

CNR : KLHC010423272025



1

OP(C) NO. 1203 OF 2025

2026:KER:65200

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

THURSDAY, THE 20TH DAY OF AUGUST 2026 / 29TH SRAVANA, 1948

OP(C) NO. 1203 OF 2025

**AGAINST THE ORDER DATED 04.02.2025 IN IA 3/2024 IN
CS NO.9 OF 2024 OF SUB COURT, TIRUR**

PETITIONER:

**ABDUL GAFOOR
AGED 36 YEARS
S/O.KUNHAHAMMADKUTTY,
MUKHAMVEETIL HOUSE,
A.R. NAGAR AMSOM, DESOM,
OLAKARA P.O., TIRURANGADI TALUK,
MALAPPURAM DISTRICT, PIN - 676306**

BY ADV SRI.K.RAKESH

RESPONDENT:

**MAHMMUTH AHAMMADH
AGED 71 YEARS
S/O.AANAPPARA AYAMUHAJI,
KUZHIYAMPATTIL HOUSE,
KOZHIKKODE AIRPORT P.O.,
KONDOTTY, MALAPPURAM DISTRICT, PIN - 673647**

BY ADVS.

CNR : KLHC010423272025



2

OP(C) NO. 1203 OF 2025

2026:KER:65200

**SRI.JAMSHEED HAFIZ
SMT.T.S.SREEKUTTY**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
20.08.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

CNR : KLHC010423272025



3

OP(C) NO. 1203 OF 2025

2026:KER:65200

EASWARAN S., J.

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O.P.(C) No. 1203 of 2025

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Dated this the 20th day of August, 2026

JUDGMENT

The defendant in a suit for recovery of money based on dishonor of a cheque has come up with the original petition complaining that his request for referring the dispute to the arbitrator was turned out by the trial court.

2. The respondent/plaintiff filed O.S. No.31 of 2021 before the Sub Court, Tirur for recovery of a sum of Rs.43,91,634/- together with interest at the rate of 12% per annum based on a cheque dated 01.04.2019, 10.06.2019, 31.07.2019, 31.08.2019, 31.10.2019 and 31.12.2019 issued by the defendant. When the cheques were presented, returned

CNR : KLHC010423272025



4

OP(C) NO. 1203 OF 2025

2026:KER:65200

with an endorsement 'funds insufficient'. Hence, notice was issued and since the defendant did not received the notice and returned 'unclaimed' and the suit was filed. The petitioner/defendant filed a written statement wherein the defendant had raised a plea that in the light of existence of an arbitration clause in the alleged agreement, suit cannot be entertained. The agreement in turn is referable to a partnership agreement entered between the parties which contains an arbitration clause. The written statement was filed in the month of July 2024 later in September 2024, the application under Section 8 was filed seeking an order of reference under Section 8 of the Arbitration and Conciliation Act, 1996, the same stood rejected on 04.02.2025 by the Commercial Court, Tirur. Impugning the said order, the present original petition is filed.

CNR : KLHC010423272025



5

OP(C) NO. 1203 OF 2025

2026:KER:65200

3. Heard Sri.K.Rakesh, learned Counsel for the petitioner and Sri.Jamsheed Hafiz, learned Counsel for the respondent.

4. Sri.K.Rakesh, the learned Counsel for the petitioner submitted that in the light of the decision of the Supreme Court in *Rashtriya Ispat Nigam Limited and Another v. M/s Verma Transport Company [2006 (7) SCC 275]*, the commercial court erred desecrate in rejecting an application under Section 8 of the Arbitration and Conciliation Act, 1996. It is further pointed out that the petitioner has not subjected himself to the jurisdiction of the commercial court and as raised as specific objection regarding maintainability of the suit quo, the presence of arbitration clause the agreement. Therefore, the irrespective of an application being filed under Section 8,

CNR : KLHC010423272025



OP(C) NO. 1203 OF 2025

2026:KER:65200

the court was bound to refer the parties to the arbitration agreement, because the partnership deed itself was filed by the plaintiff. Therefore, it is pointed out that the impugned order is liable to be interfered with.

5. Per contra, Sri.Jamsheed Hafiz, learned Counsel for the respondent/plaintiff pointed out that it is not possible to accept the plea of the defendant, since the suit is not based on a partnership agreement. He pointed out that the suit is one for recovery of money based on a dishonored cheque. He further pointed out that in the absence of any application under Section 8 of the Arbitration and Conciliation Act, 1996, before delivering the statement of defense, the commercial court was justified in rejecting the same. In support of his contention relied on a decision of the Supreme Court in ***Sukanya Holdings Pvt. Ltd. v. Jayesh***

CNR : KLHC010423272025



7

OP(C) NO. 1203 OF 2025

2026:KER:65200

H. Pandya and Another [2003 AIR(SC) 2252]. He further relied on the decision of the learned Single Bench of this Court in *K.Jayakumaran Nair v. Vertex Securities Ltd [2005 KHC 1203]*.

