IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1222 of 2001

Date of hearing 26. 01. 2006
Date of Judgment . 01. 2006

Plaintiff: **Sung Hwan Chang, through Umer Hayat Sandhu, Advocate**

Defendant

Nos.1 & 2: **Syed Imran Haider and Mst. Yasmeen Perveen, through Mr. Imran Ahmed, Advocate**

Defendant

No. 3 **Shakeel Idrees Bhutta through Mr. Feroze Ahmed Shaikh, Advocate**

J U D G M E N T

MUNIB AHMED KHAN, J. **According to facts of the plaint the plaintiff entered into partnership business with the defendants Nos. 1 and 3 and a firm with the name of E.A.T. International was registered on 2.11.1998 with following sharing:-**

1. Mr. Sung Awan Chang, Plaintiff 60%
2. Mr. Syed Imran Hyder Zaidi, Defendant No.1 25%
3. Mr. Shakil Idrees Bhutta, Defendant No.3 15%

Besides other business the main business of the firm was to manufacture concrete blocks and pavers. Since the plaintiff, a Korean National, had contacts in South Korea, therefore, machinery for manufacturing these items to be imported from there. That the plaintiff invested huge amount and imported three plants from Korea. According to plaintiff he was induced into said business by defendants Nos.1 and 3 as the Government of Pakistan in 1999 opened big scheme for construction of low costs houses. Through a fax by defendants Nos.1 and 3 the plaintiff was asked to arrange for machinery from South Korea for the production to capture 40% to 45% in the upcoming business under scheme of

the government. The defendants Nos. 1 and 3 fully involved the plaintiff and in that way he imported machinery and equipment and thereafter went back to Korea. In his absence, the defendants Nos. 1 and 3 started project without any information to the plaintiff nor he was sent any progress or account of the firm business, therefore, plaintiff sent two faxes on 13th and 16th December 2000 to defendants Nos. 1 and 3 and asked them to behave properly and honestly else legal action has been taken against both of them. Through response, the defendant No.3 by his fax dated 14.3.2001 admitted starting of factory and took side with the defendant No.1. Meanwhile relations between defendants Nos.1 and 3 became tense on sharing the profit as well as allegation of dishonesty and in that way defendant No.3 through fax dated 31.05.2001 informed the plaintiff that defendant No.1 has become dishonest and wanted to transfer the factory in the name of his wife and has formed another company in the name of Anchor Block and thereby committed fraud and forgery. In such situation plaintiff came to Pakistan to sort out problems and to take legal action against defendants Nos.1 and 3. The plaintiff came to know that the defendants Nos.1 and 3 are playing double game with him otherwise they are together. The defendants Nos. 1 and 3 did not allow him to enter the factory. It has also been alleged that defendant No.1 made his wife, the defendant No.2, proprietor of the factory with the name Anchor Block and through her filed a suit for permanent injunction against the plaintiff and defendant No.3 on 13.7.2001 as the plaintiff tried to visit his factory on 7.7.2001 but he was not allowed. Anyhow, the plaintiff appeared in the Suit No.367 of 2001 filed by defendant No.2, wife of defendant No.1, and noticed that the defendant No.2 has taken plea that he is sole proprietor of whole factory along with machinery, equipment and other assets while her husband has some dispute with the plaintiff therefore plaintiff and defendant No.3 are trying forcibly to take possession of the factory in illegal manner and in that way injunction was sought. Actually the defendant No.2 was working agent of defendants Nos. 1 and 3 and all the three defendants were together to deprive the plaintiff from his factory by fraud and cheating and to involve him in unnecessary litigation. It has been stated by the plaintiff that initially the defendants Nos. 1 and 3 undertook to invest capital but they failed to provide while plaintiff brought machinery from South Korea by incurring US $ 1,16,025 equivalent to Pakistani Rs.77,73,675/- and consignment was imported by opening LC through Faisal Bank Ltd. in the name of American Express Bank Ltd. South Korea while other two consignments were imported without opening LC. The payment of Rs.4,56,010/- was made by Faisal Bank Ltd. to beneficiary bank and debit advice was sent to firm of the plaintiff. According to plaintiff there were three plants installed in the factory, their brochure and photographs were with the plaintiff. It has also been stated by the plaintiff that Anchor Block is brand name of product of the firm E.A.T.

