

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

SUMMONS FOR JUDGMENT NO.87/2014
IN
SUMMARY SUIT NO.353/2013

M/s. Navyug Distributors ... Applicant

M/s. Navyug Distributors ... Plaintiff

V/s.

M/s. Kalyan Book Centre & Ors. ... Defendants

Ms. Pooja Patil a/w. Mr. Rajmani Varma i/b. M/s. Navdeep Vora &
Associates for the Plaintiff.

Mr. Uday P. Warunjikar for the Defendant No.2.

CORAM: K.K. TATED, J.
DATED : NOVEMBER 16, 2015

PC. :

1. Heard the learned counsel for the Plaintiff and Defendant No.2. The learned counsel for the Plaintiff submits that by order dated 21/07/2015 this court (Coram : K. R. Shriram, J.) directed to proceed the matter exparte against Defendant No.1.

2. None appeared for Defendant No.3 though duly served.

3. The Plaintiff is a partnership firm duly registered under the Indian Partnership Act, 1932. The Plaintiff is a distributor of Navneet Publications (India) Ltd. Defendant No.1 is a partnership firm and

carries on business of wholesaler/reseller of books, stationery and other materials sourced from third party manufacturers and distributors. Defendant Nos.2 and 3 are partners of Defendant No.1. Earlier, one Mr. Vasant Phrande and Nilesh Pharande were partners of Defendant No.1. Vasant died on 27/07/2009 and Nilesh died on 24/07/2010. Hence, Smt. Smita, wife of deceased Nilesh and Smt. Shobhna, wife of deceased Vasant were shown as partners of Defendant No.1 partnership firm.

4. During the course of business from the period 09/12/2009 to 09/08/2010 the Plaintiff supplied goods i.e. children's books, educational books and compact discs etc. worth aggregate invoice value of Rs.1,45,27,468/- to the Defendants. The Plaintiff issued invoices to that effect to the Defendants. The Plaintiff placed on record delivery challans as well as lorry receipts to show delivery of goods. During the course of business the Defendants issued several cheques. Out of the said cheques, following cheques were honoured by the Defendants:

Sr.No.	Cheque No.	Cheque Amount	Date of credit in the Plaintiff's bank account as per the bank statement
1	940561	7,01,876	10/08/2010
2	940562	7,13,048	13/08/2010
3	940563	4,00,000	31/08/2010
4	940564	1,50,000	06/09/2010
5	940565	1,50,000	09/09/2010
6	940566	1,50,000	22/09/2010
7	940567	1,00,000	27/09/2010
8	940568	1,00,000	30/09/2010

9	940570	1,00,000	06/10/2010
10	940571	1,00,000	12/10/2010
11	940572	1,00,000	15/10/2010
12	940573	1,00,000	26/10/2010
	TOTAL	28,64,924	

The following cheques were dishonoured

Sr. No.	Cheque No.	Amount	Cheque Date	Towards Invoices
1	940575	25,67,725	25.11.2010	08.06.2010 to 21.06.2010
2	940574	20,22,120	25.11.2010	09.12.2009 to 29.03.2010
3	940576	22,26,926	25.11.2010	21.06.2010 to 26.06.2010
4	940577	30,12,961	25.11.2010	26.06.2010 to 08.07.2010
5	940578	22,89,499	25.11.2010	10.07.2010 to 21.07.2010
6	940579	9,70,579	05.01.2011	27.07.2010 to 28.07.2010

5. Hence, the Plaintiff issued notice dated 27/10/2010 to Defendant No.1 by RPAD calling upon them to pay total outstanding amount of Rs.1,45,27,468/- immediately. Thereafter, the Plaintiff issued several reminders to the Defendants. The Defendant No.2 Smita Nilesh Pharande, by letter dated 04/02/2011 informed the Plaintiff that her staff has misappropriated the funds after the death of her father-in-law and her husband. Hence, she would require some time to reconcile everything. It was also stated in the said letter that, the Plaintiff shall not deposit the cheque Nos.940401 to 940460 and 940561 to 940580 without her consent. In the said letter, Defendant No.2 stated that those cheques were issued by them to towards security. Thereafter, at the request of Defendant, Plaintiff accepted unsold goods and issued credit note to the Defendants by their letter dated

