

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

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Date of Decision : 03.10.2012

**+ CS(OS) No.1003/2011**

ARJUN KOHLI

..... Plaintiff

Through: Mr. S.C.Singhal, Adv.

versus

VISHAL PRAJAPATI

..... Defendant

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE V.K.JAIN**

**JUDGMENT**

**V.K.JAIN, J. (ORAL)**

This is a suit filed under Order XXXVII of the Code of Civil Procedure for recovery of Rs.4 crores. The case of the plaintiff is that the defendant had opened a mutual current account with it and had been purchasing goods on credit and making payment on account. The defendant confirmed the statement of the account for the period 01.04.2008 to 31.03.2010, thereby acknowledging a sum of Rs.3,78,32,551/-. The defendant issued four post-dated cheques of Rs.1 crore each to the plaintiff towards discharge of his outstanding liability. These cheques, when presented to the bank were dishonoured for want of 'insufficient funds'. The plaintiff also sent notice to the defendant but there was no response to the notice. The plaintiff has accordingly claimed Rs.4 crore being the amount of the cheques

issued to him by the defendant. The case of the plaintiff is that these cheques represent Rs.3,78,32,551/- as principal sum of Rs.21,67,449/- as interest.

2. The summons in prescribed form was served upon the defendant by publication in “The Statesman” on 6<sup>th</sup> September, 2012 as also in the newspaper “Amar Ujala” on the same date. No appearance has been filed by the defendant despite service, though the statutory time fixed for this purpose has already expired. Order 37 Rule 3 of the Code of Civil Procedure to the extent it is relevant provides that the defendant shall not defend the suit referred to in sub-rule(1) of the said rule unless he enters an appearance and in default of his entering an appearance, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, upto the date of the decree and such sum for costs as may be determined by the court from time to time by rules made in that behalf. Rule 3 of Order 37(1) CPC provides that the appearance has to be entered by the defendant within ten days from the receipt of the summon either in person or through pleader and in either case the defendant is also required to file the address for service of notices on him. Sub-Rule(3) Rule 3 provides that on the date of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff’s pleader, or if the plaintiff sues in person, to the plaintiff himself either by notice delivered or sent by a pre-paid letter

directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

3. In the present case, the time for entering appearance expired on 16<sup>th</sup> September, 2012. Mr. Singhal, who appears for the plaintiff, states that neither he nor the plaintiff has received any notice of appearance from the defendant. The record also does not show any appearance having been filed by the defendant. No vakalatnama or address form on behalf of the defendant is on record. Thus, the defendant has failed to enter appearance within the statutory period. The averments made in the plaint are, therefore, deemed to be admitted by the defendant and the plaintiff is entitled to judgment forthwith.

4. The plaintiff has placed on record certified copies of cheques, the details of which are as follows:

| Sr. No. | Cheque No. | Dates      | Amount                            | Drawn on        |
|---------|------------|------------|-----------------------------------|-----------------|
| 1.      | 847151     | 01.06.2010 | 1,00,000,00/-<br>(One Crore only) | Indus Land Bank |
| 2.      | 847101     | 30.06.2010 | 1,00,000,00/-<br>(One Crore only) | Indus Land Bank |
| 3.      | 847102     | 30.06.2010 | 1,00,000,00/-<br>(One Crore only) | Indus Land Bank |
| 4.      | 847152     | 17.02.2011 | 1,00,000,00/-<br>(One Crore only) | Indus Land Bank |

5. Mr. Singhal states that original cheques have been filed under Section 138 of Negotiable Instruments Act. The plaintiff has also filed the bank deposit slip whereby these cheques were deposited in the bank. The plaintiff has also placed on record the copy of the legal notice dated 13<sup>th</sup> July, 2010 and 18<sup>th</sup> June, 2010 sent to the defendant.

6. For the reasons stated hereinabove, a decree for recovery of Rs.4 crore with cost and pendente lite and future interest at the rate of 12% per annum is hereby passed in favour of the plaintiff and against the defendant. Decree sheet be prepared accordingly.

**V.K. JAIN, J**

**OCTOBER 03, 2012**

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