International, therefore, it cannot be taken or treated as a name for a proprietor firm as has been done by defendant No.2. It shows that defendant No.1 had committed fraud and since defendant No.2 has been using machinery and factory of the plaintiff, therefore, she is liable to pay mesne profit at the rate of Rs.100,000/- per month and as the defendants are running factory making blocks and selling the same for the last one year therefore they are also liable to render account and as a rough estimate, profit share of the plaintiff comes to Rs.25,00,000/- and since the plaintiff is major share holder as such is entitled to possession of factory, account and payment of his share in the profit by the defendants. Besides above reliefs, the plaintiff has also sought permanent restraining order against the defendant from removing the machinery or creating third party interest or depriving the plaintiff in any way.

In reply to the Plaint, all the three Defendants have filed separate written Statements. Defendants Nos 1 and 2 being husband and wife have their stand common on some issues except the fact that Defendant No.2 has denied any meeting with the plaintiff or her involvement in the partnership concern and that she is running small factory of Anchor Block at her own and the plaintiff has no cause of action against her. She has denied any money contribution by the plaintiff in her business and since plaintiff was harassing, therefore, she lodged a Complaint with the police and had also filed Suit for Injunction against the plaintiff. She has also alleged that Defendant No.3 has joined the plaintiff.

Defendant No.1's written Statement has detailed reply, which has also been picked-up at some places by Defendant No.2. According to Defendant No.2 the plaintiff fraudulently entered into partnership business, namely E. A. T. International without investing a single penny and sharing in partnership is fake as the plaintiff and Defendant No.3 did not invest a penny, while Defendant No.1 spent all the amount in import of block manufacturing machines. He has also stated that two block machines, brought into Pakistan by some other Koreans, were purchased by him through Clearing Agent. He has submitted that the factory was established in the name of Anchor Block and there was no mutual agreement or understanding in respect of manufacturing of concrete block. The premises, where the factory is run, is exclusively owned by Defendant No.2, while the plaintiff and Defendant No.3 are blackmailing Defendants Nos. 1 and 2. Both the plaintiff and Defendant No.3 never made any investment or contribution in term of money, skill or physical assistance, therefore, Defendants No. 1 suffered huge loss and he reserves right to claim damages. He has disputed the receipts produced by the plaintiff towards purchase of machinery. He has also denied sending any fax and the Defendant No.3 as per advise of Plaintiff sent him fax from Karachi. He has also alleged that E. A. T. International has been dissolved as the partnership was to be terminated at Will and since the plaintiff, in collusion with the Defendant No.3, wanted to dispossess the Defendants Nos. 1 and 2, therefore, suit was filed through Defendant No.2, who is running the factory and producing Anchor Blocks. He has submitted that business of E.A.T. International was never started and Defendant No.3, an employee of Defendant No.2, was removed as he joined plaintiff to harass the Defendants Nos. 1 and 2. He has submitted that he sent a notice dated 26.06.2001 to Defendant No.3 with intention to settle the account between the plaintiff and Defendants Nos. 1 and 3. It is stated that Defendant No.2 is running a factory from her own fund as she was serving in Saudi Airlines for a period of seven years and has acquired premises in the name and style of Anchor