6. Considering the rival submissions made across the Bar and perused the impugned order.

7. The dispute in this case is whether an application filed belatedly after the delivery of the defense can be considered as proper application under Section 8 of the Arbitration and Conciliation Act, 1996. Before this Court consider answers the above question, it must note that the suit is not for enforcement of respective rights under a partnership agreement. It is indisputable that the petitioner was issued various cheques to the respondent/plaintiff and later a firm was reconstituted. Therefore, the crucial

CNR : KLHC010423272025



8

OP(C) NO. 1203 OF 2025

2026:KER:65200

question to be addressed by this Court is whether the cheque which has been issued by the petitioner constitute an independent contract or is intrinsically connected with Ext.P3 partnership deed.

8. True that the issuance of cheque is for settlement of the dispute between the parties in terms of the partnership deed. But then, once a cheque has been issued, can it be said that still there exist dispute between the parties under the partnership deed. It is inconceivable to hold that once a cheque is issued for settlement of the amounts due to the plaintiff, the dispute still continues in terms of the partnership deed.

9. Once a negotiable instrument is issued, the suit for recovery based on the above covered by the cheque constitute as a different contract altogether. Though it may

CNR : KLHC010423272025



OP(C) NO. 1203 OF 2025

2026:KER:65200

have a relationship with the dispute between the parties arising out of the partnership deed.

10. Coming to the arbitration clause in the agreement, this Court is unable to accept the plea of the petitioner that the subject matter of the dispute should go to the arbitration. The clause 35 of Ext.P3 agreement reads as under;

“ 35.1 All disputes and differences whatsoever which shall arise between the partners or between the partners and the successors of any deceased partner or between partner and LLP whatsoever touching the affairs of the LLP or the interpretation of this Agreement shall be referred to a sole arbitrator to be appointed by the disputing parties on mutual agreement, in default either party to the dispute may approach the appropriate High Court for appointment of a sole arbitrator for resolution of the dispute in accordance with the provision of the Arbitration and Conciliation Act, 1996 as amended from time to time.

35.2 The venue of the arbitration shall be the registered

CNR : KLHC010423272025



10

OP(C) NO. 1203 OF 2025

2026:KER:65200

office of the LLP or the local limits of such office.”

11. A reading of the clause shows that what is referable to the arbitration is disputes and differences whatsoever between the partners and the successors of any deceased partner or between partners and LLP whatsoever touching the affairs of the firm or the interpretation of the agreement. Once a cheque is issued, it becomes a concluded contract between the petitioner and the respondent thereby enabling the respondent to enforce the cheque either through criminal proceedings or move before the civil court for recovery.

12. Moreover, in a suit for recovery based on a dishonored cheque, the court is precluded from looking into the anterior transaction which led to the issuance of the cheque. In the peculiar facts, this Court is not persuaded to

CNR : KLHC010423272025



11

OP(C) NO. 1203 OF 2025

2026:KER:65200

hold that the irrespective of issuance of the cheque, there exist a dispute between the parties which is liable to be referred to the arbitration. The dispute if any between the parties has come to an end on issuance of the cheque and that the dishonor of the cheque constitutes a different cause of action enabling the plaintiff to institute the suit for recovery.

13. In view of the above discussion, this Court finds that even if the impugned order is liable to be sustained for other reasons since the dispute itself is not referable for arbitration. Therefore, this Court finds that the order impugned is liable to be sustained. Accordingly, the original petition fails and stand dismissed. The trial of the suit shall be done untrammelled by any observations made by this Court in the judgment and all defenses of the petitioner is

CNR : KLHC010423272025



12

OP(C) NO. 1203 OF 2025

2026:KER:65200

left open to be judged appropriately.

Sd/-

EASWARAN S.

JUDGE

LU

CNR : KLHC010423272025



13

OP(C) NO. 1203 OF 2025

2026:KER:65200

APPENDIX OF OP(C) NO. 1203 OF 2025

PETITIONER EXHIBITS :

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|-------------------|--|
| EXHIBIT P1 | A TRUE COPY OF THE PLAINT IN O.S.NO.31/2021 FILED BEFORE SUB COURT, TIRUR DATED, 12-3-2021 |
| EXHIBIT P2 | A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER IN COMMERCIAL SUIT NO.9/2024 BEFORE THE COMMERCIAL COURT, TIRUR DATED, 19-7-2024 |
| EXHIBIT P3 | A TRUE COPY OF THE LIMITED LIABILITY PARTNERSHIP AGREEMENT EXECUTED BY THE PLAINTIFF AND DEFENDANT ON 9-10-2015 |
| EXHIBIT P4 | A TRUE COPY OF THE AGREEMENT DATED, 20-2-2019 EXECUTED BY THE PLAINTIFF AND THE DEFENDANT AT THE TIME OF RECONSTITUTION OF THE PARTNERSHIP FIRM |
| EXHIBIT P5 | A TRUE COPY OF I.A.NO.3/2024 IN C.S.NO.9/2024 BEFORE THE COMMERCIAL COURT, TIRUR DATED, 12-7-2024 |
| EXHIBIT P6 | A TRUE COPY OF THE OBJECTION TO I.A.NO.3/2024 IN C.S.NO.9/2024 FILED BY THE RESPONDENT BEFORE THE COMMERCIAL COURT, TIRUR DATED, 2-12-2024 |
| EXHIBIT P7 | A TRUE COPY OF THE ORDER DATED, 4-2-2025 IN I.A.NO.3/2024 IN C.S.NO.9/2024 PASSED BY THE COMMERCIAL COURT, TIRUR |

// True Copy // PA To Judge