

14

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CS(OS) 2721/2000

%

Judgment Delivered on: 30.01.2012

CMI LTD

..... Plaintiff

Through: Mr.Sudhir Sukhija and Mr.Rama
Shankar, Advocates

versus

PANDIT AND CO. & ORS. F+

..... Defendant

Through: Mr.Kuljeet Rawal, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

I.A. No.4765/2002

1. This is an application filed by the contesting defendant nos.1 to 3 seeking leave to defend. Plaintiff has filed present suit under the provisions of Order XXXVII of the Code of Civil Procedure, based on four dishonored cheques and an invoice by which goods were dispatched by the plaintiff to the defendant no.1. The supply of goods is not disputed by defendant no.1.
2. The necessary facts which are required to be noticed for disposal of this application are that the defendant no.1 is a partnership firm of which defendant nos.2 and 3 are the partners. Defendant no.1 to 3 had placed an order on the plaintiff for supply of four quad telecommunication cable for 52000 meters (52 kms) vide purchase order No.PCO/SR-04/763/97-98 dated 19.12.1997. The defendant no.4 is the banker of defendant no.1 who had issued a letter dated 09.03.1998 confirming the plaintiffs' lien on account No.112 of defendant no.1 with the bank, for the supplies made by

the plaintiff against the defendant no.1's purchase order dated 19.12.1997. As per the plaint, defendant no.5, Chief Signal and Telecommunication Engineer, Southern Railway, Chennai had placed a contract dated 08.09.1997 on the defendant no.1. The scope of the work under the said contract awarded to defendant no.1 included providing all telecommunication cables for Tokenless Block working between Olakur and Villapuram stations in connection with proposed Parallel Broad Gauge on the Chengalpattu – Villapuram Section of Southern Railway. In order to execute the work under the contract dated 08.09.1997 defendant no.1 was to procure and supply 52000 mtr. of four quad 0.9 mm telecommunication cable. The defendant no.1 had indicated to the railway that the said material would be procured from the plaintiff and accordingly the plaintiff was approved as the supplier by defendant no.5 for placing orders for supply of the material. The initial order of 19.12.1997 was modified to the extent that the quantity of cables was reduced to 50.05 kms. As per the plaint out of the total order of supply of 50.05 kms. cables, the plaintiff dispatched only 20.6 kms. to defendant no.1, consignee, Southern Railway on 17.02.1998, as per the invoice no.CMI/J/2500/02926 dated 17.02.1998 for Rs.24,01,631/- for which the defendant no.1 made payment to the plaintiff against the aforesaid invoice dated 17.02.1998. As per the plaint the payment was received on 31.03.1998 after several request and reminders, whereas as per the terms of the payment, the plaintiff was to receive Rs.5.0 lakhs in advance and the balance payment was to be received within 20 days of dispatch of the consignment of cable. The defendant No.1, however, delayed in making the payment. On account of the delay in making the payment and having regard to the dilatory tactics of defendant No.1, the plaintiff insisted that the balance quantity of cables would be dispatched only after receiving advance payment against the performa invoice and before dispatch of the material. The defendant no.1

requested the plaintiff to raise its performa invoice on capital Cable Limited account, Pandit & Company, however, the defendant no.1 could not arrange for the advance payment as promised and requested the plaintiff to dispatch the balance order on urgent basis, assuring the plaintiff that the payment in respect thereof would be made at the earliest.

