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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 1383/2010

% *Judgment Delivered on: 08.07.2011*

APPRECIATE FINCAP PVT LTD Plaintiff
Through : Mr. Anil K. Kher, Sr. Adv. with Mr. D.R.
Bhatia, Mr. B.P. Lathwal, Mr. Kapil
Kher, Mr. Ankur Bansal and Mr.
Rajesh Pandit, Avs.

versus

HKK BUIDWELL PVT LTD Defendant
Through : None.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J. (ORAL)

I.A.NO.14331/2010.

1. This is an application filed by defendant under Order XXXVII Rule 3 (5) of the Code of Civil Procedure for leave to defend.
2. Plaintiff has filed the present suit under the provisions of Order XXXVII of CPC based on dishonor of nine cheques in the total sum of Rs.2,26,85,000/-. As per the plaint, the plaintiff is a Private Limited Company duly Registered with the Registrar of Companies, NCT of

Delhi & Haryana under the Companies Act, 1956, and is also a Non-Banking Finance Company duly registered with the Reserve Bank of India vide Registration No.B-14.01878 dated 17.8.2000. The suit has been filed by Sh. Malam Chand Jain, who is the authorised signatory and is competent to file the present suit. The defendant has been described as a Private Limited Company and is engaged in the business of real estate development, construction of housing projects and is also a consultant for execution of various development projects on turnkey basis.

3. Learned counsel for the plaintiff submits that around the month of October, 2006, the defendant approached the plaintiff and requested for a loan of Rs.2,26,85,000/- for the purposes of its business. The aforesaid amount was disbursed to the defendant by means of six cheques, which are detailed below:

S.No	Cheque No.	Date	Encashed on	Amount (Rs.)
1)	145433	10.10.2006	10.10.2006	42,00,000/-
2)	154334	10.10.2006	12.10.2006	80,60,000/-
3)	145435	11.10.2006	13.10.2006	82,95,000/-
4)	145436	13.10.2006	14.10.2006	6,30,000/-
			TOTAL	2,11,85,000/-

All the above cheques were drawn on the South Indian Bank Ltd. Greater Kailash-II, New Delhi and the following cheques were drawn on South Indian Bank Ltd. Greater Kailash-II, New Delhi:

S.No	Cheque No.	Date	Encashed on	Amount (Rs.)
1)	242537	10.04.2007	10.04.2007	5,00,000/-
2)	242538	24.04.2007	24.04.2007	10,00,000/-
			TOTAL :	15,00,000/-

4. Learned counsel for the plaintiff submits that defendant on receipt of the aforesaid six cheques in the total sum of Rs.2,26,85,000/- encashed the cheques and the receipt of the above said loan amount was confirmed and acknowledged by the defendant as reflected in its audited balance sheets for the financial years 2006-07, 2007-08 and 2008-09. Counsel further submits that the defendant in order to repay the loan amount handed over nine post-dated cheques drawn on Indian Overseas Bank, Rajiv Chowk Branch, D-28, Connaught Place, New Delhi, to the plaintiff. On presentation of four cheques bearing no.367009, 367010, 367011 and 367012 for payment to its banker on 25.10.2007, 27.10.2007, 29.10.2007 and 31.10.2007 respectively all the cheques were returned by the bankers with the endorsement “*Funds Insufficient*”. Dishonour of the cheques was brought to the notice of the defendant who assured the plaintiff that the remaining five cheques would be cleared on presentation. However, despite the assurances given by the defendant all the nine cheques were dishonoured. Details of the dishonoured cheques are as under:

S.No.	Cheque No.	Dated	Date of dishonour of cheque	Reason for dishonour	Amount (Rs.)
1.	367009	25.10.2007	26.10.07	Funds Insufficient	25,00,000/-
2.	367010	27.10.2007	29.10.07	Funds Insufficient	25,00,000/-
3.	367011	29.10.2007	29.10.07	Funds Insufficient	25,00,000/-
4.	367012	31.10.2007	31.10.07	Funds Insufficient	25,00,000/-
5.	367013	03.11.2007	05.11.07	Funds Insufficient	25,00,000/-

