

What If Both Partners Work But Only One Invests?

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What do the scholars say about the following issue? “I have a friend with whom I want to start a restaurant business. However, he currently doesn’t have any money to invest. Therefore, I will provide all the investment, and we both will work equally and share the profit and loss equally. Is this partnership permissible?”

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According to Fiqhi principles, the partnership as described in the question is not valid. One way of partnership is this that both parties contribute capital, even if their contribution is unequal and the other way is this that one person provides capital but does not work, while the other works without contributing capital. Your scenario does not match any of them.

An Alternative from Shariah-perspective:

You should loan half of the investment amount to your friend. Then you make a partnership in restaurant business in such a way that you invest your remaining amount and your friend invests the loaned amount. You should also decide that from investment and profits sharing to working everything will be equal. In this case if any loss occurs without

any negligence from any of you, it will also be borne equally.

Note: By following this approach, this business will be your jointly owned business and both of you will be considered equal partners in the business. Moreover, you will also have the right to recover your loan from your partner every now and then but the recovery schedule must be set beforehand to avoid any resentment.

While mentioning a lawful way for making a partnership with an individual who does not have money to invest, Allama Alauddin Hiskafi (رحمہ اللہ) writes in Durr-e-Mukhtar:

”ان يقرضه المال الا درهما ثم يعقد شركة عنان بالدرهم، وبما اقرضه على ان يعمل، والربح بينهما---- فالقرض عليه“

Translation: An investor (رب المال) may loan all the capital, except for one dirham, to the Mudharib (the other partner). Then he should enter into a Shirkah-tul-Enan with one Dirham (from his side) and the loaned money (from partner's side) on the condition that both partners will work and share profits equally while the loan will remain an obligation on the partner.

(Durr-ul-Mukhtar Ma Radd-il-Muhtar, vol. 8, p. 498, Quetta, Summarized)

Mufti Muhammad Amjad Ali Azami (رحمہ اللہ) explains in Bahar-e-Shariat:

”مضاربت میں جو کچھ خسارہ ہوتا ہے وہ رب المال کا ہوتا ہے اگر یہ چاہے کہ خسارہ مضارب کو ہو، مال والے کو نہ ہو، اُس کی صورت یہ ہے کہ کل روپیہ مضارب کو بطور قرض دیدے اور ایک روپیہ بطور شرکت عنان دے یعنی اُس کی طرف سے وہ کل روپے جو اس نے قرض میں دیے اور اس کا ایک روپیہ اور شرکت اس طرح کی کہ کام دونوں

کریں گے اور نفع میں برابر کے شریک رہیں گے۔۔۔۔۔۔ جو کچھ مستقرض کو دیا ہے وہ قرض ہے اُس سے وصول کرے گا۔“

Translation: “In a Mudarabah partnership, all the losses are borne by the investor (Rab-ul-Mal). However, if the investor wishes to place the burden of losses on the working partner (mudarib), he should loan all the capital to the working partner and invest only one Rupee in Shirkat-ul-Enan. In this way, the partner will invest the entire loaned money while he will invest only one rupee with the condition that both will work and share the profits equally.” He further mentions, “Whatever amount he loans to the partner, the partner will have to pay back to him”

(Bahar-e-Shariat, vol. 3, p. 4, Maktaba-tul-Madina Karachi, Summarized)

Imam Ahle-Sunnat, Ash-Shah, Imam Ahmed Raza Khan (رحمه الله) writes in Fatawa Razawiyyah:

”شرکت ایک عقد ہے جس کا مقتضی دونوں شریکوں کا اصل و نفع دونوں میں اشتراک ہے۔“

Translation: A partnership is an agreement in which both partners share the capital and profits.”

(Fatawa Razawiyyah, vol. 17, p. 371, Raza Foundation Lahore)

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

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