3. To secure the plaintiff, defendant no.1 also arranged from their bankers Laxmi Vilas Bank, defendant no.4 herein a letter of lien dated 09.03.1998 on the defendant no.1's account therein in respect of payments due to the plaintiff for the cables supplied by the plaintiff to defendants No.1 to 3. Accordingly, the plaintiff supplied the entire balance order quantity of material of 30.208 kms. Quad Telecommunication Cables within the stipulated delivery period through All India Goods Transport Company and consigned the same to the consignee, Southern Railway, as per the dispatch instructions issued by the defendant no.1 and invoice no.CMI/J/2500/02982 dated 07.04.1998 for a sum of Rs.35,21,769/- was raised by the plaintiff and sent to the defendant in respect of the said quantity i.e. 30.208 kms. Quad Telecommunication Cables.
4. After considerable persuasion the defendants No.1 to 3 paid an amount of Rs.14,96,350/- to the plaintiff towards part payment of the above invoice of Rs.35,21,769/- vide demand draft No.240699 dated 15.05.1998 and withheld the balance amount of Rs.20,25,419/-. It is also the case of the plaintiff that the entire quantity of 50.05 kms. cables was offered for inspection by the plaintiff to RDSO, as per the terms of the contract and the same was duly approved by RDSO, and an inspection certificate dated 13.02.1998 was issued by RDSO prior to their dispatch to the consignee.
5. Counsel for the plaintiff submits that the entire material was supplied well within the delivery schedule. The said material has been used by the consignee, Southern Railway. There was no protest from defendants no.1 to 3 or any complaint with regard to the delay in supplying the material or

the quality of the cable supplied by the plaintiff. After several requests and reminders, defendant no.1 issued four cheques in the total sum of Rs.19.0 lakhs in discharge of their liability. The details of four cheques are as under:

Sl.No.	Cheque No.	Date	Amount	Drawn on
1.	092403	30.04.1999	5,00,000/-	State Bank of Mysore Mumbai Main Branch
2.	092404	15.05.1999	5,00,000/-	- do -
3.	092405	31.05.1999	5,00,000/-	- do -
4.	092406	09.06.1999	4,00,000/-	- do -

6. The aforesaid four cheques were dishonoured on presentation to the bank, on the ground of “insufficient funds” or ‘not arranged for’. Counsel for the plaintiff has also drawn attention of the court to a letter dated 17.06.1996 addressed to the plaintiff wherein the defendant admitted their liability in respect of the dishonoured cheques and undertook to replace the said cheques with demand drafts. Counsel further submits that defendant no.1 unambiguously admitted and acknowledged the balance amount due vide letter dated 08.03.2000 when further time was requested to make the payment. Counsel also submits that vide fax sent on 10.03.2000 a detailed statement of account was sent to defendant no.1, pointing out the total liability towards principal of Rs.20,25,419/- together with interest @ 18% per annum, amounting to Rs.10,20,542/-. This statement of account was accepted and acknowledged by the defendant vide their fax dated 23.03.2000.
7. Counsel for the plaintiff also submits that a legal notice dated 28.06.2000 was issued to the defendants, however, the defendants failed to make the balance payment which has led to the filing of the present suit.

8. Mr.Rawal, counsel for the defendant submits that defendants No.1 to 3 are entitled to unconditional leave to contest the matter broadly on the following grounds:
- (i) The plaintiff has not approached this court with clean hands and has suppressed and withheld the material facts.
 - (ii) The cables were not supplied by the plaintiff to the defendants within the time allowed, which led to the cancellation of the contract by the Southern Railways.
 - (iii) The plaintiff is liable to pay for the losses suffered by defendants No.1 to 3 on account of non-supply of cable within the agreed period, including loss of profit.
 - (iv) The cable supplied by the plaintiff was sub-standard and not as per the specifications.
 - (v) The cheques handed over to the plaintiff were merely a security. The cheques were undated and there was no mandate to present cheques without prior information to the defendants.
 - (vi) The letter of the lien by the bank is a conditional document and payment was only to be made only in case the Southern Railway made the payment to the defendant.
9. Counsel for the plaintiff submits that the goods were not rejected within the reasonable period, hence the same are deemed to have been accepted.
10. It is also submitted that since the suit is based on invoice, would be covered under the provisions of Order 37 of the Code of Civil Procedure. Counsel for the plaintiff in support of his submission has relied upon **M/s.KIG Systel Ltd. Vs. M/s.Fujitsu ICIM Ltd.** AIR 2001 DELHI 357 and more particularly paragraph 11, which reads as under:

“11. The Defendant/Applicant has also challenged the maintainability of the suit under Order XXXVII of the C.P.C., stating that "there is no debt or liquidated demand in money payable to defendant-Company (sic. read plaintiff)) and/or based on a written contract". It is no longer rest integra that Invoices/Bills are 'written contracts' within the contemplation of this Order. Reference is directed to Messrs. Punjab Pen House vs. Samrat Bicycle Ltd. AIR1992Delhi 1, Corporate Voice (Pvt.) Ltd. vs. Uniroll Leather India Ltd. (1995) 60 DLT 321, and Beacon Electronics vs. Sylvania and Laxman Ltd., 1998 III AD (Delhi)141. There is, thus, no hesitancy in holding that the present suit is a suit which should be tried under the summary procedure of Order XXXVII of the C.P.C.”