6.	367014	06.11.2007	06.11.07	Funds Insufficient	25,00,000/-
7.	367015	10.11.2007	12.11.07	Funds Insufficient	25,00,000/-
8.	367016	14.11.2007	14.11.07	Funds Insufficient	25,00,000/-
9.	367017	17.11.2007	19.11.07	Payment stopped	26,85,000/-
				Total	2,26,85,000/

10. Learned senior counsel for the plaintiff further contends that left with no option the plaintiff issued two legal notices dated 7.11.2007 and 22.11.2007 under Sections 138 and 142 of Negotiable Instruments Act, 1881 to the defendants. The defendant despite service and receipt of notices neither responded to the said notices nor cleared the outstanding loan amount. The plaintiff was forced to file two separate criminal complaints against the defendant and its Directors under Sections 138 and 142 of the Negotiable Instruments Act in the Court of Metropolitan Magistrate, Patiala House, New Delhi. The aforesaid two complaints are still pending adjudication. Counsel further submits that the plaintiff also issued a notice dated 23.11.2007 under Sections 433 and 434 of the Companies Act to the defendant. As no response was received, a winding up petition, being CP No.86/2008, was also filed by the plaintiff, which is also pending adjudication. Despite repeated requests and reminders, the defendants have failed to make this payments. Mr.Kher submits that the defendant has neglected to pay the loan amount despite categorical admission in its balance sheet. By the present suit, the plaintiff has also prayed for interest at the rate of 18 percent being a commercial transaction w.e.f. October, 2006, on the amount of

Rs.2,26,85,000/- and w.e.f. April, 2007, on the amount of Rs.15.00 lakhs.

11. Summons were issued to the defendant in the prescribed format. Defendant filed memo of appearance and thereafter the plaintiff filed an application for summons for judgment. The defendant has filed the present application for leave to defend.
12. Learned counsel for the defendant submits that present suit is not maintainable under the provisions of Order XXXVII of the Code of Civil Procedure as it does not satisfy the ingredients required for invoking the jurisdiction under the said provision. Counsel further submits that the present suit involves disputed questions of fact which would require extensive trial and are not capable of being adjudicated in summary proceedings under Order XXXVII of the Code of Civil Procedure. Counsel also submits that the promoters of the plaintiff, more particularly Mr. Harvinder Singh, has played fraud upon the defendant and he is now misusing the cheques, which were obtained by misrepresentation of facts by the plaintiff to the defendant. Counsel next submits that M/s DD group of companies through one of its group companies, namely, M/s DD Township Pvt. Ltd. was approached by Mr. Harvinder Singh. The said Mr. Harvinder Singh offered to transfer controlling shareholding and management in following seven companies in favour of M/s DD Township Pvt. Ltd. and its nominees:

- “i. Rangoli Infotech Part Ovet. Ltd.
- ii. Rangoli Software Pvt. Ltd.
- iii. Rangoli Projects Pvt. Ltd.
- iv. Krishna Murari Infrastructure & Developers Pvt. Ltd.
- v. Rising Infrastructure & Developers Pvt. LTd.

- vi. Bindas Estates Pvt. Ltd.
 - vii. HKK Buildwell Pvt. LTd. (defendant herein)
13. Learned counsel for the defendant submits that Mr. Harvinder Singh, for himself and on behalf of his family members and associates who were majority shareholders and in control of management of abovementioned seven companies, agreed to transfer all assets and management of the said seven companies, which primarily owned lands in the district of Sonapat, Haryana. The defendant believing the representation of Mr. Harvinder Singh, his family members and associates, that all lands owned by the said seven companies were free from all encumbrances and litigations agreed to purchase the shareholding and entire assets of the said seven companies.
14. Learned counsel for the defendant submits that after the shareholding and management got transferred in favour of M/s DD Township Pvt. Ltd. and its nominees in April, 2007, and new management took over the charge of the said seven companies, the following facts surfaced which came as a shock and surprise for M/s DD Township Pvt. Ltd. and its promoters:
- a) That seven suits were pending before the civil courts at Sonapat with regard to the above mentioned land in Sonapat which were to be claimed to be owned by Mr. Harvinder Singh.
 - b) That some of the above mentioned suits were filed by one, M/s New Hind Enterprises Pvt. Ltd., based on prior agreements to sell the said property to M/s New Hind Enterprises Pvt. Ltd.; in the other suits M/s Krishnamurari Infrastructure and Developers Pvt. Ltd. were impleaded as one of the defendants prior to the

