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

+ CS(OS) 1426/2010

% *Judgment Delivered on: 03.08.2011*

PARIDHI TEXTILES Plaintiff
Through: Mr. Pramod Kr. Singh, Advocate.

versus

PETAL INTERNATIONAL & OTHERS Defendants
Through: Mr. Khawaja Siddiqui with Mr. Mayank
Wadhwa, Advocates for Defendant
No.1 to 3.

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)

CS(OS) No.1426/2010 and IA No.13216/2010 & 14092/2010

1. Plaintiff has filed the present suit under the provisions of Order XXXVII of the Code of Civil Procedure for recovery of ₹22,32,249/-.
2. As per the plaint, plaintiff is engaged in the business of trading and supply of fabrics and garments accessories across the country. Defendants have been described as a partnership firm and parties have been in business association since the year 2008.
3. Learned counsel for the plaintiff submits that during the usual

course of business transaction with the plaintiff, defendants placed orders for supply of fabrics to the plaintiff, which were supplied. Counsel further submits that as per the practice adopted by the parties, the orders were placed by the defendants to the plaintiff by raising purchase orders. On each purchase orders raised by the defendants the plaintiff supplied the fabrics by issuing challan on each delivery and subsequently raised invoice on the respective purchase orders. Plaintiff has placed on record copies of the following purchase orders dated:

- (i) 17.3.2009
- (ii) 17.3.2009
- (iii) 21.3.2009
- (iv) 30.3.2009
- (v) 30.3.2009
- (vi) 30.3.2009

4. Copies of corresponding invoices relating to each purchase order, being invoices nos.58-59; 82-101; 86-108; 147; 151; 153; 156; 173; 177; 181; 182; 198; 199; 207; 217; 95; 108; 154; 174; 85; 155; 218; 220; *and* 87 have been placed on record.
5. Learned counsel for the plaintiff submits that at the request of the defendants based on the aforesaid purchase orders the goods were supplied by the plaintiff to the defendants as per

their requirements and documents. The goods and materials supplied by the plaintiff were duly acknowledged by the plaintiff to their complete satisfaction and in consideration of the aforesaid supplies defendants issued following five cheques to the plaintiff:

- (i) 238401, dated 31.12.2009 for Rs.5,24,812/-, drawn on Punjab National Bank, Chanakya Puri, New Delhi;
- (ii) 238718, dated 30.3.2010 for Rs.6,00,000/-, drawn on Punjab National Bank, Chanakya Puri, New Delhi;
- (iii) 238719, dated 20.2.2010 for Rs.4,00,000/-, drawn on Punjab National Bank, Chanakya Puri, New Delhi;
- (iv) 238720, dated 10.3.2010 for Rs.4,00,000/-, drawn on Punjab National Bank, Chanakya Puri, New Delhi; *and*
- (v) 074359, dated 22.11.2009 for Rs.2,07,437/-, drawn on HDFC Bank Ltd. Sector 15, Sector 14, Gurgaon.

6. Counsel for the plaintiff submits that all the aforesaid five cheques were returned on account of insufficient funds. Copies of cheques and their respective return memos have been filed by the plaintiff. Counsel further submits that as no payments were made by the defendants, the plaintiff issued a statutory notice dated 11.5.2010 under Section 138 of the Negotiable Instruments Act to the defendants. Counsel next submits that cheques worth Rs.22,32,249/- were issued by the defendants in discharge of its admitted liability, which

have been returned unpaid due to insufficient funds. Counsel also submits that present suit is on the basis of returned cheques and the invoices, which have been placed on record. Plaintiff has also claimed *pendente lite* future interest at the rate of 18%.

7. Defendants have filed an application for leave to defend, being I.A.No.14902/2010. Leave is sought by the defendants primarily on the following grounds:

- (i) All the invoices do not bear the stamp and signature of the defendants and further the goods supplied by the plaintiff was neither as per specifications nor they were supplied within the stipulated time;
- (ii) On account of delay and the goods not being as per specifications, the defendants have incurred a loss; *and*
- (iii) This Court has no territorial jurisdiction to try and entertain the present suit.