11. In support of his argument that the defendant has failed to raise any tribal issue, counsel for the plaintiff has relied upon V.K. Enterprises Vs.m/S. Shiva Steels 2010 (IX) AD (SC) 426 and more particularly paragraphs 8, 9 & 10, which read as under:

“8. Order XXXVII C.P.C. 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 XXXVII Rule 3 C.P.C. 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.

9. Against such cogent evidence produced by the plaintiff/respondent, there is only an oral denial which is not supported by any corroborative evidence from the side of the Petitioner. On the other hand, the ledger book maintained by the Respondent and settled by the Petitioner had been produced on behalf of the Respondent in order to prove the transactions in respect of which the cheque in question had been issued by the Petitioner.

10. In our view, the defence raised by the Petitioner does not make out any triable issue and the High Court, has dealt with the matter correctly and has justifiably rejected the Petitioner's application under Order XXXVII Rule 3 C.P.C. and the same does not call for interference by this Court. The Special Leave Petition is, therefore, dismissed, but without any order as to costs.”

12. Reliance has also been placed by counsel for the plaintiff on **Chaitan Charan Parida Vs. Maheswar Parida and Anr.** AIR 1991 ORISSA 125 and has also placed reliance on **Lohmann Rausher GMBH Vs. Medisphere Marketing Pvt. Ltd** 117 (2004) DLT 95.
13. Mr.Kuljeet Rawal, counsel for the defendants, applicants has placed reliance in support of his submission on **Svam Soft Ware Ltd Vs. M/s.Point to Point Couriers** 2002 VI AD (Delhi) and more particularly paragraph 5, which reads as under:

“5. This court on a consideration of the matter is of the view that a suit under Order XXXVII CPC should fall in once of the Clauses envisaged by Rule 2 of the said order. In the case in hand no doubt the plaintiff entered into a contract as well as the bills were drawn but as noticed above it is seen the terms of the said contract seem to have been observed by the parties more in breach than in its

observance. Besides the defendant had raised the defense with regard to the having suffered damages on account of delayed delivery of the articles in USA. It appears that trial court was mostly guided by the existence of so called contract and delivery of bills at the defendant office and declined the leave to defend and decreed the suit. In the opinion of this court some of the defense pleas as raised in the leave to defend application raised tribunal issues which could only be answered after a full dress trial. On the face of the facts, circumstances and material obtaining on record and the law on the subject, this court is of the view that it was a fit case where leave to defend ought to have been granted to the petitioner-defendant and suit could not have been decreed straight away.”

14. Counsel for defendants has also placed reliance on **Tata Iron & Steel Co. Ltd. Vs. Shakti Bearings & Anr.** 94 (2001) DLT, and more particularly paragraph 14, which reads as under:

“14. Now comes the objection with regard to the provisions of Order 37 as according to the learned counsel, suit is based upon only goods supplied and accounts and not on the basis of cheques. The defense stemming from the objection is that the cheques were issued blank subject to the condition that they would not be presented to the bank for encashment unless disputes between the parties were settled.”

15. Reliance has also been placed on **Sunil Enterprises & Anr. Vs. SBI Commercial & International Bank Ltd.** (1998) 5 SCC 354, and more particularly paragraphs 3 and 5 which read as under:

“3. In this appeal it is contended that what should be examined at the stage of grant of leave to defend is whether there was a real or a (sic) defence and whether the facts alleged by the appellants of established would be a good defence and the trial court should not go into the question whether the facts alleged were true or not, as that situation would arise only after leave was granted and at the trial. That a condition as to security

could be imposed if the Court was of the opinion that the defence was put forward with a view to prolong this suit.