Block and that business has no concerned with E.A.T International, therefore, the plaintiff or Defendant No.3 have no right to visit the factory of Anchor Block. The defendant No.1 has further stated that claim of plaintiff that he purchased and brought concrete block making machines to Pakistan is incorrect, as machineries were purchased by him through other Koreans while one machine was imported through LC. The import document of the plaintiff has been disputed by him. He has further stated thatalthough payment made from E.A.T. International bank account but nothing was contributed by the plaintiff or Defendant No.3 in bank account. Defendant No.1 has been doing business with Defendant No.2 in her factory, as she is doing her exclusive business. Defendant No.1 has further stated that despite fact that the plaintiff did not pay any amount towards machinery, but even then the Defendant No.1 bore all expenses of the plaintiff's stay in Pakistan and his Air Ticket from Korea and since the plaintiff has not made investments in E. A. T International business, nor participated in any way, therefore, he is not entitled to any relief nor he has any concern with the concrete block business being run by his wife Defendant No.2.

Defendant No.3 has more or less admitted the contents of the plaintiff and has admitted that fax were sent to the plaintiff as per instructions of Defendant No.1 and they are based on correct information. He has denied plaintiff's allegation that Defendant No.3 joined fraudulent act of Defendants Nos. 1 and 2. By admitting the fact of the Plaint, he has verified that he was working as Director Marketing and the Defendants Nos. 1 and 2 are using machineries, sent by plaintiff from Korea under partnership. He has denied any collusion with Defendants Nos. 1 and 2, as alleged in the Plaint and stated that he is not in possession of the factory.

On the basis of the pleading of the parties, following issues were framed and evidence was recorded through Commission.

1. **What amounts, if any, were contributed by the plaintiff and Defendants Nos. 1 and 3 towards the partnership business of E. A. T. International?**
2. **What amounts, if any, were contributed by the plaintiff, the Defendant No.1 and the Defendant No.3 towards the importation /price of the three sets of machinery in question?**
3. **Whether the plaintiff has any right share and/or lien over/in the imported machinery and/or the business of Concrete Blocks and Pavers being run by the Defendants Nos. 1 and 2 by utilizing the machinery in question?**
4. **Since when the Defendants 1 and 2 are running the business of Concrete Blocks and Pavers by using the machinery in question?**
5. **Whether the Defendants Nos. 1 and 2 are liable to render the accounts of the business in question to the plaintiff?**
6. **What right, if any, does the Defendant No.3 has in respect of the business in question?**
7. **What amounts, if any, the Defendants and each of them are liable to pay to the plaintiff?**
8. **Whether any monetary loss has been caused to the Defendant No.1 on account of plaintiff, if so, in what amount?**

ISSUES NOS. 1 TO 3

During the trial, the Nazir was appointed to inspect the place and machinery and he has submitted his reports dated 25.01.2003, 27.09.2004 and 18.11.2004. Different Nazir's inspection reports were requested, as according to plaintiff

the machineries, imported by the plaintiff, were being used by Defendants Nos. 1 and 2 by removing them from the plot of E. A. T. International to another plot owned by Defendant No.2 as well as on the allegation that Defendants Nos.1 and 2 have violated the orders of the Court and have removed machinery from the place, earlier inspected by the Nazir, to another place. On the basis of contrary filing in the Nazir's report, contempt application has also been moved being CMA No 6268 of 2004. On this application Nazir was also required to submit report in compliance of the order dated 22.02.2005 as to whether any monthly statements were submitted by the Defendants Nos. 1 and 2 in terms of the order passed by the Court earlier.

Besides this application, two other pending applications being CMAs Nos. 5040 of 2004 and 8077 of 2004 are also to be decided at the time of final arguments, hence these applications are also to be considered.

CMA 8077 of 2004 is based on the claim of plaintiff towards his share in the factory and since the ownership of the factory itself was disputed, therefore, the decision in the matter will also determine that application as well. CMA No. 5040 of 2004 is with the prayer of appointment of Auditor to look after the business of E. A. T. International and similarly since the dispute of ownership of the factory was involved, therefore, this application is merged in the findings given in this judgment.

