the sake of convenience, A.Jagadish and Mrs.J.Loga who represented the firm will hereinafter be referred to as the defendants 1 and 2 respectively and the defendant partnership will be referred to as "the defendant firm".

14. The learned counsel appearing for the plaintiff would vehemently submit that execution of agreement for the sale of the entire proprietorship business run by the plaintiff in the name and style of Raj Yamaha to the defendants viz., A. Jagadish and Mrs.J.Loga is not in dispute. Having agreed to purchase the business for Rs.4.25 crore, the defendants paid part of sale consideration of Rs.2.65 crore in two installments by way of cheques, except

Rs.1.60 crore towards the sale consideration, which was said to be paid in cash, is also not in dispute. However, the said amount has not been paid. Besides for total settlement including stocks and shares, the defendants 1 and 2 have agreed to pay a sum of Rs.4.18 crore. That apart, the defendants have also received Rs.1.20 crore from the plaintiff for the purpose of their business which is evident from Ex.P.6. Hence, it is his contention that only towards payment of the said amount of Rs.4.18 core suit cheques were issued by the defendant. Issuance of the cheques were also not in dispute. Therefore, according to the learned counsel for the plaintiff, the contention of the defendants that the defendants were never involved in the affairs of the partnership firm cannot be countenanced. The documents filed on the side of the plaintiff and the admissions made by D.W.1 in his cross examination would vouchsafe the fact that after entering Ex.P.1-Deed of Partnership and Ex.P.2 Agreement of Sale it was the defendants who were running the dealership business. Ex.P.1 Partnership Deed was entered only for the name sake so as to enable the licensor to issue dealership business to the partnership firm which has also been clearly admitted by the defendants. Therefore, according to the learned counsel for the plaintiff, the contention of the defendants that they have repaid Rs.1.60 crore in cash to the plaintiff is nothing but an afterthought and it has not been substantiated by any evidence.

Therefore, once the issuance of cheque has been admitted and the sale of the business has also been established by the plaintiff, it is for the defendants to establish that consideration as agreed had been passed on. The defendants merely denied plea of the plaintiff in this regard and they have not established the payment of the said amount. Whereas the plaintiff has clearly brought in evidence the circumstances under which the entire transaction had taken place. Hence, the learned counsel for the plaintiff submitted that the plaintiff is entitled for a decree for recovery of money based on dishonored cheque with interest as prayed for in the suit.

15. The learned counsel for the defendants on the other hand vehemently contended that though Ex.P.1 Deed of Partnership and Ex.P.2 Agreement of Sale were executed on the same day, the plaintiff has continued as partner of the dealership business and was running the business. In other words, it is the contention of learned counsel for the defendants that the entire business was all along in the control of the plaintiff and for that purpose only, the plaintiff had issued cheques for Rs.4.32 crore in favour of the defendants which was dishonored.

16. The learned counsel for the defendants further contended that legal notice issued by the plaintiff would itself describe the plaintiff as partner. The

plaintiff has not explained in his legal notice why he had issued notice in the capacity of one of the Partners of the firm despite having been claimed to have sold the dealership business in favour of the defendants. The suit cheques were issued by the partnership firm in the name of the plaintiff Raj Yamaha. Hence, it is the contention of the learned counsel that when the plaintiff being a partner cannot sue against the other partners of the firm. It is his further contention that the documents produced by the plaintiff would clearly indicate that invoices were raised by India Yamaha Motors Private Limited, even after the partnership, the plaintiff continued the business. The payments for notices have gone from the firm's account. Hence, it is the contention of the learned counsel that the suit cheques were not supported by any consideration. In the mail sent by the plaintiff to the defendants, he had made a claim only to Rs.2.50 crore and whereas the present suit has been laid for recovery of more than Rs.4.00 cores which has not been explained. Further, according to the learned counsel for the defendants, no Income Tax Returns have been filed by the plaintiff to show that the defendants owe a sum of Rs.4.18 crore and there is absolutely no evidence on record to show that how the suit claim of Rs.4.18 crore has been arrived at by the plaintiff. Hence, according to the learned counsel for the defendants, the defendants have brought out various circumstances which would make the plaintiff's case improbable and therefore, presumption available under Section 118 of the Negotiable Instruments Act, 1881 will not apply to the facts of the case. In support of his contention, the learned counsel relied upon few judgments of the Supreme Court as well as this court.

