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A.S.No.590 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2026

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

A.S.No.590 of 2025

and

C.M.P.No.10833 of 2025

1.P.Suresh Kumar
2.P.Rajendra Kumar
3.P.Vimal Kumar
4.M/s.Balaji Automotive,
Represented by its Partners,
P.Suresh Kumar, P.Rajendra Kumar
and Vimal Kumar,
No.570, T.H. Road,
Old Washermenpet,
Chennai – 600 021.

... Appellants

Vs.

B.Sujatha

... Respondent

Prayer : Appeal filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 21.12.2024 passed in O.S.No.3477 of 2024 on the file of the VI Additional City Civil Court, Chennai.



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A.S.No.590 of 2025

For Appellants : Mr.B.Arvind Srevatsa

For Respondent : Mr.K.S.Jeyaganeshan

J U D G M E N T

(Judgment was delivered by V. LAKSHMINARAYANAN, J.)

The present Appeal challenges the judgment and decree in O.S.No.3477 of 2024, dated 21.12.2024. The appellants before us are the defendants in the suit.

2.For the sake of convenience, the parties shall be referred to as per their ranking in the suit.

3.The plaintiff presented O.S.No.3477 of 2024 as an under-chapter suit/summary suit invoking Order XXXVII of the Code of Civil Procedure. The case of the plaintiff is that the plaintiff was a partner in a firm, in the name and style of “M/s.Balaji Automotives”. She and one Kalyananarayanan joined the firm consisting of defendants 1 to 3. The plaintiff and Kalyananarayanan invested a sum of Rs.1,25,00,000/- in the business of the firm between July and August, 2020. On account of the

Page 2 of 11



differences of opinion between the plaintiff, Kalyananarayanan and one P.Rajendra Kumar, the 2nd defendant, the parties decided to part ways.

Accordingly, a Memorandum of Understanding (MoU) was entered into between the plaintiff, defendants and Kalyananarayanan. It was entered into on 18.05.2023. In the terms of the MoU, the defendants 1 to 4 were called upon to return 80% of the value invested by the plaintiff and Kalyananarayanan. The defendants agreed that the plaintiff would be paid Rs.40,00,000/- and Kalyananarayanan would be paid Rs.60,00,000/-. In due discharge of the MoU, the plaintiff alleged that the 2nd defendant had issued three cheques for Rs.16,00,000/-, Rs.12,00,000/- and Rs.12,00,000/- respectively drawn on three different dates, viz., 16.08.2023, 16.11.2023, 16.02.2024.

4. When the cheques were presented for encashment, they were returned with an endorsement "*kindly contact the drawer*". When the plaintiff contacted the defendants 1 to 3, they assured that they will clear the dues within two weeks. Unfortunately, they did not do so. The same was the situation with respect to the second cheque dated 16.11.2023 and the third cheque dated 16.02.2024. Being a commercial transaction, the plaintiff



presented a suit for recovery of money as an under-chapter suit/summary suit.

5.Summons were served on the defendants. They filed an application seeking leave to defend the suit.

6.In the leave to defend application filed by all the four defendants, the defendants accepted that a partnership firm was formed and on account of the huge loss suffered by the firm and due to the misunderstanding between the 2nd defendant and one Natarajan, the husband of the plaintiff, an agreement was entered into for retirement of the newly inducted partners. They accepted that Rs.60,00,000/- was agreed to be paid to Kalyananarayanan and a sum of Rs.5,00,000/- was agreed to be paid to Sujatha (plaintiff) as full and final settlement for exiting from the partnership firm.

7.They urged that the sum of Rs.5,00,000/- was paid to the plaintiff on 11.10.2023 and her husband has also acknowledged the receipt of the payment. They urged that, misusing the signed cheques and on the basis of



the unenforceable MoU, the present suit came to be presented. They further pleaded that the plaintiff has not given any details of the amount of Rs.50,00,000/- said to have been invested by her, nor any document had been presented for the purpose of substantiating this plea. They further urged that the cheques had been issued by Rajendra Kumar in his personal capacity and not in the capacity as a member of the partnership firm. They pleaded that the partnership firm is an unregistered one and hence, the suit is hit by Section 69 of the Partnership Act, 1932. In the light of the above defences, they urged that they have made out a case for grant of unconditional leave to defend the suit and hence, sought the application to be allowed. The application was received as I.A.No.1 of 2024 in O.S.No.3477 of 2024.