5. In those cases the circumstances arising are that the Bill of Exchange were accepted by the defendant even though they had already discharged earlier Bills of Exchange as and when they were due and the bank had continued to pay out such large amounts of Bills of Exchange accepted by the party who is already a defaulter. It is also contended that some of the Bills of Exchange were mere secondary documents and, therefore, these matters require examination. It cannot be said that the defence raised by the appellants is totally defenceless or moonshine or illusory as noticed earlier in the course of this order. Therefore, the view taken by the High Court that appellants have absolutely no prima facie case may not be correct. And in the circumstances, we allow appeals set aside the order made by the Division Bench and the judge on the original side of the Bombay High Court and dismiss the Summons for Judgment, grant leave and direct unconditional leave to the defendant to defend the suit. Appeals, therefore, stand allowed accordingly.”

16. Reliance has also been placed by counsel for defendant on *John Impex (P) Ltd. Vs. Surinder Singh & Others* (2003) 9 SCC 176, and more particularly paragraphs 4 & 5, which read as under:

“4. The question is, whether on these facts, the Courts below were justified in rejecting the application of the appellant for leave to defend. It is not proper for us to enter into the merits of the contentions in view of our findings, which we are hereunder going to give, which make this petition pending before the trial court. In view of the decision of this Court in the case of *Precision Steel & Engineering Works v. Prem Deva Niranjana Deva Tayal*, we feel that this matter should not have been rejected at this stage. 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. In the present case we find that contest of the ownership of the landlord as such is seriously challenged.

5. In view of this, we set aside the orders passed by the High Court and the Additional Rent Controller, Delhi and remand the case back to the Rent Controller for deciding the matter afresh. We observe in view of the facts of this case, that the Rent Controller will dispose of this matter between the parties preferably within a period of three months from the date the certified copy of this order is filed before the said authorities. The parties shall file the certified copy of this order within four weeks from today, and on that date the Court will then fix the next date and proceed to dispose of in accordance with law. With the said observation, the appeal is disposed of. Costs on the parties.”

17. Reliance has also been placed on *M/s.Datt Enterprises Ltd. Vs. VK Dua & Anr* 118 (2005) DLT 408, and more particularly paragraph 8, which reads as under:

“8. Suit having been filed on 31.7.2000, it is asserted that suit was barred by limitation. It has been stated in the leave to defend application that five cheques were issued under the cover of letter dated 7.2.1997. Though stated as settlement of accounts, cheques were handed over as security not to be encashed. Evidence of some kind of oral understandings is that cheque No. 263076 and 263077 were handed back and cheque No. 501118 was replaced in lieu of the earlier two cheques, and that too for a much lesser sum.”

18. I have heard counsel for the parties and also perused the plaint, application for leave to defend and the documents filed by the parties. The basic facts of the case are not in dispute that defendant no.1, who is a partner of defendants no.2 and 3, had placed an order on the plaintiff for the supply of

four quad telecommunication cable for 52000 meters (52 kms) vide purchase order No.PCO/SR-04/763/97-98 dated 19.12.1997. It is not in dispute that subsequently the supply to be made was reduced to 50.05 kms. Chief Signal and Telecommunication Engineer, Southern Range, Chennai, had placed a contract dated 08.09.1997 on defendant no.1. The scope of the work under the said contract awarded to defendant no.1 included providing of all telecommunication cables for Tokenless Block working between Olakur and Villapuram stations in connection with proposed Parallel Broad Gauge. Defendant no.1 had indicated to the Railway that the material would be procured from the plaintiff and the plaintiff was approved as the supplier by defendant no.5 for placing order for supply of the material. The plaintiff at the first instance dispatched 20.6 kms of cable to the Southern Railways on 17.2.1998 as per the invoice for a sum of Rs.2,41,635/-.

19. It is the case of the plaintiff that although the amount of Rs.2,41,635/- was released in favour of the plaintiff by defendants no.1-3 but the plaintiff insisted that the balance cable would be sent only upon receipt of payment in advance. Although no advance payment was made plaintiff obtained a letter of lien dated 9.3.1998 from The Lakshmi Vilas Bank Limited. Original letter of lien dated 9.3.1998 has been placed on record. Plaintiff has also placed on record the invoice dated 19.12.1998.
20. The first submission made by learned counsel for the defendants is that the plaintiff has not approached this Court with clean hands and has suppressed and withheld material facts. Since counsel for the plaintiff has failed to substantiate as to how the plaintiff has approached this Court with unclean hands and what are the material facts, which have been suppressed by the plaintiff, the above submission made by counsel for the defendants is rejected.