<u>Issue Nos.1 and 2:</u>

17. Indisputably the plaintiff was carrying on proprietary business dealing in Yamaha Model Two-Wheelers sales and service and was running show-rooms at five different locations in the City of Chennai viz., at Adayar, Thoraipakkam, Palavakkam, Velachery and Navalur. This fact has not been disputed by the defendants in their entire written statement.

18. It is the specific case of the plaintiff that he and his wife had decided to settle with his son in United State of America and therefore, they had decided to wind up the proprietary business which was run by the plaintiff and made an advertisement for the sale of the entire proprietorship business. On such advertisement, the defendants 1 & 2, who are at present the partners of Raj Yamaha, a Partnership Firm viz., viz., A. Jagadish and Mrs.J.Loga, had approached him for outright purchase of the entire business for a total sale consideration of Rs.4.25 crore. In this regard, an agreement was reduced into writing between the plaintiff and the defendants. The agreement of sale is Ex.P.2. This fact is also not in dispute.

19. It is the admitted case of the defendants that a sum of Rs.1.40 crore was paid by them on 24.05.2018, 08.06.2018 and 15.06.2018 through RTGS transfer from Axis Bank to the plaintiff's account towards part of sale consideration under Ex.P.2 Agreement of Sale. Subsequently, another sum of Rs.1.25 crore was paid by way of RTGS transfer on 17.08.2018. This fact is also not in dispute before this court. Thus, admittedly, for the balance sale consideration of Rs.1.60 crore, the defendants had issued the following four cheques (i) cheque bearing No.67 2392 for Rs.50.00 lakh drawn on Vijaya Bank; (ii) cheque bearing No.672393 for Rs.15.00 lakh drawn on Vijaya Bank; (iii) cheque bearing No.000020 for Rs.50.00 lakh drawn on HDFC Bank; and(iv) cheque bearing No.000021 for Rs.45.00 lakh drawn on HDFC Bank.

20. The aforementioned four cheques, which had been issued towards the remaining sale consideration of Rs.1.60 crore, were not admittedly encashed and it is the specific case of the defendants that Rs.1.60 crore payable towards balance sale consideration was paid to the plaintiff in cash and they got back the original cheques from the plaintiff.

21. It is relevant to note here that no plausible documentary evidence has been let in by the defendants to substantiate their stand that they had paid

such a huge sum of Rs.1.60 crore by way of cash to the plaintiff. All the transactions even prior to and after entering into agreement of sale were made only through bank. Such being the position, it is highly improbable for the defendants to contend that Rs.1.60 crore was paid in cash to the plaintiff. Therefore, the contention of the defendants that they had paid the balance sale consideration of Rs.1.60 crore to the plaintiff by way of cash cannot be countenanced in the absence of any material whatsoever to substantiate such contention.

22. On the other hand, a careful examination of Ex.P.1-Deed of Partnership and Ex.P.2-Agreement of Sale, which were admitted on either side makes it clear that though stamp papers were purchased on the same day and both the deeds were entered into between the parties on the same day, Ex.P.1 Deed of Partnership came into existence between the plaintiff and the defendants only for the purpose of continuing the business by the defendants with India Yamaha Motors Private Limited. The very recitals in Ex.P.1-Deed of Partnership that a separate bank account would be opened in the name of the firm and such account would be operated on behalf of the firm by the defendants 1 & 2 who are the partners of the firm would make the intent of the parties very clear that the plaintiff had no access with the partnership business taken over by the defendants 1 and 2. Though it has been stated in

the contract that the plaintiff -Raj Kumar was having 51% of profit and loss in the business, the intent of the parties could be gathered considering not only the agreement of sale, but also from the other activities about which reference would be made at the appropriate place in the latter part of this judgement.