On all the above issues, the plaintiff has examined himself by way of affidavit-in-evidence and has corroborated factual position narrated in the Plaint. He has filed photocopy of registered Partnership Deed as Ex.P-5/2 and stated that the original of the same is with Defendant No. 1. Registration Certificate was filed as Ex.P-5/3 and has also filed receipts of price of machines, although they were objected to by the learned counsel for the plaintiff but have taken on record with the observation that objection to be considered at the time of arguments. Photocopy of fax has been filed as Ex.P-5/4, copies of E-Mails Ex. P-5/5 with its English translation, as the same is in Korean / English language, photocopy of E-Mail sent by Defendant No.3 to plaintiff as Ex.P-5/6 with its translation, photocopy of legal notice sent by Defendant No.3 to plaintiff as Ex.P-5/7, photocopy of Plaint in suit No. 367 of 2001 as Ex.P-5/9, copy of LC as Ex.P-5/10, Debit advice as Ex.P-5/11, photocopy of visiting card of Defendant No.3 as Director Marketing. Out of above, various documents were objected to by the Learned counsel for Defendants Nos. 1 and 2 but these documents have not been challenged or disputed.

On the other hand, Defendants Nos. 1 and 2 have been represented by Defendant No.1 who has filed affidavit-in-evidence. The Defendant No.3 has also led evidence and has stated that Partnership Deed was executed between the following partners:

1. **Sang Hwan Chang 60%**
2. **Syed Imran Haider Zaidi 25%**
3. **Shakil Idris Bhutta 15%**

The firm was registered on 02.11.1998 in the name of E. A. T. International with its office at Karachi. In pursuance to the Partnership Deed, all the three partners planned to establish factory for manufacturing Concrete Blocks and Pavers, as the plaintiff has contracts in South Korea wherefrom machine for such purpose was most suitable. They imported

three machines at the cost of US $1,16,025/- and that amount was spent by the plaintiff. The Defendant No.3 has admitted that business was started and machines imported by firm were put to production and he himself acted as representative of the firm to sell the Concrete Blocks and Pavers. He has also submitted that plant installed by Korean Engineer, namely, Jung Han Jin and Park Young Keun and all expenses amounting to US $ 37,660/- were paid by the plaintiff. Since the plaintiff was busy in other works, therefore, he left for South Korea and in his absence Defendant No. 1 planned to oust the plaintiff and Defendant No.3 and in that way he transferred the factory in the name of his wife by establishing another factory with the name of Anchor Block and thereby committed fraud and forgery and when the plaintiff came to know he came to Pakistan but Defendant NO.2 filed a suit No. 364 of 2001 for restraining him and Defendant No.3, from entering the factory. He stated that Defendant No.2 is wife of Defendant No.1 and has been planted as an owner of Anchor Block Factory, which is nothing but to dodge the plaintiff and to usurp his investment. The intention of filing the suit by Defendant No.1 was nothing but to harass the plaintiff, by involving him into litigation; making him run away from Pakistan; to deprive him his legal rights. He has submitted that under the Partnership Deed plaintiff was to import Korean machine to Pakistan and Defendant No.1 and 3 to arrange working capital but both Pakistani's partner failed and, therefore, the plaintiff was constrained to arrange for the same. The machines were imported through LC opened by the Bank and even the payment of Rs.456,010/- was made by Faisal Bank to beneficiary bank. He has also submitted that productions of machines were sold and that Anchor Block is itself is a brand name of the product of E. A. T. International, therefore, Defendants Nos.1 and 2 cannot take in hand production with branded name. The said name was introduced by the plaintiff but the Defendants Nos. 1 and 2 have been manufacturing block with the said name and are selling in the market for more than a year and minting huge profits and are liable to account for.

