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

+ **CS(OS) 620/2012**

% ***Judgment dated 18.07.2014***

M/S KANJIMULL AND SONS Plaintiff
Through : Mr.Rajesh Yadav and Ms.Ruchira, Advs.

versus

RADEKA CHAUDHARY & ANR Defendant
Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Plaintiff has filed the present suit under the provisions of Order XXXVII for recovery of Rs.2,38,00,000/-. Summons were issued to the defendants in the prescribed form. Defendant no.1 entered appearances and also filed IA.No.16903/2012 seeking condonation of 12 days' delay in entering appearance. The defendants could not be served in the ordinary way and hence defendants were served through publication.
2. Reply to the application [IA.No.16903/2012] has been filed by the plaintiff. Despite opportunity having been granted, no rejoinder has been filed. None has been appearing on behalf of defendant no.1 since 6.11.2013. None appeared on behalf of the defendant on.1 even on 7.3.2014 as also on 3.4.2014. None is present even today to press this application. Accordingly the application [IA.No.16903/2012] is dismissed for non-prosecution.
3. Counsel for the plaintiff submits that the proceedings against defendant no.1 have also been initiated by the plaintiff under Section 138 of the

Negotiable Instruments Act, which is pending.

4. Counsel for the plaintiff prays that since the defendant no.2 has chosen not to appear despite service and the memo of appearance of defendant no.1 has been filed beyond the period of limitation, plaintiff is entitled to a decree forthwith, in terms of provisions of Order XXXVII of the Code.
5. The plaintiff has filed the present suit for recovery of Rs.2,38,00,000/-. The plaintiff is engaged in the business of jewellers, trading and manufacturing. The defendant no.1 was a regular customer of the plaintiff firm and had been purchasing jewellery from the show-room of the plaintiff from time to time. The defendant no.1 purchased certain items of jewellery from the plaintiff on 18.9.2008. Plaintiff raised two invoices one in the name of the defendant no.1 and the other in the name of her daughter, defendant no.2, details of which is given below:

“Invoice No.KMS 2008-09/113 dated 18.9.2008, of a total sum of Rs.58,98,400/- (Rupees Fifty Eight Lakhs Ninety Eight Thousand Four Hundred Only) inclusive of VAT @ 1% of a sum of Rs.58,400/- (Rupees Fifty Eight Thousand Four Hundred Only), in the name of the defendant no.1, Mrs.Radeka Chaudary.

Invoice No.KMS 2008-09/114 dated 18.9.2008, of a total sum of Rs.1,06,80,750/- (Rupees One Crore Six Lakhs Eighty Thousand Seven Hundred Fifty Only) inclusive of VAT @ 1% of a sum of Rs.1,05,750/- (Rupees One Lakh Five Thousand Seven Hundred and Fifty Only), in the name of the defendant no.1, namely, Shraeyaa Radeka Chowdhry, the defendant no.2 herein.”

6. The defendant no.1 again purchased items of jewellery on 16.10.2008, details of which is given below:

“An Invoice bearing No.KMS 2008-09/136 dated

16.10.2008, of a total sum of Rs.3,28,250/- (Rupees Three Lakhs Twenty Eight Thousand Two Hundred Fifty Only) inclusive of VAT @ 1% of Rs.3,250/- (Rupees Three Thousand Two Hundred Fifty Only) was raised. This invoice was raised by the plaintiff firm in the name of defendant no.1, Mrs.Radeka Chaudary, at her request.”

7. The items of jewellery were handed over to the defendants and since defendant no.1 was an old customer and in the past has been making payments promptly she developed trust and faith in the partner of the plaintiff. The defendant on.1 asked for credit facilities which were granted, keeping in view the good relations and her past conduct. The total jewellery articles purchased by the defendant no.1 amounts to Rs.1.69,07,400/-. In part discharge of the amount the defendant No.1 issued cheque bearing No.226542 dated 2.12.2008 in the sum of Rs.62,26,650/- drawn on HDFC Bank Limited, Vasant Vihar, New Delhi. The aforesaid cheque was in respect of two invoices bearing No.KMS 2008-09/113 dated 18.9.2008 for Rs.58,98,400/- and invoice No.KMS 2008-09/136 dated 16.10.2008 for Rs.3,28,250/-. The total value of both the invoices being Rs.62,26,650/-.
8. The aforesaid cheque dated 2.12.2008 was dishonoured by the bankers of defendant no.1 vide return memo dated 16.12.2008. The plaintiff immediately contacted the defendant no.1, whereupon defendant no.1 regretted the dishonour of cheque and issued two fresh cheques [(i) Cheque bearing No.063831 dated 21.1.2009 in the sum of Rs.1,06,80,750/- and (ii) Cheque bearing No.063832 dated 21.1.2009 in the sum of Rs.50,00,000/-].
9. Both the aforesaid cheques were drawn on HDFC bank, however, when presented the aforesaid cheques were also dishonoured due to insufficient funds. When contacted the defendant no.1 regretted for the default and in

discharge of her debt in the sum of Rs.1,69,07,400/- issued three cheques in favour of the plaintiff [(i) Cheque bearing No.063834 dated 13.3.2009 in the sum of Rs.75,00,000/-, and (ii) Cheque bearing No.063835 dated 14.3.2009 in the sum of Rs.50,00,000/-, (iii) Cheque bearing No.063836 dated 15.3.2009 in the sum of Rs.50,00,000/-]. This amount of Rs.1.75 crores included the principal amount of Rs.1,69,07,400/- and the balance amount was towards the interest.

10. The aforesaid cheques were also returned due to insufficient funds when presented.
11. Plaintiff had issued a notice under Section 138 of the Negotiable Instruments Act as well. It has been averred in the plaint that at the time of purchase of jewellery, the defendant no.2 was minor, however, her mother, defendant no.1 had issued the cheques in discharge of the total liability. Defendant no.2 arrayed as a necessary and property party.
12. I have heard counsel for the plaintiff and perused the plaint and documents in support thereof. Rule 3(2) of order XXXVII of the Code of Civil Procedure reads as under:

“2. Institution of summary Suits.-

(1) and (2) xxxxxx

(3) The defendant shall not defend the suit referred to in sub-rule (1) 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, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.”

13. In this case upon service, defendant no.2 has not entered appearance and

defendant no.1 entered appearance beyond the period of limitation, but none has chosen to press the application for condonation of delay.

14. The present suit is based on invoices and dishonoured cheques which were issued by the defendant no.1 in favour of the plaintiffs. The invoices referred above, give complete details, description and particulars of the jewellery articles including the type, quality and weigh etc. purchased by the defendant no.1 from the showroom of the plaintiff. Accordingly, the present suit is maintainable against defendant no.1 under Order XXXVII of the Code of Civil Procedure, 1908.
15. Since none had entered appearance, the present suit is decreed in favour of the plaintiff and against the defendant no.1, who has issued the cheques of the entire suit amount. However, the case is not made out against the defendant no.2 under Order XXXVII of the Code of Civil Procedure, 1908. Decree-sheet be drawn up accordingly.

G.S.SISTANI, J

JULY 18, 2014

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