23. If really the plaintiff had retained 51% of shares as indicated under Ex.P.1-Deed of Partnership, there was no necessity for the plaintiff to hand over the entire financial transaction to the partners of the firm, viz., the defendants 1 and 2 herein. Further, the admission of the 1st defendant (D.W.1) during cross-examination to a suggestion made under Question No.251 that the very purpose of execution of Ex.P.1-Deed of Partnership was to transfer the entire business as a going concern to the defendants' partnership firm would make it clear that the business was not continued to be carried on by the plaintiff.

24. A careful perusal of Ex.P.2-Agreement of Sale coupled with the admission made by D.W.1, the 1st defendant regarding execution of Ex.P.2-Deed of Partnership would clearly indicate that on the same day, the parties viz., the plaintiff on one part and the defendants on the other part have entered a contract for the sale of entire proprietorship business of the plaintiff for a total sale consideration of Rs.4.25 crore. As already discussed, the fact that a sum of Rs.1.25 crore and another sum of Rs.1.40 crore were paid through

bank on three different dates towards part sale consideration are not in dispute. Similarly, the fact that for the remaining sale consideration of Rs.1.60 crore, the defendants had issued four cheques, which are now subject matter in the suit, is also not in dispute.

25. As per Clause 7 of the agreement, the defendants 1 and 2 had to take stock audit of all the vehicles and spares stocks and pay for them within a month's time to the plaintiff separately apart from the mentioned amount. The above said clause thus makes it categorically clear that apart from sale consideration, the plaintiff and the defendants had also agreed between themselves to arrive at an amount for the entire stock and spares, etc.

26. It is the specific contention of the plaintiff that after receipt of part of sale consideration, since there was a cordial relationship existed between himself and the defendants 1 and 2, when the defendants 1 and 2 made a request to him for financial assistance to the tune of Rs.1.20 crore for the further development of their business, he had advanced the said sum as loan. In order to establish that he had paid Rs.1.20 crore to the defendants for the development of their business, and the firm was only under the control of the defendants 1 & 2, and supplies were made to the defendants' partnership firm by India Yamaha Motors Private Limited, the plaintiff has let in cogent evidence and produced Ex.P.6-Original Bank Statement maintained by him

with HDFC bank for the period from 01.01.2018 to 31.12.2018. On a careful perusal of Ex.P.6 it could be seen that an amount to the tune of Rs.1.20 crore was transferred to India Yamaha Motors Private Limited towards supplies made on various occasions from the account maintained by the partnership firm besides transfer of monies to one Dhanam Foundations Private Limited. The evidence of D.W.1 would indicate the 1st defendant (D.W.1) is also one of the Directors of Dhanam Foundation Private Limited. Various money transactions found under Ex.P.6 were not disputed by the defendants.

27. The defence set up by the defendants is that despite Ex.P.2-Agreement of Sale that the plaintiff was continuing the business as a partner of the firm and the partnership business was in existence all along. In this regard it is relevant to note that if the defendants were not really having any control over the firm and it was only the plaintiff who had been continuing the business, as a partner of the partnership firm, there was no need for the defendants to obtain a separate dealer code and GST registration. The specific admission made by D.W.1, the 1st defendant during cross examination makes it clear that 1st defendant was dealing with India Yamaha Motors Private Limited and that all the transactions in respect of transfer of amounts to India Yamaha Motors Private Limited were made only through bank transactions. D.W.1, the 1st defendant has also admitted that India Yamaha Motors Private