21. The next submission made by learned counsel for the defendants was that cables were not supplied by the plaintiff to the defendants within the time allowed, which led to cancellation of contract by Southern Railways and, thus, the plaintiff is liable to pay for the losses suffered by defendants on account of non-supply of cables on time. Both these submissions made by counsel for the defendants can be addressed together. The aforesaid submissions made by counsel for the defendants are without any basis inasmuch as that defendants have not placed a single document on record to show that defendants no.1-3 ever protested to the plaintiff that cables were not supplied within the time agreed, except for a bald statement that there is nothing on record to show that on account of the actions of the plaintiff the contract of defendants no.1-3 with Southern Railways was cancelled. Neither any document has been placed on record nor any counter claim has been filed for the losses, if any, suffered on account of the delay in supplying the cables to the Southern Railways. There is also no merit in the submission made by learned counsel for the defendants that cables supplied by the plaintiff were sub-standard and not as per the specifications. Defendants have not issued any communication to the plaintiff, complaining about the quantity of the cables supplied by the plaintiff to them.
22. Mr. Rawal, counsel for the defendant, has also strongly urged before this Court that the cheques handed over by the defendant to the plaintiff were only as a security and there was no mandate to present the cheque without prior information to the plaintiff. Plaintiff has placed on record the original cheques, which were issued by the defendant to the plaintiff. Issuance of the said cheques are not denied. After the cheques were returned on account of insufficient funds the defendants had issued a communication dated 17.6.1999, which reads as under:

“Ref: PC/SR04/CMI/1706/99.
Date: 17th June, 1999.

M/s CMI Ltd.,
New Delhi.

Kind Attn.: Mr. B.R. Rakecha, Chief Executive

Dear Sir,

We refer to our P.O. for 4 quad cables for Southern Railway.

We had given you post-dated cheques towards our balance payable to you. AT the time of issuing the cheques to Mr. Bitu Rawal, we had requested him to inform us before depositing the cheques, so that the same will be honoured. But, unfortunately as funds could not be arranged the same were returned by our bank. We have yet to receive the payment from Southern Railway as our contract was recended and the risk and cost amount to be deducted from out bills is still not finalized by them. We are putting our best efforts to collect the payment at the earliest. In fact, we have approached the C.A.O., Southern Railway to intervene and get the matter sorted out with the S&T department so that they complete the formalities and process our payment.

We will replace the dishonoured cheques with d.d.'s and also clear the balance as soon as we receive the payment from Southern Railway. Our intention is to pay this overdue amount in right earnest, or we would not have issued post-dated cheques in the first place.

Thanking you,

Yours faithfully,
For PANDIT & CO.,”

23. Upon reading of this communication, it is abundantly clear that defendants have admitted that they had issued post-dated cheques towards balance amount payable to the plaintiff. Although, this communication also mentions that at the time the cheques were handed over defendants had requested the plaintiffs to inform the defendants before depositing the

cheques but defendants went on to clarify that unfortunately as funds could not be arranged the cheques were returned by the Bank. Defendants also stated in the concluding portion of this communication that they would replace the dishonoured cheques with DDs and also clear the balance as soon as the payment is received from the Southern Railways. In all earnestness, defendants also stated in the said communication that their intention is to pay the overdue amount or else they would not have issued post-dated cheques at the first place.