transaction with M/s DD Township Pvt. Ltd, and the impleadment of M/s Krishnamurari Infrastructre and Developers Pvt. Ltd. was never brought to its knowledge.

- c) That M/s DD Township Pvt. Ltd. took the ownership of M/s Rangoli Project Pvt. Ltd. in the month of April 2007, and on 30.08.2008 received a notice by the Official Liquidator to submit a statement of affairs on 08.09.2008. Further a company petition titled as *Bal Kishan Gupta v. M/s Rangoli Project Pvt. Ltd.* C.P. No.170/2006, was instituted, in which an order for winding up was passed by this High Court.
- d) That apart from the above mentioned notice from the office of the Official Liquidator; the Defendant has received no other notice. In response to the said notice from the Official Liquidator, M/s DD Township Pvt. Ltd. filed application C.A.No. 970/2008 before the Company Judge and secured a restraint order on 11.09.2008, which was subject to deposit of Rs.25.00 Lakhs within 15 days and deposit of another sum of Rs.25.00 Lakhs within 8 weeks from the date of the order. It was important to note that the counsel for the earlier management kept appearing in the said winding up petition even after transfer of the management and shareholding of M/s Rangoli Project Pvt. Ltd.
- e) That subsequently M/s DD Township Pvt. Ltd. deposited Rs.50.00 Lakhs and entered into a settlement with the said Mr.Bal Kishan Gupta to pay remaining amount of Rs.1,00,00,000/- (One Crore

only). Subsequently the new management got a release deposited of Rs.50.00 Lakhs in favour of the Plaintiff in the said winding up petition and further paid a sum of Rs.45 Lakhs with interest of Rs.68,942/- as is noted in the order dated 10.02.2010 in CP No.170/2006. The aforesaid was the liability of Mr. Harvinder Singh and not of M/s DD Township Pvt. Ltd., and that M/s DD Township Pvt. Ltd. is entitled to recover the same from Mr.Harvinder Singh, and in turn from the plaintiff as the plaintiff is a company in ownership and control of Mr.Harvinder Singh.

15. Another ground, which is urged by learned counsel for the defendant for grant of unconditional leave, is that the cheques were given to the plaintiff company, which is another company under the ownership and control of Mr. Harvinder Singh, as sale consideration for the transfer of shareholding/assets of the said seven companies and it was not given for the purpose as mentioned by the counsel for the plaintiff. Counsel for the defendant further submits that the cheques handed over were post dated cheques as sale consideration for the transfer of shareholding / assets of seven companies mentioned above. Counsel for the defendant further submits that the land which was the subject matter of the transaction with D.D. Township Pvt. LTd., was under dispute and the cheques issued were, thus, without any consideration and not enforceable against the defendants. Counsel next submits that M/s DD Township Pvt. Ltd. and its promoters got cheques issued through one of the abovesaid seven companies after taking over the management and purchase of shareholding and assets of said seven companies. It is also submitted by counsel for the defendant that the total value of the land owned by

aforesaid seven companies was Rs.7,25,72,451/- (approximately) and at the time of purchasing of shareholding of said companies, said companies had liability towards its investors who had booked the plots in the township of Rs.5,15,12,793/-. It is submitted that defendant was given the impression that Mr. Harvinder Singh and his associates had decided to transfer shareholding and assets as they did not have expertise and means to carry on with the said project.

