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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 2597/2010

M/S GLOBAL INFONET DISTRIBUTION PVT LTD ..... Plaintiff

Through: Mr.Rajiv Aneja and Mr.Asit Tewari, Advs

versus

RAJESH TAHIL RAMANI

..... Defendant

Through: Mr.Gaurav Dalal, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

**ORDER**

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05.01.2012

**IA.16200/2011 (Leave to Defend)**

1. Plaintiff has filed the present suit under the provisions of Order 37 CPC for recovery of Rs.66,91,225/-. Summons were issued to the defendant in the prescribed form. The defendant has filed the present application under Order XXXVII Rule 3(5) of the Code of Civil Procedure seeking leave to defend.
2. The facts of the case as set out by the plaintiff are that the plaintiff is a private limited company and is engaged in trading and distribution of Computers, Laptops, Computer Hardware and Peripherals etc. The defendant is the proprietor and authorized signatory of his proprietary-ship firm and is duly engaged in the business of trading in computer hardware and components. The parties have been conducting business for the last several years. The defendant had approached the plaintiff and demanded supply of computer hardware and peripherals. The defendant had agreed to pay interest on delayed payments @21% per annum. The

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By:AMULYA

goods were supplied by the plaintiff to the defendant both at Delhi and at Jaipur, as demanded by the defendant from time to time for which the plaintiff had raised invoices.

3. It is stated that the plaintiff maintains statement of accounts in the ordinary course of business. For the goods supplied the plaintiff has raised various invoices details of which is given in para 5 of the plaint, which are reproduced below:

“Invoices Bearing No. SIRJ100290 Dt. 27-02-2009 of Rs. 22,76,130/-,  
 Invoice No. SIRJ100302 Dated 12-03-2009 of Rs. 10,97,200/-,  
 Invoice No. SIRJ100336 Dated 25-03-2009 of Rs. 98,800/-,  
 Invoice No. SIRJ100363 Dated 31-03-2009 of Rs. 1,52,880/-,  
 Invoice No. SIRJ150018 Dated 23-04-2009 of Rs. 66,560/-,  
 Invoice No. SIRJ150022 Dated 27-04-2009 of Rs. 1,15,800/-,  
 Invoice No. SIRJ150044 Dated 04-05-2009 of Rs. 1,46,000/-,  
 Invoice No. SIRJ150056 Dated 09-05-2009 of Rs. 33,000/-,  
 Invoice No. SIRJ150076 Dated 16-05-2009 of Rs. 99,800/-,  
 Invoice No. SIRJ150108 Dated 26-05-2009 of Rs. 35,400/-,  
 Invoice No. SIRJ150111 Dated 27-05-2009 of Rs. 41,000/-,  
 Invoice No. SIRJ150266 Dated 21-07-2009 of Rs. 2,39,000/-.”

4. According to the plaintiff as on 10.08.2008 a sum of Rs.38,37,895/- was due and payable towards goods supplied. The plaintiff also supplied goods to the defendant at Delhi in the sum of Rs.13,05,987/-. Details of the invoices are as under:

“Invoice Bearing No. SIDEL150448 Dated 10-06-2009 of Rs. 33,200/-,  
 Invoice No. SIDEL150492 Dated 18-06-2009 of Rs. 97,500/-,  
 Invoice No. SIDEL150498 Dated 19-06-2009 of Rs. 98,400/-,  
 Invoice No. SIDEL150547 Dated 25-06-2009 of Rs. 64,398/-,  
 Invoice No. SIDEL150559 Dated 26-06-2009 of Rs. 32,750/-,  
 Invoice No. SIDEL150840 Dated 04-08-2009 of Rs. 1,96,000/-,  
 Invoice No. SIDEL150662 Dated 14-07-2009 of Rs. 34,499/-,  
 Invoice No. SIDEL150712 Dated 21-07-2009 of Rs. 1,37,000/-,  
 Invoice No. SIDEL150738 Dated 24-07-2009 of Rs. 3,275/-,  
 Invoice No. SIDEL150741 Dated 24-07-2009 of Rs. 52,500/-,”

Invoice No. SIDEL150407 Dated 02-06-2009 of Rs. 80,000/-."