24. In this communication, there is a categorical admission on the part of the defendants with regard to issuance of cheques, their inability to pay to the plaintiff on account of the funds not being arranged and their intention to pay the amount, which is due to the plaintiff. Thus the submission made by Mr.Rawal, is without any force. Defendants have also admitted their liability to clear this amount, which is evident from yet another communication dated 8.3.2000 issued by defendants to the plaintiff, wherein defendants have stated that *“First of all we would like to clarify to you that our intentions are very clear to make payment to you at the earliest opportunity. We have explained to Mr.K.S.R Chandran that due to our precarious financial condition on account of heavy losses incurred by us during the past two years we have not been able to make payments to you.”* In the concluding portion of this communication, defendants have also given a schedule that they would pay Rs.8.00 lacs by the end of April, 2000; Rs.5.00 lacs by the end of May, 2000; *and* balance amount by the end of June, 2000 to the plaintiff. Defendants have also expressed their regret for the inconvenience caused to the plaintiff. In response to the fax dated 23.3.2000 along with statement of account sent by plaintiff to the defendant, the defendant has replied to the plaintiff as under:

“M/S CMI Ltd.,

B1/D2, Mohan Co-operative Industrial Estate,
Badarpur,
Mathura Road,
New Delhi 110 044

Kind Attn. : Mr. Sanjeev Navani

Dear Sir,

Sub: Outstanding payment against supply of Asix Counter Cable

We refer to your fax dt. 10th March 2000 along with the statement of account.

As discussed with Mr. K.S.R. Chandran, we agree to clear the outstanding payment first as per the schedule given by us in our letter. As regards the overdue interest, we have informed Mr.K.S.R. Chandran that the issue can be taken up later once the outstanding amount is cleared.

Our bills with the Southern Railways is in process and at this stage we are not in a position to issue post dated cheques. We again reiterate that we would like to honour our commitments as promised.

Thanking you,

Yours faithfully,
For PANDIT & CO.,

S.S. Pandit.
c.c. to Mr.K.S.R. Chandran, SEC, Mumbai.”

25. In the light of the aforesaid communication, containing categorical admissions, the submissions of counsel for the defendants are only to be rejected.
26. The Apex Court in the case of *M/s.Mechalee Engineers & Manufacturers Vs. M/s.Basic Equipment Corporation* AIR 1977 SC 577 has drawn up the

parameters to be considered by the court while dealing with the application for leave to defend. Relevant praras of the judgment reads as under:

“8. In Smt. Kiranmoyee Dassi and Anr. v. Dr. J. Chatterjee 49 C.W.N. 246 , Das. J., after a comprehensive review of authorities on the subject, stated the principles applicable to cases covered by order 37 C.P.C. 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.”

27. In the light of the aforesaid facts, which have been discussed in detail, the questions, which arises for consideration before this Court is whether the defendants have been able to make out a case for grant of unconditional leave; are the defendants entitled to conditional leave upon deposit of the suit amount; should the court fast track hearing of this matter as some defence has been raised by defendants; or should the application for leave to defend be dismissed.
28. The aim and object of introducing Order XXXVII of the Code of Civil Procedure is expeditious disposal of such matters pertaining to the financial implications, which are based on a written contract and the debt was a liquidated amount. Since the present suit is based on invoices and four post-dated cheques, it is fully covered under the provisions of Order XXXVII of the Code of Civil Procedure.
29. There is no denial by the defendant that post-dated cheques were issued for amounts due and payable by them to the plaintiff. Neither any document has been placed by defendants that post-dated cheques were issued for amounts not due and payable by them to the plaintiff, nor a single document has been placed on record to substantiate any of the submissions made by counsel appearing on behalf of the defendants. On the other hand the communications dated 17.6.1999 and 8.3.2000 and the fax dated 23.3.2000 addressed by defendants to the plaintiff makes out categorical admissions with regard to amounts due and payable.
30. 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. 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.

31. In the facts of the present case where the acknowledgement of debt is clear unequivocal and unambiguous the judgment relied upon by counsel for the defendant are not applicable.
32. Accordingly, present application for leave to defend stands dismissed in view of above.

CS(OS) 2721/2000

33. Since this is not a fit case for grant of leave on any condition to the defendants, present suit is decreed in the sum of Rs.32,89,677 with *pendente lite* interest @8% from the date of filing of the suit till its realization. Let decree sheet be drawn up accordingly.

LA.NO.7103/2003 (O XXXVII R 3(5) – BY D-3)

34. Application stands dismissed in view of the order passed above.

LA.NO.12650/2000 (O XXXIX R 1 & 2)

35. Application stands disposed of in view of above.

G.S.SISTANI,J

JANUARY 30, 2012

ssn [pdf]