Limited is that of their manufacturer. When a specific question was put to D.W.1 about certain entries found in Ex.P.6 which has been filed on behalf of the plaintiff to prove the retransfer of amount to the tune of Rs.1.20 crore to the defendants, that payment of Rs.1.20 crore was made to India Yamaha Motors Private Limited only at their instance, the 1st defendant (D.W.1) has not denied the suggestion but had conveniently chosen to give an evasive answer that he did not know about those transactions. He, however, admitted that he had obtained a separate dealer code and GST registration for the purpose of operation of their partnership business. Ex.P.16 has been specifically admitted by D.W.1. D.W.1 admitted during cross examination that until new GST registration and dealer code are obtained separately in the name of partnership firm, old dealer code in the name of the plaintiff Raj Kumar was used for certain period. When a specific question was put to D.W.1, the 1st defendant with regard to payment of Rs.1.20 crore paid back to them by the plaintiff as loan for the development of their business, D.W.1, the 1st defendant had stated that he did not know about those transactions. The verbatim of Question Nos.38 & 39 and the answers given to them by D.W.1 are reproduced hereunder:

> “Question No.38: Witness is shown Ex.P.6 bank statement – Out of the said sum of Rs.2.65

crore paid by you as advance, a sum of Rs.1.20 crore was transferred back by the plaintiff at your instance as per Ex.P.6 bank statement?

A: I do not know about these transactions.

Question No.39: What was the total amount that was agreed to be paid by you to the plaintiff for the sale of the business?

A: Rs.4.25 crore."

Earlier when it was suggested to D.W.1, the 1st defendant under Question No.37 that, was the plaintiff right in saying that a sum of Rs.2.65 crore was paid by you originally when you wanted to take over the entire business, he replied in affirmative in sense that he paid the said amount from his personal account to take over the entire business. Though he claimed to have paid Rs.4.25 crore, except for payment of Rs.2.65 crore which has been admittedly paid under the agreement of sale, admittedly, no material evidence what soever has been produced by the defendants to substantiate their contention that they had paid the balance sale consideration of Rs.1.60 crore in cash to the plaintiff.

28. On the other hand, Ex.P.6 which is not in dispute would clearly go to show that out of total sale consideration received from the defendants, a

sum of more than Rs.1.20 crore has been retransferred for the business purposes of the defendants viz., India Yamaha Motors Private Limited and Dhanam Foundation Private Limited in which the 1st defendant (DW1) was admittedly one of the Directors. D.W.1 has admitted that he has not adduced any evidence to show the cash payment of Rs.1.60 crore to the plaintiff. When a question was put to him under Question No.112 that what was the name under which the new partnership business with Yamaha India Motors Private Limited) was being carried on by him, he replied that the new business was being carried on by him in the name and style "Sky Motors". The very question to the effect that, after signing of Ex.P.1 Deed of Partnership and Ex.P.2 Agreement of Sale, until the new dealer code was alloted, earlier dealer code in the name of the proprietary concern was used by him for the business, the 1st defendant (D.W.1) had answered that he never involved in Yamaha business during that period. Interestingly when it was suggested to him under Question No.105 that though he claimed to have paid Rs.4.25 crore under the sale agreement it was not substantiated by him in evidence through documentary evidence before the court, he had stated that, except for payment of Rs.1.60 crore, he produced evidence for the remaining amount. Thus, this piece of evidence would only go to show that there was no evidence adduced on his side for payment of Rs.1.60 crore.

29. When it was suggested to D.W.1 under Question No.65 that he had obtained a separate GST Registration for partnership firm, he admitted that a separate GST Registration and PAN were obtained for the partnership firm. Certificate in Form-C has been filed under Ex.D.5. He has further admitted that principal place of business address was found to have mentioned in the GST Registration Certificate. He has also admitted that under Ex.P.6, a sum of Rs.15.00 lakh was transferred to Dhanam Foundations Private Limited wherein he was one of the Directors.

