

## Ruling Regarding Not Specifying Ratio Of Profit Sharing In A Partnership

Ref: IEC.0015

Date:16-06-23

What do the Islamic scholars say concerning the following: I know a work. I buy scrap and extract silver from it. A friend of mine gave me two hundred thousand rupees and became my partner in this business. I also added an equal amount and bought scrap for extracting silver. As far profit sharing is concerned, we mutually decided that I would give him any amount from the profit as per my wish. Also, we did not discuss loss-sharing ratio. Is this sort of contract right from Shariah perspective?

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الجواب بعون الملك الوهاب اللهم هداية الحق والصواب

setting a ratio of profit in percentage for each partner in a contract of partnership is obligatory. If the ratio of profit is not decided in percentage, partnership will be Fasid (invalid). And in the above-mentioned case, since the profit share depends on the discretion of one party and is not determined by a percentage, this partnership is deemed Fasid (invalid), and it is obligatory (upon the partners) to terminate it. And if they want to make a new contract, they will have to specify the profit-sharing ratio in percentage. They are allowed to allocate a low percentage for the one who does not work or works but works less than the other. As far sharing a loss is concerned, a rule should always be in one's mind that in loss sharing, the ratio of invested capital will be considered even if the partners have already specified a different ratio because shariah has already

given a rule in this regard. If both parties have invested an equal amount, as is evident from the mentioned situation, and their business suffers a loss, the loss will be distributed upon them equally.

While mentioning the conditions of partnership, the book, *Badai-us-Sanay* says:

” (ومنها): أن يكون الربح معلوم القدر، فإن كان مجهولاً تفسد الشركة؛ لأن الربح هو المعقود عليه، وجهالته توجب فساد العقد كما في البيع والإجارة. (ومنها): أن يكون الربح جزءاً شائعاً في الجملة“

Translation: From the conditions of partnership is that the amount of profit is known. If it is unknown, the contract of partnership will be deemed invalid because profit itself is *Maqood Alah* (Subject of the contract) and lack of knowledge in regard to it is a reason which renders a contract *Fasid* (invalid) as is the case in sale and *Ijarah* (i.e. they are considered invalid if the payment is unknown). Also, from the conditions of partnership is that the profit must be as *Juz-e-Shai* (i.e. profit must be in every part of co-owned) wealth.

(*Badai-us-Sanay, Fasl-Fi-Bayani-Shraiti-Jwazi-Anwa-ishrikati*, vol. 06, Page 59, Darul Kutub Ilmia)

It has also been mentioned in *Fatawa Aalamgiri*:

” ان يكون الربح معلوم القدر فان كان مجهولاً، تفسد الشركة وان يكون الربح جزءاً شائعاً في الجملة“

Translation: The profit must be known. If it is unknown, the partnership will be *Fasid* (void). Also, it is a condition that profit must be a *Juz e shai* (i.e. profit must be in every part of the co-owned) wealth.

(*Fatawa Aalam-Giri, Vol 02, page 302, Beirut*)

It is stated in the book *Bahar-e-Shariat*: If two individuals enter in a partnership and both of them invest in it with the condition that only one individual will work but both will share the profit and the profit will be shared according to the ratio of investment or it will be equal or the one who works will receives a greater share, (in all these scenarios) the partnership will be permissible. And if (they decide that) the one who does not work will receive a greater share (i.e. a

share greater than the ratio of his invested amount), the partnership will be impermissible.

(Bahar-e-Shariat, Vol.2, Page 499, Maktabah-tul-Madinah)

While mentioning the rule regarding a loss in a partnership, the book Radd-ul-Muthar says:

“ولا خلاف ان اشتراط الوضیعة بخلاف قدر راس المال باطل”

Translation: there is no difference of opinion in this that specifying a ratio of loss-sharing other than the ratio of capital is void.

(Radd-ul-Muhtar with Durr-ul-Mukhtar, Vol. 6, Page 469, Quetta.)

It is written in Bahar e Shariat: When a loss incurs, it will be shared according to the ratio of capital and specifying any ratio other than this will be void. If both have invested an equal number of rupees but it was decided that if a loss incurs so and so will bear only a one third and the other will bear two third, this condition will be void and the loss will be borne equally.

(Bahar-e-Shariat, Vol.2, Page 491, Maktabah-tul-Madinah)

والله اعلم عز وجل ورسوله اعلم صلى الله تعالى عليه وآله وسلم

Written by

Abu Muhammad Mufti Ali Asghar Attari Madani

26Zeqadah-Til-Haram 1444 Hijri/ June 16, 2023

Translated by Maulana Abdul wajid madani