16. Learned counsel for the defendant submits that the alleged land given by the plaintiff to the defendant in the year 2006 is on the basis of a concocted story and sham transactions as promoters of both the companies were the same. It is denied by counsel for the defendant that defendant company borrowed from the plaintiff a sum of Rs.2,26,85,000/-. It is lastly contended that alleged cheques were without any consideration and therefore not valid in law. Counsel also disputes that legal notices were received by the defendant. On this ground the defendant seeks unconditional leave to defend.
17. Learned senior counsel for the plaintiff submits that the defence, sought to be raised by the defendant, is sham and moonshine. Counsel further submits that defendant has failed to raise any triable issue, which would entitle the defendant to unconditional leave. Counsel next submits that the defence is neither honest nor bona fide and it cannot be said that the defendant has been able to raise good defence, which would entitle the defendant to unconditional leave to defend.
18. Learned senior counsel for the plaintiff has relied upon *Mechelec Engineers and Manufacturers v. Basic Equipment Corporation*, reported at 1977 AIR (SC) 577, more particularly para 8, which is reproduced below:

8. In *Kiranmoyee Dassi Smt v. Dr J. Chatterjee*, (1945) 49 Cal WN 246, 253, Das, J., after a comprehensive review of authorities on the subject, stated the principles applicable to cases covered by Order 17 CPC in the form of the following propositions (at p. 253):

“(a) If the defendant satisfies the court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shews such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to the time or mode of trial but not as to payment into court or furnishing security.

(d) If the defendant has no defence or the defence set-up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise secured and give leave to the defendant on such

condition, and thereby show mercy to the defendant by enabling him to try to prove a defence.”

19. Learned senior counsel for the plaintiff has also relied upon *V.K. Enterprises And Another v. Shiva Steels*, reported at (2010) 9 Supreme Court Cases 256, more particularly paras 10 and 11, in support of his plea that the defendant has failed to place a single document on record to support the defence, sought to be raised, while reliance has been placed by the plaintiff on nine cheques issued by the defendant. Learned senior counsel has placed heavy reliance upon three legal notices, which were issued to the defendant, and submits that no reply has been received, thereby the defendant admitted its liability. Learned counsel has further relied upon copies of balance sheets, placed on record, for the financial years 2006-2007, 2007-2008 and 2008-2009, wherein the defendant has shown the plaintiff to be an unsecured creditor and the principle amount is mentioned in the balance sheets. Learned senior counsel for the plaintiff submits that having issued nine cheques to the plaintiff and having shown the name of the plaintiff as an unsecured creditor in the balance sheet would put the controversy between the parties at rest. It would be useful to reproduce paras 10 and 11 in the case of *V.K. Enterprises & Another* (supra):

10. Order 37 CPC has been included in the Code of Civil Procedure in order to allow a person, who has a clear and undisputed claim in respect of any monetary dues, to recover the dues quickly by a summary procedure instead of taking the long route of a regular suit. The courts have consistently held that if the affidavit filed by the defendant discloses a triable issue that is at least plausible, leave should be granted, but when the defence raised appears to be moonshine and sham, unconditional leave to defend cannot be granted.

11. What is required to be examined for grant of leave is whether the defence taken in the application under Order 37 Rule 3 CPC makes out a case, which if established, would be a plausible defence in a regular suit. In matters relating to dishonour of cheques, the aforesaid principle becomes more relevant as the cheques are issued normally for liquidation of dues which are admitted. In the instant case, the defence would have been plausible had it not been for the fact that the allegations relating to the interpolation of the cheque is without substance and the ledger accounts relating to the dues, clearly demonstrated that such dues had been settled between the parties. Moreover, the issuance of the cheque had never been disputed on behalf of the petitioner whose case was that the same had been given on account of security and not for presentation, but an attempt had been made to misuse the same by dishonest means.

20. Learned senior counsel for the plaintiff has also relied upon a Division Bench decision rendered in *Bank of India and Anr. v. Madura Coats Ltd.*, reported at 157 (2009) DLT 240 (DB), more particularly paras 18, 20 to 24:

18. It is settled law that in a summary suit, in order to entitle the defendants for leave to defend, it would be incumbent upon them to show that they have a substantial defence and triable issue to raise and their defence is not frivolous or vexatious. AIR 1988 Delhi 308(310).