30. When it was suggested to D.W.1, the 1st defendant under Question No.79 that he was dealing with Yamaha India Motors Private Limited, he (D.W.1) admitted the suggestion. Similarly, he has also not denied that current business account in the name of India Yamaha Motors. He has also admitted that India Yamaha Motors Private Limited is the manufacturer of the defendant firm. When a specific suggestion was put to him regarding payment made under Ex.P.6 to India Yamaha Motors by the plaintiff was only at their instance, the 1st defendant (D.W.1) did not deny the suggestion, but, he has simply stated that he did not know about those transactions. To the very suggestion made to D.W.1 that after the execution of Ex.P.1 and Ex.P.2 since new dealer code was awaited, the earlier code in the name of the proprietary concern was used by the defendants for their business was not specifically

denied by D.W.1. He has also admitted to a suggestion made under Question No.131 that payments were made from his personal account to India Yamaha Motors Private Limited. However, when it was further put to D.W.1 that for what purpose these payments were given to India Yamaha Motors Private Limited from his personal account, he has stated that since he was good at handling of cash, his partner-Raj Kumar delivered cash to him and he made payments to India Yamaha Motors Private Limited on his behalf. Ex.D.13, original invoices would make it clear that they were raised for the sale of Yamaha model motor cycles by India Yamaha Motors Private Limited on 14.09.2018 and 28.10.2018 on M/s.Raj Yamaha (12930). Those original invoices (buyer copies) were produced by the defendants. If the defendants were not really involved in the business, how originals of supply invoices could have come into their hands. D.W.1 did not even deny the fact that though the invoices were raised in the old dealer code, the amounts had been paid from his personal account maintained with Axis Bank.

31. When a question was put to D.W.1 under Question No.277 that what was the nature of business that was being carried on by the partnership firm, he has stated that the firm was dealing in sales and service of multi brand two wheeler and second hand two-wheeler sales. He has also admitted Ex.D.11, a statement of account of his personal bank account which would

reflect various payments made in the name of India Yamaha Motors Private Limited during September 2018 to December, 2019. He, however, gave an explanation that he made all those transfers only on behalf of the plaintiff.

32. Considering the cumulative fact of admission by D.W.1, the 1st defendant, the nature of money transactions from the personal account of D.W.1, the payment of substantial consideration made by the defendants at the time of Ex.P.2 Agreement of Sale and only a sum of Rs.1.60 crore was originally due to be paid towards balance sale consideration, this court finds it hard to accept contention of the defendants that they never took control of the business. In fact, various transactions from his own account and the invoices raised by the manufacturer of two-wheelers on Raj Yamaha, Partnership firm, money transactions through bank and the evasive reply of D.W.1 during his cross examination that he did not know about those transactions would only probabilise the plaintiff's case that the defendants having agreed to purchase the entire proprietorship business including the show-rooms located at five different locations, agreed to pay a sum of Rs.4.18 crore and out of which a sum of Rs.2.65 crore was already paid under the agreement itself and a sum of Rs.1.60 crore alone was remaining to be paid.

33. Ex.P.3 (series) is the suit cheques (8 Nos.). The signatures on the cheques are also not disputed by D.W.1. It is a partnership firm. The cheques