Defendants Nos. 1 and 2 have led evidence and Defendant No.1 has appeared for himself and as an attorney of his wife. In his evidence he has not denied partnership and joint account was opened in the names of Defendants Nos. 1 and 3. He has admitted that E.A.T. International imported three second hand block making machines from Korea and entire LC amount was paid from the joint account, but the plaintiff has not paid any amount in this respect. He has submitted LC document as Ex.D/6, Bill of entry as Ex.D/7, and other documents regarding import but they could not be exhibited on the objection raised by learned counsel for the plaintiff in a similar fashion as objections were raised by Learned counsel for Defendants Nos. 1 and 2 in the evidence of plaintiff. The Defendant No.1 has stated that he has imported machines and made required payment to customs and clearing agents and it is incorrect that the plaintiff purchased machines from Korea and the receipts produced by the plaintiff are false. According to him he invested huge amount in the business and got rented premises where plaintiff used to stay at Karachi. It is also stated by Defendants Nos. 1 and 2 that second machines were not in a proper condition for production and the plaintiff warned / stopped Defendants Nos. 1 and 2 not to start the production by using imported secondhand machines and plaintiff assured to start the production himself. Due to non-performance of obligation of the plaintiff in the joint business, the Defendant No.1 has to arrange local machinery and established separate business of concrete Block with the help of Defendant No.2 and invested huge amount in the said business but the said business continued for 2/3 months and went in loss hence it was discontinued. He has denied that Defendants Nos. 1 and 2 conducted business in the name of E. A. T. International by using imported machines. He has stated that he took premises on rent to keep three imported machines in safe proper custody and paid rent and salaries of the security guards. The plaintiff extended threats on the allegation that he has been defrauded and the Defendant No.3 has twisted the facts to save himself from the action of the plaintiff and has invited the plaintiff to file the suit. In para 6 of

affidavit-in-evidence he has stated that he has a lien on three imported machines lying in his custody in a rented premises and has a claim of Rs.15,32,758/-. The detailed statement of expenses in this respect are given in the said paragraph, wherein expenses on bill of entry, Freight, import charges, electricity bill, rent for a flat, maintenance charges, salary of servant, rent of factory premises, salary of security guard and air tickets of the plaintiff etc.

Before discussing the evidence, it is material to have a look on Nazir's report, as he was directed at different times by the Court to inspect the premises / machineries. In his first report dated 25.01.2003, carried out in terms of order dated 10.01.2003, the Nazir in para 5 of his Report has stated as follows:

> **"According to inventory of machinery lying at the site was prepared on the pointation of both the parties. However, the Defendant No.1 informed that the inventory of machinery prepared at Serial "A" to "C" has been imported and serial No. D-1 to J-8 belonged to Defendants Nos. 1 and 2 is local. As such Mr. Umar Hayat Sandhu Advocate for the plaintiff claims that all the three conveyors at Sr. No.1 to J-8 are imported from Korea and belonged to plaintiff. But the Deputy Nazir noted that there was no specification of words inscribed on machinery from which it may observe to be imported. The copy of inventory prepared at site is enclosed with this report".**

Alongwith the said report, Nazir has given details of machines/ equipment lying at the premises. In terms of the said order, the Defendant No.1 has also submitted monthly statement before the Nazir. On 07.09.2004, Nazir was again directed to visit the premises as according to plaintiff, machines were shifted to a new place. Nazir report dated 27.09.2004 in this respect was taken on record and it establishes that certain machineries were shifted from previous place of factory to a new place. In paragraph 4 of his report, the Nazir has stated as follows:

> **"However, Syed Imran Ahmed Defendant informed that said machines have been shifted from previous place Hub where the earlier inventory was prepared on 20.01.2003 and gradually he will shift the parts and remaining machines from Hub, such intimation has already been given to the Nazir in writing".**

In para 5 Nazir has observed that:

> **" .... From the material lying on the new premises it transpires that machines might have been operated but running / duration cannot be estimated .... ".**

In the third report dated 18.11.2004 carried out by the Nazir in terms of order dated 12. 10. 2004 on the allegation that certain machines have been shifted from Hub to Dunba Goath at Super Highway, as mentioned in CMA No.6268 of 2004. According to Nazir, the activity for production in the factory at Hub was found in working condition with some marks of oil and condition of machines. Nazir was of the opinion that probably there was working at the site. However, Nazir submitted that certain machineries, available at Hub site were shifted to Dunba Goath but Nazir has not pointed out as to what specific machines or machineries were shifted from one site to another site.