8.The plaintiff filed a counter and opposed the application. According to the counter, the MoU dated 18.05.2023, not being denied, points out to the number of cheques and the amounts with the dates on which the same have to be honoured. It was further stated that the cheques had been issued, for and on behalf of M/s.Balaji Automotives, and not in the personal capacity of the 2nd defendant. She urged so on account of the statement in the MoU



A.S.No.590 of 2025

itself. The plaintiff pleaded that she is entitled to present the suit based on the cheques, as they had been returned and not honoured. She also pointed out that the defendants have not made out a case for grant of leave and hence, sought for dismissal of the said application.

9.The learned trial Judge took the application for disposal and by an order dated 21.12.2024, dismissed the same. The ground of dismissal being that, since the MoU has not been specifically denied nor the circumstance under which it had been executed, and since all the parties have signed the MoU, the defendants cannot take contradictory pleas. It was further held that the cheques had been issued by Mr.Rajendra Kumar, for and on behalf of the partnership firm M/s.Balaji Automotives, and not in his personal capacity.

10.The defendants did not challenge the leave to defend application by way of a revision. They have chosen to challenge the consequential decree and judgment passed by the trial Court on 21.12.2024 in O.S.No.3477 of 2024, pursuant to the dismissal of the leave to defend application.



A.S.No.590 of 2025

WEB COPY

11. We have heard Mr.B.Arvind Srevatsa for the appellants/defendants and Mr.K.S.Jeyaganeshan for the respondent/plaintiff.

12. The only point that arises for consideration in this Appeal is, whether the defendants are entitled to leave to defend the suit ?

13. Insofar as the MoU is concerned, both the plaintiff as well as the defendants have agreed to the execution of the same. Yet, the finding of the learned Judge that the cheques had been given by the 2nd defendant in discharge of the amount under the MoU would require evidence. The same could not have been decided solely on the basis of an affidavit and counter affidavit. Furthermore, the plea that the partnership firm is unregistered and hence, the plaintiff, as a former partner, is not entitled to sue, should also necessarily have to be gone into by the Court. On that aspect, we do not find any discussion by the learned trial Judge. These two aspects, viz., the enforceability of the MoU, as well as whether the firm is entitled to be sued when it is unregistered, raise triable issues.



14.The Supreme Court, in *Mechelec Engineers & Manufacturers v.*

Basic Equipment Corporation [(1976) 4 SCC 687] as well as in *IDBI Trusteeship Services Limited v. Hubtown Limited [(2017) 1 SCC 568]*, has laid down the principles under which leave to defend can be granted. The Supreme Court pointed out that, if the defence raised by the defendants in the leave to defend application is entirely moonshine, it does not deserve the consideration of the Court. If the defence raised is sterling in character, the defendants would be entitled to unconditional leave. If the defence falls between the two different extremes, the Supreme Court held that the defendants would be entitled to leave on the basis of conditions.

15.In the present case, the issuance of the cheques by the 2nd defendant and the same being captured in the MoU, is not in dispute. Whether the MoU is enforceable and whether the cheques have been given by the 2nd defendant in his personal capacity or in discharge of the partnership liability, would require evidence. Yet, this shows that the plaintiff has been issued with certain cheques which have been dishonoured. That being the situation, the case of the defendants does not fall under the sterling character test laid down by the Supreme Court. Hence, we are of the



A.S.No.590 of 2025

view that, while setting aside the order dismissing the leave to defend application, the defendants must be put on terms in order to defend the suit.

16.In the light of the above discussion, the Appeal is allowed. The order passed by the learned trial Judge in I.A.No.1 of 2024 in O.S.No.3477 of 2024, dated 21.12.2024, is set aside and consequently, the decree and judgment passed by the learned trial Judge in O.S.No.3477 of 2024, dated 21.12.2024, is also set aside. The leave to defend application in I.A.No.1 of 2024 will stand allowed on condition that the defendants shall deposit a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) before the trial Court to the credit of O.S.No.3477 of 2024, within a period of three weeks from today. On making such deposit, the defendants shall file their written statement within a period of two weeks thereafter. The trial Court shall dispose of the suit within a period of three months therefrom. In the event of default in payment of the said amount, the defendants will not be entitled to the benefit of this order. The cost of this Appeal will follow the result of the suit. Connected miscellaneous petition is closed.

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Page 9 of 11

(N.S.K., J.) (V.L.N., J.)
18.02.2026



A.S.No.590 of 2025

Internet : Yes
Index : Yes / No
Speaking Order / Nonspeaking order
Neutral Citation : Yes

To

1.The VI Additional Judge,
City Civil Court,
Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.



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A.S.No.590 of 2025

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