had been issued in the name of Raj Yamaha which is admittedly a proprietary concern. The proprietary concern is like that of an individual. The evidence as discussed above would clearly indicate that after having obtained GST Registration and PAN from the respective departments, the firm has started carrying on its business with its separate code. Prior to obtaining such separate dealer code / GST Registration and PAN, the business was continued in the old GST which was standing in the name of the proprietary concern. The signatures on the suit cheques were not disputed. Ex.P.2 would itself indicate that all accounts shall be operated only by D.W.1 and the other partner, who is none other than his wife. When it was specifically suggested to D.W.1, the 1st defendant, during his cross examination under Question No.251, that Ex.P.1 was executed only for the namesake for the purpose of continuing the business with the manufacturer, he admitted the suggestion. Similarly, Ex.D.15 E-mail communication from the plaintiff would also clearly go to show that the value of the vehicle stocks and spares. This was not even denied by D.W.1 in cross examination under Question No.327. The signatures in the cheques were not disputed and the only contention of the defendants is that the cheques were misused by the plaintiff. Another contention of the defendants is after the defendants lodged police complaint against plaintiff, after several round of litigation, the plaintiff had arrived at a settlement with the defendants and had issued a cheque for Rs.4.32 crore towards repayment of amount assuring that he would ensure that the cheque would be honoured on its presentation for collection. However, on presentation of the cheque, it was dishonoured. In this regard, the evidence of the plaintiff would clearly explain the circumstances under which that cheque came into possession of the defendants and how it was misused. In this regard he had also lodged a complaint. Though it is the contention of the defendants that the plaintiff had issued a cheque dated 26.01.2019, the evidence of the plaintiff and the documentary evidence adduced before the court would clearly go to show that the plaintiff had, in fact, sent that cheque in a consignment and the consignment was delivered only on 11.03.2019. Ex.P.9 is the consignment slip with delivery note. Therefore, it is highly improbable to contend that the plaintiff had issued the cheque dated 26.01.2019. The very writing in the said cheque was also made by the defendant which was not disputed by D.W.1 in his cross examination.

34. Further if any such cheque was really issued by the plaintiff and on presentation of the same for collection, when the cheque was returned as unpaid / dishonored, the defendants are still entitled to such amount. It would be the normal conduct of a prudent man either to file a private complaint against the person who issued such a cheque or to make a claim in the suit as

counter claim. Admittedly no such counter claim was made by the defendant in the instant case. Further to show that the defendants had paid cash of Rs.1.60 core, absolutely, there is no material except the oral evidence of D.W.1 that he had paid such amount in cash. It is relevant to note that all the transactions of the defendants were made only by way of bank transfer. Therefore, it is hard to believe that cash payment of Rs.1.60 crore was made by the defendants to the plaintiff.

35. Considering all the above evidence, this court is of the view that the defence set up by the defendants that after Ex.P.2 Agreement of Sale came into existence, defendants never took possession of the show-rooms of the plaintiff is highly improbable and this court is unable to accept the contention of the defendants in this regard particularly, in the light of D.W.1's own admission and the demeanour of D.W.1 feigning ignorance to certain transactions made under Ex.P.6 and Ex.D.11. Ex.D.13 Email communication was also not replied by the defendants wherein the plaintiff had quantified the liability. It is the contention of the plaintiff that after reworking the defendants had agreed to pay a sum of Rs.4.18 crore which included the amount received by the defendants 1 and 2 and the unpaid amount of Rs.1.60 crore and also vehicle stocks and spares. According to the plaintiff, Rs.4.18 crore was arrived at as final settlement between himself and the defendants and in this

regard, cheques were issued by the defendants.

36. The only contention of the defendants that signed blank cheque leaves kept in the office had been misused by the plaintiff. Except making such claim, no other material was placed on the side of the defendants. Signing of the cheques by D.W.1 as a partner was also not disputed and the fact that figures in the disputed cheques written in the handwriting of the defendants were also not disputed. Such being the scenario, it is highly improbable on the part of the defendants to say that cheques had been misused by the plaintiff. Even in the written statement and in the evidence, there is no circumstance pleaded and proved under what circumstances eight signed cheques were left in the partnership firm. No person with ordinary prudence would do so. It is, therefore, highly improbable to contend that the 1st defendant had kept eight signed blank cheques in his business place and they were misused by the plaintiff. Thus, this court is of the view that after having made part payment and issued the suit cheques towards the balance of sale consideration, the defendants had taken over the control of the entire business. Thereafter, several money transactions were taken place during such partnership business from the personal account of the 1st defendant and he had also received a sum of Rs.1.20 crore from the plaintiff for the purchase of motor cycles for his dealership business and also for the other company,

All these proved facts would only probaiblize that after the payment of part sale consideration of Rs.2.65 crore, a sum of Rs.1.20 crore was taken back by the defendants as loan and the remaining sale consideration of Rs.1.60 crore was also not paid. Under clause 7 of Ex.P.2 Agreement of Sale it was specifically agreed between the parties to arrive at the value for stock of vehicles and spares also.