After perusing report of Nazir as well as pleadings and evidence, I have found that the Partnership Deed and percentage of share has not been disputed by all the three partners, rather, each and every party has relied on it. It is

evident that the plaintiff share has been kept at 60%, it means he has to play a major role and keeping in view that association with Defendants and professional back ground as an Engineer he was the fit person to arrange and export suitable machines from Korea to Pakistan. The Nazir has also found certain Korean machines lying at the site, therefore, it is not disputed that the machines were not imported but the dispute between both the parties is that he imported the machines from his own funds. According to Defendant No. 1, he spent all the amount toward import and paid all expenses. If this would have been the situation and Defendant No.1 himself has to arranged for all the machines as well as to establish business in Pakistan on his own premises, then there was no need to include the plaintiff and to give him 60% shares in the business. In terms of clause (9) of the Partnership Deed, two partners were to open bank account, therefore, two partners available in Pakistan i.e. Defendants Nos.1 and 3 opened Bank account in Pakistan but it has not been proved that Defendants deposited amount in that Bank Account and from that account money was spent on the import of machines. The Defendant No.1 admittedly spent money on rent of the premises and on other running misc expenses, which he is claiming lien on the machinery, which shows that machines are not owned by him. The 60% share of a non resident partner can be guessed towards import and ownership of machines until rebutted with strong evidence. The plea of the Defendant No.1 that his wife was moneyed lady and has invested huge amounts towards establishing a factory with the name of Anchor Block does not appeal to senesces; as had it been the position, the plaintiff would not have been involved in that respect. Although, the Defendant No.1 has taken the stand of investment but he failed to establish as to from where he has brought that amount, and what was the source and what are the supporting documents in that respect. The Defendants Nos. 1 and 2 have produced a document, namely, Memorandum, which was brought on record even subject to objection of learned counsel for the plaintiff.Thisdocument is in original, containing signatures of plaintiff, Defendants Nos. 1 and 2 and is dated 24.01.2000, alongwith the said document, expenses in respect to machinery has been given. The documents of import and its Freight Slip of PNSC shows that machines were imported in the name of E. A. T. International. The bill of entry produced by Defendants Nos. 1 and 2 also shows that the machines were imported in the name of E. A. T. International, therefore, it would be useless on the part of Defendants Nos. 1 and 2 that they paid all the amount from their own pocket and imported machines in the name of a firm, of which plaintiff has 60%, shares. There is nothing on the part of Defendant No. 1 to show that imported machines were of no use and remained lying idle as he has stated, apparently, as an alternate to his ownership, if he does not succeed in establishing that.

In cross-examination he has admitted that there are three sets of the machines at the factory but has stated that he paid foreign exchange. It has also been stated in cross-examination that he came to know in 1999 that imported machinery was not fit for production but he admitted that he did not inform any of his partners and then he admitted that plaintiff was not present. In affidavit-in-evidence and written Statement the stand of Defendant No.1 is not similar and it has been admitted by him in cross-examination that "it is correct that my written Statement and affidavit-in-evidence are at variance with each other". Although, he has stated that "he has purchased machine through clearing agent" but he failed to bring evidence in this respect or monetary source. In the written Statement Defendant No.1 has taken stand that "E.A.T. International has been dissolved" but has failed to file any document or to show reasons of dissolution. In written Statement and affidavit-in-evidence of Defendants Nos. 1 and 2 different stands have been taken, firstly, that the partnership has been dissolved and on the other hand, partnership has been admitted and even a memorandum dated 24.01.2000 was presented by Defendant No.1 in cross-examination of the plaintiff. The Defendant No.1 has also stated that "machines were imported by him" but on the other hand he has stated that "the machines