20. It is also well settled law that at the stage of granting leave to defend, parties rely on affidavits in support of the rival contentions. Assertions and counter-assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and *prima facie* material available to show that the facts disclosed in the application filed by the applicant seeking leave to defend were either frivolous, untenable or most unreasonable. No

hard and fast rule or strait-jacket formula can be laid down for judging this question.

21. The Supreme Court in *Defiance Knitting Industries Pvt. Ltd. v. Jay Arts*, (2006) 8 SCC 25, reiterated the abovesaid position while holding that:

“While giving leave to defend in the suit the Court shall observe the following principles:

- ‘(a) If the Court is of the opinion that the case raises a triable issue then leave to defend should ordinarily be granted unconditionally. The question whether the defence raises a triable issue or not has to be ascertained by the Court for the pleadings before it and the affidavits of parties.
- (b) If the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious it may refuse leave to defend altogether.
- (c) In cases where the Court entertains a genuine doubt on the question as to whether the defence is genuine or sham or whether it raises a triable issue or not, the Court may impose conditions in granting leave to defend.’”

22. In *John Impex (P) Ltd. v. Surinder Singh and Others*, (2003) 9 SCC 176 it was held:

“The submission on behalf of the respondent is that the lease deed clearly confirms the title of the respondent. But this again is a matter to be considered at trial not at this stage *i.e.* leave to defend application. At this stage neither evidence is to be weighed nor looked into. The purpose of introducing a provision like leave to defend, is only to find out frivolous, uncontestable cases at the initial stage, not to eliminate other class of cases which require adjudication after contest. In other words if there be no conceivable contest possible the litigation has to be nipped in the bud.”

23. In *Raj Duggal v. Ramesh Kumar Ms. Prem Lata Bansal, Adv.*, AIR 1990 SC 2218, it was observed as follows:

“Leave is declined where the Court is of the opinion that the grant to leave would merely enable the defendant to prolong the litigation by raising untenable and frivolous defences. The test is to see whether the defence raises a real issue and not a sham one, in the sense that if the facts alleged by the defendant are established there would be a good or even a plausible defence on those facts. If the Court is satisfied about the leave it must be given. If there is a triable issue in the sense that there is a fair dispute to be tried as to the meaning of a document on which the claim is based or uncertainty as to the amount actually due or where the alleged facts are of such a nature as to entitle the defendant to interrogate the plaintiff or to cross examine his witnesses leave should not be denied. Where also, the defendant shows that even on a fair probability he has a *bona fide* defence, he ought to have leave. Summary judgments under order 37 should not be granted where serious conflict as to the matter of fact or where any difficulty on issues as to law arises. The Court should not reject the defence of the defendant merely because of its inherent implausibility or its inconsistency.”

24. Learned Counsel for the plaintiff has referred to the case of *Hira Lal & Sons & Others v. Lakshmi Commercial Bank*, 25 (1984) DLT 33 (SN) (DB) where the principles for granting or refusal leave to defend are being laid down in the following words:

“The principles on which Courts should grant or refuse leave to defend the suit are not in doubt. Thus—

- (a) If the defendant raises a triable issue indicating that he has a fair or *bona fide* or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(b) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet shows such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of 'trial but not as to payment into Court of furnishing security'."