37. Considering all the above, when the eight cheques were issued to the plaintiff and the same were dishonoured, this court is of the view that the plaintiff has established his claim. The statutory presumption available under Section 118 of the Negotiable Instruments Act, 1881, will apply to the suit cheques. Though the defendants contended that there is no liability due under the cheque and that the plaintiff had misused the cheques, a perusal of the entire evidence and the documents adduced before the court, this court is of the firm view that no circumstances were brought on record to dislodge the legal presumption available to the negotiable instruments. The only contention of the defendants that legal notice was sent as a partner by the plaintiff and therefore, the plaintiff continued to be a partner. In this regard, this court has carefully perused Ex.P.4 legal notice issued on behalf of the plaintiff. A mere reference made under Ex.P.4 legal notice describing the plaintiff as a partner by itself shall not be a decisive factor. It is a mere

inadvertence in drafting by the counsel who had issued the legal notice and that will not wipe out the fact pleaded and established before this court.

38. Considering the above, this court is of the view that the plaintiff is certainly entitled to recover the suit amount due under the dishonoured cheques. The plaintiff has also established the fact that the plaintiff was a proprietary concern and the defendants are the partners of Raj Yamaha, a partnership firm and both are different entities and no connection with each other except for selling the property by the proprietary concern to the partnership firm.

39. Though the learned counsel for the defendants in support of his contention placed much reliance on the judgement in the cases of **Managing Director, Chennai Metropolitan Water Supply and Sewearage Board v. M.Umar FArooq Hussain [2006 (4) CTC 828]** ; **Thirumalai Iyengar v. Subba Raja [AIR 1962 Mad 219] ;** and **B.Mahadevan v. K.Velmurugan [2022 SCC OnLine Mad 3931],** upon going through the same, this court with great respect is of the view that the facts in those judgements cannot be made applicable to the facts of the present case.

40. From the facts narrated and discussed above and from the records, both oral and documentary, this court is of the view that the defence set up by

the defendants is nothing but a falsehood and taking advantage of Ex.P.1-Deed of Partnership which was executed for the name sake in order to continue the business with the manufacturer, the defendants had taken such a plea that the plaintiff has not handed over the business to them and continued to be one of the partners of the firm.

41. Accordingly, both the issues are answered in favour of the plaintiff and the plaintiff is entitled to a decree as prayed for with interest @ 12% p.a. and further interest @ 9% p.a. from the date of decree till date of realization in full and costs of the suit.

In the result, suit is decreed as prayed for with costs. The plaintiff is entitled to recover a sum of Rs.4,59,50,225/- (Rupees Four Crore Fifty Nine Lakh Fifty Thousand Two Hundred and Twenty-Five only) together with interest @ 12% p.a. on the principal sum of Rs.4,18,00,000/- (Rupees Four Crore and Eighteen Lakh only) from the date of plaint till date of decree and thereafter with interest @ 9% p.a. from the date of decree till date of realization in full.