5. Counsel for the plaintiff submits that in discharge of its admitted liability the defendant issued cheque bearing No.234941 dated 06.05.2010 for Rs.38,37,895/- and cheque bearing No.234942 dated 06.05.2010 in the sum of Rs.13,05,987/-. Both the cheques were drawn on Syndicate Bank, Green Park Extension Branch, New Delhi. The aforesaid cheques on presentation were dishonoured and returned unpaid with the remarks 'insufficient funds'. The plaintiff received the information with regard to the dishonor of the cheques vide memos dated 08.05.2010 sent by its bankers M/s.IDBI Bank Limited at the office of the plaintiff at Delhi. The plaintiff thereafter issued a legal notice to the defendant dated 31.05.2010 under Section 138 of the Negotiable Instruments Act. As despite the legal notice having been issued the defendant failed to clear the outstanding, the plaintiff has filed two criminal complaints under Section 138 of the Negotiable Instruments Act against the defendants. Both the complaints are stated to be pending before the Metropolitan Magistrate, Rohini Courts, Delhi.
6. Counsel for the plaintiff has also submitted that the invoices pertain to the period of 27.02.2009 to 04.08.2009. It is submitted that the present suit is based on the dishonored cheques and on the basis of invoices, copies of which have been placed on record, which is a written document and thus the suit is maintainable under the provisions of Order 37 of the CPC. Counsel for the plaintiff has also contended that the defence raised by the defendant in leave to defend, does not disclose any triable issue. The defence is sham and moonshine and is to be rejected. The total principal amount outstanding and subject matter of both the cheques is Rs.51,43,882/-. Plaintiff also claimed interest @ 18% being a commercial transaction. The plaintiff prays for a decree in the suit amount together

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with interest.

7. Counsel for the defendant submits that present suit has been filed with *mala fide* motive and with an intention to extract money illegally from the defendant, and thus the present suit is not maintainable and is liable to be rejected with costs. Counsel also submits that the plaintiff has not approached this court with clean hands and has suppressed the material facts from this court.
8. The main thrust of the argument of counsel for the defendant is that in the year 2008 the defendant had handed over blank cheques bearing No.234941 and 234942 to the plaintiff as security for the business transaction. Counsel further contends that the transactions between the plaintiff and the defendant were settled in the year 2009, but the plaintiff did not return the above said cheques handed over to him as a security. Counsel for defendant next submits that in the complaints pending, filed by the plaintiff under Section 138 of the Negotiable Instruments Act, the learned Metropolitan Magistrate has granted liberty to the defendant to cross-examine the witnesses of the plaintiff, which would show that defendant has a plausible defence. Another submission made by counsel for the defendant is that after clearance of all the transactions between the plaintiff and the defendant in the year 2009 the defendant never purchased any goods from the plaintiff, as alleged in the plaint. The documents filed along with the plaint according to the defendant are fabricated as they bear forged stamp and signatures of the defendant only with a view to mislead the court. The issuance of both the cheques has also been denied in the leave to defend. According to the defendant the leave to defend raises triable issues which can only be decided upon leading evidence.
9. I have heard counsel for the parties and considered their rival

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submissions. The first submission of counsel for the defendant is that the present suit has been filed with *mala fide* motives and intentions nor the plaintiff has approached this court with clean hands and thus the suit is liable to be rejected. Counsel for the defendant is unable to point out either the malafide motive or the material which has been suppressed from this Court by the plaintiff and thus the submission made, has no force and the same is rejected.

10. The second argument of counsel for the defendant is that blank cheques were issued to the plaintiff only with a view to provide security for the transaction between the parties and the defendants have cleared the entire payments due, to the plaintiff. This submission of counsel for the defendant is also without any force, in view of the fact that defendant has failed to file a single document on record to show that the defendant either demanded return of the cheques or any detail as to when and how the amounts were cleared by the defendant, but a faint argument has been made that the amounts were paid in cash. There is nothing on record to even substantiate this argument, which on the face of it is absurd. The fact that the defendant has been granted liberty to cross-examine the witnesses of the plaintiff by itself would not show that the defendant has been able to raise plausible defence before this court.