21. I have heard counsel for the parties and carefully perused the plaint, application for summons of judgments, the applications for leave to defend and the documents placed on record. The plaintiff is a company duly registered with the Registrar of Companies and is a Non-Banking Finance Company duly registered with the Reserve Bank of India. At the request of the defendant, the plaintiff granted a loan to the defendant in the sum of Rs.2,26,85,000/- and the loan was disbursed by means of six cheques in favour of the defendant, details of which have been extracted hereinabove. All the cheques issued by the plaintiff were duly received by the defendants and were encashed by the defendant. The acknowledgement of the loan is evident from the copies of the audited balance sheet, which duly reflect the principle amount received by the defendant from the plaintiff. The stand of the plaintiff is further fortified from the fact that in order to repay the principle amount defendant handed over nine post-dated cheques, all drawn of Indian Overseas Bank, Rajiv Chowk Branch, Connaught Place, New Delhi, in favour of the plaintiff. On presentation out of nine cheques, eight cheques were returned unpaid on account of insufficient funds and for the last cheque

the payment was stopped by the defendant. The defence, sought to be raised by the defendant, is vague, unfounded and without any basis in view of the fact that from the date of grant of loan till the date of presentation of the cheques in spite of three legal notices having been issued by the plaintiff to the defendant the defendant did not clear its stand by issuing a reply to any of the legal notices. Neither the defendant issued any communication to the plaintiff that the loan granted was for the purchase of a company in which there were various disputes and the transaction was bad in law nor at any point of time the defendant informed the bank to stop the payment except for one cheque. In case there was any truth in the defence, which is sought to be raised, the defendant at the first opportunity available would have written to the plaintiff and brought out the facts, sought to be raised at this belated stage. The defence raised by the defendant is also moonshine, sham and dishonest in view of the fact that the defendant has reflected the name of the plaintiff as an unsecured creditor in the balance sheet for three consecutive years. In case the defendant had any grievance against the plaintiff the name of the company would not have been shown in the balance sheet. The facts of the case and the defence raised is to be considered on the touchstone of the law laid down by the Apex Court in its judgments, sought to be relied upon by counsel for the plaintiff.

22. In the case of *Mechalec Engineers and Manufacturers* (supra), the Apex Court has held culled out five principles, which are to be considered at the time of considering the application for leave to defend. The Apex Court has held that if the defendant satisfies the Court that he has a good defence to the claim on merits the plaintiff would not be entitled to leave to sign the judgment and the defendant would be

entitled to unconditional leave to defend. Similarly if the defendant raises triable issues including that he has fair and bona fide or reasonable defence although in a positively good defence the defendant would still be entitled to leave to defend. The Supreme Court has also observed that in case the defendant discloses such facts, which may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he had a defence, yet, shows such a state of facts as leads to the inference that at the trial the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security. However, in case defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign the judgment and the defendant is not entitled to leave the defend. The Court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enable him to try to prove a defence.

23. In the case of *V.K. Enterprises And Another* (supra) the Apex Court has considered that where the defendant does not disclose the triable issue and the defence appeared to be moonshine and sham, unconditional leave to defend cannot be granted. The Apex court has stressed that in the matters relating to dishonour of cheques the principles laid down by it become more relevant as the cheques are issued normally for liquidation of dues, which are admitted.

24. There is nothing on record to show that the cheques have either been interpolated or the issuance of cheques have been denied except for a bald oral denial, which is not supported by any corroborative evidence and with regard to the cheques in favour of the plaintiff the legal notices issued remain unrebutted and the balance sheets of the defendant, which have indicated the name of the plaintiff to be an unsecured creditor the amount being identical to the principle amount with respect to this matter, I find the defence raised by the defendant to be practically moonshine, sham, lacking bona fides and dishonest. I am of the view that granting leave in the facts of the present case would only prolong the litigation and since there is no conceivable defence and, thus, the litigation is to be nipped in the bud. I may add that this matter was heard in part on 7.7.2011 and adjourned for today to enable counsel for the defendant to cite the law. The defendant has not chosen to appear today despite the matter having been called on three occasions. Accordingly, the application for leave to defend is dismissed. Plaintiff would be entitled to a decree in the sum of Rs.3,78,63,375/-. The plaintiff would be entitled to *pendente lite* and future interest at the rate of 8% per annum from the date of filing of the present suit till the passing of the decree and from the date of passing of the decree till realisation. Memo of costs have been handed over in Court today, which has been taken on record.

JULY 08, 2011
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CS(OS) 1383/2010

G.S.SISTANI,J

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