IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 56 OF 2014
IN
SUMMARY SUIT NO. 544 OF 2014

Sumer Builders Pvt. Ltd. .. Plaintiff
Vs.
Narendra Gorani .. Defendant

Mr.Rohaan Cama i/b Yasmin Bhansali & Co. for plaintiff.

Mr.Hamed Kadrani i/b Yashpal Jain for defendant.

CORAM : K.R.SHRIRAM, J.
DATE : 22ND JUNE, 2015

P.C.

1 It is the case of the plaintiff that the plaintiff had advanced a friendly loan to the defendant in the sum of Rs.4 crores. It is averred in the plaint that the plaintiff, by a cheque drawn at Oriental Bank of Commerce and credited through RTGS to the Bank account of the defendant with State Bank of India, Indore Branch gave the defendant a sum of Rs.4 crores. Disputes arose and when the plaintiff called upon the defendant to return the amount of Rs.4 crores, the defendant has denied liability and on the contrary is claiming damages from the plaintiff.

2 The facts in the case are covered by the judgment of a Full Bench of

this Court in the matter of ***Jyotsna K. Valia Vs. T.S. Parekh & Co.***[1] where in paragraphs 26 and 27, it is held as under :

> *26. Reference may now be made to a judgment on honoured cheque, in the case of Purnima Jaitly v. Ravi Bansi Jaisingh . In that case, it was contended that a suit for recovery of loan which was advanced by a Plaintiff by a cheque, would be a suit based on a bill of exchange. Negating the said contention, the Court held that ; "It is true that a cheque is a bill of exchange, a special type of bill of exchange which is drawn on a bank. However, a suit upon a cheque (bill of exchange) means a suit to recover money due on a cheque (bill of exchange) drawn by the defendant, which is dishonoured."*
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> *In such a case, the suit must be for recovery of money on a cheque drawn in favour of or endorsed to the plaintiff. A suit, however for recovery of a loan which was advanced by the plaintiff by a cheque is not a suit upon a cheque or a bill of exchange and as such is not maintainable as a summary suit. The contention of the Plaintiff that the suit is upon a bill of exchange was rejected.*
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> *Reference may also be made to to the judgment in the case of The Central Railway Employees Co-operative Credit Society v. Bank of Baroda . In that case, the Plaintiff had issued crossed cheques for Rs. 1,75,000/- for short term deposit by the bank. The bank encashed the cheque but the amount of cheque was siphoned by the bank officials. A learned Single Judge whilst holding that a Summary Suit was maintainable, held that the Plaintiff society seeks to recover a debt payable by the Defendants bank with interest, arising on a written contract. The Court held that to hold otherwise, would be to cause loss of faith and confidence of the business community and the ordinary citizens in the banking system. This however was not a case of honoured cheque.*

1 2007 (3) Bom. C.R.790`

> *27. <u>From the above discussion it is clear that a summary suit would not lie on a settled account which is not confirmed by the Defendant and "on honoured cheque". Items (II) and (IV) of para 2 are answered accordingly.”</u>*

(emphasis supplied)

Therefore a summary suit would not lie on a settled account which is not confirmed by the Defendant. For a summary suit to lie for recovery of a loan which was advanced by the plaintiff by a cheque is not a suit upon a cheque or a bill of exchange and as such is not maintainable.

3 In the circumstances, the summons for judgment is rejected.

4 The defendant is granted unconditional leave to defend the suit. The defendant to file their written statement within three weeks from today. The parties to file their respective affidavit of documents and also complete discovery and inspection within one week thereafter. The suit to be listed on 24.07.2015 for framing of issues.

(K.R. SHRIRAM, J.)