11. 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

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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."

12. It would also be useful to refer to the case of V.K. Enterprises Vs. Shiva Steels III (2010) Banking Cases 718 (SC) where in a matter with somewhat similar facts the Supreme Court had upheld the order passed by the trial court where leave was rejected. Paragraphs 3,4 and 8 to 10 of the

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judgment read as under:

"3. In the said application for leave to defend the suit, the Petitioner contended that the cheque in question had been handed over by the Petitioner to the Respondent-firm by way of security only and not for presentation. Furthermore, the said cheque was issued by the Petitioner on 11th October, 2000, but the date of the cheque was, thereafter, interpolated and altered from 11.10.2000 to 11.10.2006, and presented to the Bank. It was also indicated that apart from the signature on the face of the cheque and the date mentioned therein, the rest of the cheque was blank and an attempt was made by the Respondent to misuse the same with the intention of withdrawing or misappropriating the amount subsequently inserted in the cheque. A specific allegation was also made to the effect that the date of the cheque issued on behalf of the Petitioner firm for the month of October was always written with the Roman numerical 'X', which was altered and shown in ordinary numerals, which clearly establish the fact that the cheque in question had been doctored to obtain the benefit thereof six years after the same had been issued.

4. In the said application, it was also denied that any cheque of such a large amount had been issued to the Respondent after 1992 in order to bolster the case of the Petitioner that the cheque in question had been forged. It was ultimately stated in the complaint that the Respondent had concocted the story and the Bills placed on record by the Respondent were also forged as the Petitioner had neither purchased any material nor counter-signed the last 4 bills as per the details provided.

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

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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."

13. Applying the law laid down by the Supreme Court to the facts of this case would show that the defence raised by the defendant is illusory, sham and practically moonshine. The present case is squarely covered by clause (d) of the principles laid down by the Supreme Court, which have extracted above. While the plaintiff has been able to establish that goods were supplied to the defendant by placing original invoices on record, the plaintiff has also been able to establish that for the goods supplied the defendant had issued two cheques, which were returned due to insufficient funds on presentation. The plaintiff has also taken recourse to filing of a complaint under Section 138 of the Negotiable Instruments Act, to protect his rights. In contrast the defendant has only raised an illusory defence by stating that he has made payments of the goods received. It is worthwhile to note that the defendant has not disputed receipt of goods. To simply urge that payments were made in cash without placing any supporting documents, can only lead to one conclusion that the defence is sham and practically moonshine and baseless. Merely to say that the stamps and signatures on the invoices are forged is also unacceptable and

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the case of the plaintiff would be fully covered by the decision of the Apex Court in the case of *V.K. Enterprises (Supra)*, where in almost similar circumstances the Supreme Court had upheld the order of the trial court where leave was rejected. The application for leave to defend does not disclose any triable issue, nor any plausible defence has been raised by the defendant. Mere statement unsubstantiated with any documents that payments stand made to the plaintiff, cannot be considered to be a plausible defence. The aim and object of introducing Order 37 of the Code of Civil Procedure was to grant speedy justice in financial matters where the claim is undisputed, instead of following the routine and lengthy procedure of ordinary suit.

14. In my view the application for leave to defend does not disclose any triable issue, nor any plausible defence has been raised. The application for leave to defend is without any merit and the defence sought to be raised by the defendant is sham and moonshine and thus the defendant is not entitled to leave to defend. Accordingly, the application for leave to defend is dismissed.

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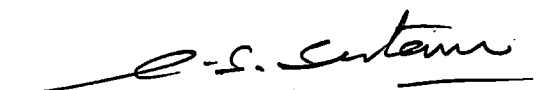
15. In view of the fact that the application for leave to defend is rejected, the present suit is decreed. Plaintiff is entitled to the decree as prayed for together with interest @8% from the date of passing of the decree to the date of realization with costs. Decree sheet be drawn up accordingly.

**IA.5075/2011 & IA.NO.7296/2011**

16. In view of order passed in the suit, both the applications stand disposed of.

**JANUARY 05, 2012**

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G.S.SISTANI, J

— For Taxation —