were imported through the funds of his wife" but even account of wife was not presented. At the same place the Defendant admitted that machines were sent by the plaintiff and even before the Nazir, on his inspection, they have only pointed out local machines to be in their ownership but to avoid adverse order and to dodge the plaintiff they allegedly shifted machines from Hub to Dnuba Goth but according to Defendant No.1, it was for security reason but has failed to justify as to what was need to shift idle and useless machines. The detail of machineries lying on the plots has been given in the Nazir's report but the Defendant No.1 has not shown any proof as to how these machineries and equipment came in his possession and from where he arranged the amount. The Defendant No.1 asserted towards certain amount paid by him towards sales tax, income tax and other taxes, which shows that he was maintaining all those accounts in respect to the imported machines then why he was not maintaining all account in respect to the amount generated for import of machine and all original documents of the machines allegedly imported by him from Korea and what was the need to give 60% share to the Korean as well as signing of the Memorandum, subsequent to the Partnership Deed, containing detail of expenses.

The stand taken by the plaintiff, which is being corroborated by Defendant No.3, that after Partnership Deed plaintiff played his role and imported second hand concrete block making machines from Korea in the name of E. A. T. International, a partnership firm but the Defendant No.1 firstly committed fraud with him with the intention to oust him from Partnership business and in that way introduced his wife as an owner of the factory and from the working of factory he purchased industrial plot in the name of his wife. The case, as set up by the plaintiff from the letter dated 25.09.1999, whereby Defendant No.1 has induced the plaintiff to involve him in a business and subsequent correspondence and documents all, in the name of E. A. T. International proved that the plaintiff contributed an amount of US $.1,16,025/- as claimed by him equivalent to Pakistani Rs.77,37,675/- in the name of Partnership Business with E. A. T. International while Defendant No. 3 was working partner and Defendant No.1 spent an amount of Rs.23,88,036/-, as mentioned in memorandum and submitted in cross-examination by the Defendant himself. Accordingly the plaintiff has lien over the imported machinery, Firm E. A. T. International and on its business i.e. Concrete Blocks and Pavers being run by Defendants Nos. 1 and 2 as machineries of firm being utilized by them.

ISSUES NOS. 4 TO 8

Since there are no certainty in respect to use of machinery as to whether it started working immediately after import or from some other date, but keeping in view the Nazir's report, I give my findings that they were using it from January 2003 and Defendants Nos. 1 and 2 are liable for account from that day, to the plaintiff as the Defendant No.3 has apparently not played any role in import or use of the machinery, who was a only selling agent. He has also complained that he was not kept with the business by Defendant No.1, therefore, I find that neither Defendant No.3 has invested any amount nor is liable to pay anything but Defendant No. 1 is entitled to an amount of Rs.23,88,036/- from E. A. T. International, as agreed in the memorandum dated 24.01.2000. It has also been observed that no monitory loss has been suffered by Defendant No.1 on account of plaintiff but it was the Defendant No.1 creating all the troubles, which brought the suit before this Court.

In view of the above circumstances, the suit of the plaintiff is decreed to the extent that E. A. T. International is partnership with sharing as given the Partnership Deed and was carrying on business and all three Korean machines as

noted by the Nazir are property of the firm and Defendant No.2 has no concern with the firm run at Mouch Goth at Plot No. 4, NAC-LSB-3/1 or at shifted place at Dumba Goth or its product Anchor Block. The plaintiff being major share holder of 60% is entitled to machines of firm and is entitled to run the firm in terms of Partnership Deed. The Defendant No. 1 to render accounts of the firm since 1998 for assessment of shares/income of each partner.

In respect of shifting of machine of the firm from one place to another place during restraining order, the Defendant No.2 has given explanation that machines were shifted for security reason. Since Nazir has not reported about missing of any machine etc. or its handing over to third party, therefore, explanation of the Defendant No.1 is Accepted and Contempt application is dismissed.

J U D G E