Index : yes / no 30..11..2023
Neutral Citation : yes / no
kmk

List of witnesses examined on the side of the plaintiff:

P.W.1 - H.Rajkumar (Plaintiff)

List of Witnesses examined on the side of the defendants:

D.W.1 – A.Jagadish (One of the partner of Raj Yamaha)

List of documents marked on the side of the plaintiff:

Ex.P.1	17.07.2018	Photocopy of Unregistered Deed of Partnership entered into among the plaintiff and the defendants
Ex.P.2	17.08.2018	Photocopy of the Sale Agreement entered into between the plaintiff and the defendants
Ex.P.3	(series - 8 Nos.)	Dishonored cheques dated 10.10.2018, 15.10.2018 and 27.10.2018
Ex.P.4	13.02.2019	Office copy of the Legal Notice issued by the plaintiff through his Advocate to the defendants
Ex.P.5	18.03.2019	Office copy of the letter
Ex.P.6	-	Original Bank Statement with HDFC bank for the period from 01.01.2018 to 31.12.2018
Ex.P.7	19.11.2018	Photocopy of the Letter of Intent from Yamaha Motors
Ex.P.8	20.11.2018	Photocopy of the letter from Yamaha Motors
Ex.P.9	06.03.2019	Printout of FedEx shipping consignment along with delivery note
Ex.P.10	14.03.2019	Printout of Online Complaint registered by the plaintiff along with status of the complaint issued by the Tamil Nadu Police Department
Ex.P.11	-	Printout of E-mail correspondences between plaintiff and HDFC Bank regarding stop payment along with Certificate under Section 65B of Indian Evidence Act
Ex.P.12	18.03.2019	Photocopy of the letter of authorization issued in favour of Shakti Deeban to file police complaint on behalf of plaintiff against Jagadish

Ex.P.13	04.04.2019	Original CSR NO.235/2019 registered against Jagadish, one of the Partners of the defendant firm
Ex.P.14	04.04.2019	Photocopy of the proceedings under CSR No.235/2019
Ex.P.15	-	Printout of Status details in respect of CSR No.235/2019 issued by Tamil Nadu Police Department through e-services portal
Ex.P.16	13.12.2018	Photocopy of the letter from D.W.1-A.Jagadish, Partner, Raj Yamaha to the Branch Manager City Union Bank, West Tambaram in reply to query raised by the bank in respect of business transaction and liability of the plaintiff with the Federal Bank
Ex.P.17	12.04.2023	Notice sent by the counsel for the plaintiff to the counsel for the defendant calling upon to produce the statement relating to the Current Account maintained by the defendants with City Union Bank at Tambaram West vide A/c No.510909010101189

<u>List of documents marked on the side of the Defendant(s):</u>

Ex.D1	16.03.2022	Notice to produce the documents
Ex.D2	13.04.2022	Notice to produce the documents
Ex.D3	20.08.2018	Minutes of the Meeting of Yamaha Motors
Ex.D4	19.09.2018	Partnership Registration Certificate
Ex.D5	19.10.2018	Form-C Certificate in the name of Raj Yamaha
Ex.D6	-	Invoice raise in the name of Raj Yamaha
Ex.D7	21.12.2018	Letter given by the plaintiff to Federal Bank
Ex.D8	-	Printout of Statement of Bank Account
Ex.D9	14.03.2019	Photocopy of the cheque return memo
Ex.D10	26.01.2019	Photocopy of the Cheque drawn in the name of A.Jagadish
Ex.D11	-	Attested copy of the bank statement from Axis Bank, Tambaram Branch for the period from 01.09.2018 to

		31.03.2019
Ex.D12	-	Attested copy of the bank statement in respect of Account maintained in the name of Raj Yamaha with City Union Bank for the period from 11.09.2018 to 31.12.2018
Ex.D13	-	Original Tax Invoices and Dispatch Advice issued in the name of Raj Yamaha for the period from September, 2018 and October, 2018
Ex.D14	21.11.2018	Original Letter issued by Yamaha Company in favour of Raj Yamaha
Ex.D15	21.02.2018	Computer generated mail communication between the plaintiff and the defendant along with Certificate issued under Section 65B of the Indian Evidence Act

30..11..2023

N.SATHISH KUMAR.J.,

kmk

Pre Delivery Judgement
in
Civil Suit No.491 of 2019

30..11..2023