8. Learned counsel for the defendants submits that this Court has no territorial jurisdiction to try and entertain this matter on account of the fact that no part of cause of action has arisen within the territorial jurisdiction of this Court. This fact is disputed by learned counsel for the plaintiff, who submits that job order was placed by the defendant at Delhi and on all payments were issued and cheques dishonoured within the territorial jurisdiction of this Court. Counsel further submits

that supplies were made at Gurgaon and payments were made at Gurgaon. Counsel next submits that since the question of jurisdiction will go to the root of the matter the defendants would be entitled to conditional leave to defend.

9. It has been strongly argued before this Court by learned counsel for the defendants that goods supplied by the defendants were not as per the specifications and neither the goods were supplied by the plaintiff within the stipulated time. Elaborating his arguments further, learned counsel for the defendants submits that the aforesaid five cheques were handed over to the plaintiff simply as a security and there was no mandate to the plaintiff to encash the aforesaid five cheques. Counsel also submits that on account of the goods not being as per specifications and not having supplied within the stipulated time, the defendants have incurred losses, for which the plaintiff is liable.
10. I have heard counsel for the plaintiff and also perused the plaint, application for leave to defend and the documents. Before dealing with the rival contentions of learned counsel for the parties, it would be useful to refer to ***Mechelec Engineers and Manufacturers v. Basic Equipment Corporation***, reported at 1977 AIR (SC) 577 wherein the Supreme Court has laid down guidelines for considering an application for leave to defend. Para 8 reads as under :

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.”

11. It would also be useful to reproduce the observations made by the Supreme Court in the case of ***V.K. Enterprises And Another v. Shiva Steels***, reported at (2010) 9 Supreme Court Cases 256, in paras 10 and 11, which are reproduced below:

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.

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.

12. Plaintiff has placed on record copies of purchase orders and also copies of invoices issued by the plaintiff, showing supplies of goods to the defendants. During the course of hearing, learned counsel for the defendants has not disputed receipt of the goods. What has been disputed is that the goods were not supplied as per the specifications nor they were supplied within the stipulated period. The submission of learned counsel for the defendant is without any basis as the defendants have failed to place single document on record to show that at any stage defendants brought it to the notice of the plaintiff that goods were as per the specification or that goods were not being supplied within the time allowed. In the absence of any document on record defence raised by the defendants is baseless, illusory, sham and practically moonshine.

13. As far as the submission made by learned counsel for the defendants, that defendants have incurred losses on account of non-supply of goods within the stipulated period and goods having been supplied not as per specification has resulted in loss, is concerned, the same is baseless for the reason that neither any complaint was ever made by the defendants to the plaintiff nor any documents has been placed on record in this regard. Thus, this argument of counsel for the defendants also does not hold any water. Further as far as the arguments of learned counsel for the defendants, that defendants are carrying out the work for gain at Gurgaon and the goods were also supplied at Gurgaon, where payments were made, is concerned, the same would require evidence and, thus, the defendants' case would fall in guideline number 'e' of ***Mechelec Engineers and Manufacturers*** (supra) and in my view defendants would be entitled to conditional leave to defend.
14. In these circumstances, the defendants are allowed conditional leave to defend. Let the defendants deposit the suit amount before this Court within six weeks as prayed. In case the amount is not deposited, the suit would be liable to be decreed.
15. The application stands disposed of accordingly.

CS(OS) No.1426/2010

16. Let the written statement be filed within 30 days from today.
Parties will file documents within the same period.
17. List the matter before Joint Registrar on 20th October, 2011
for admission/denial of documents.
18. Matter be placed before the Court on 5th December, 2011 for
framing of issues. Parties will bring suggested issued to
Court on the next date of hearing.
19. It is brought to my notice that inadvertently, draft copy of this
order was uploaded on the website of this court. The same
may be deleted from the website and this order should be
treated as the correct one.

AUGUST 03, 2011
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G.S.SISTANI,J