06/05/2011. As the cheques issued by the Defendants were dishonoured, the Plaintiff issued notice under section 138 of the Negotiable Instruments Act, 1881 dated 11/04/2011 and thereafter filed six criminal cases before the learned Magistrate, 48th Court, Andheri, Mumbai. The Plaintiff filed present suit for recovery of sum of Rs.2,16,87,166/- with interest @ 24% on principal amount of Rs.1,87,52,168/-. They filed the present summons for judgment under Order XXXVII Rule 7 of the Code of Civil Procedure, 1908 for decree of Rs.2,16,87,166/- and further interest on principal amount @ 24% p.a.

6. The learned counsel for the Plaintiff submits that as per the terms and conditions of the invoices, the Defendants were supposed to make payment within 30 days and thereafter they have to pay interest @ 24% p.a. She further submits that the goods were accepted by the Defendants and in support of that the Plaintiff relies on lorry receipts and delivery challans which are on page Nos.341 to 431 of plaint. The learned counsel for the Plaintiff submits that those delivery challans were duly acknowledged by the Defendants through their staff. She further submits that apart from these facts, the five cheques dated 25/11/2010 and a cheque dated 05/01/2011 issued by the Defendants total amounting to Rs.1,30,89,810/- were dishonoured. This itself shows that the Defendants have accepted their liability and hence, the Plaintiff is entitled to decree for the entire sum of Rs.2,16,87,166/- along with interest @ 24% p.a. on principal amount.

7. The learned counsel for the Plaintiff submits that the defence raised by the Defendants in their reply about no written contract, pendency of complaint under section 138 of the Negotiable Instruments

Act, 1881, cheques were issued towards security and about the liability of existing partners, do not stand in law. She submits that the acceptance of goods itself shows that the Defendants admitted the contract and accepted the terms. She further submits that the Defendants, on their own issued blank cheque towards payment of their liability. She further submits that, though the Defendants raised objection stating that those cheques were issued towards security, some cheques were honoured by the Defendants and some were dishonoured. She submits that the Delhi High Court, in the matter of ***Puneet Kumar Agarwal Vs. M/s. Imaginations Agri Exports & Ors.*** **2013 SCC OnLine Del 701** held that if the dishonoured cheque was given to the Plaintiff is blank as security for the payment, the Defendants having done so, impliedly authorized the Plaintiff to fill up the amount thereon and realize thereunder the monies due to him. She relied on paragraph 21 of the said judgment, which reads thus:

“21. Even if one is to believe, though not pleaded, that the dishonoured cheque was given to the plaintiff in blank as security for the investments/contribution of the plaintiff or amounts incurred by the plaintiff, made in/to/on behalf of the defendant No. 1 Firm, the defendants having done so, impliedly authorized the plaintiff to fill up the amount thereon and realize thereunder the monies due to him. It is significant that though the defendants admit parting of ways with the plaintiff in the year 2008 but even then did not care to stop payment of the said cheque which would have been done if the defendants even then felt that the plaintiff may misuse the said cheque. It is settled law that it is open to a person to sign and deliver a blank or incomplete instrument, and it is equally open for the holder to fill up blanks and specify the amount therein. In Scholfield Vs. Lord Londesborough it was held that whoever signs a cheque or accepts a bill in blank and then puts it into circulation must necessarily intend that either the person to whom he gives it, or some future holder, shall fill up the blank which he has left. This common law doctrine was also affirmed by

Justice Macnaghten in Griffiths Vs. Dalton where it was held that the drawer of an undated cheque gives a prima facie authority to fill in the date. The Supreme Court in T. Nagappa Vs. Y.R. Murlidhar (2008) 5 SCC 633 discussing the scope of Section 20 of the Negotiable Instruments Act held that by virtue of the said provision a right is created in the holder of the cheque, which prima facie authorises the holder to complete the incomplete negotiable instrument, subject to conditions contained therein. In Vijender Singh Vs. Eicher Motors Limited MANU/DE/2021/2011 it was held a blank cheque signed and handed over meant that the person signing it had given implied authority to the holder to fill up the blank which he had left and the person issuing a blank cheque is to understand the consequences of doing so and cannot escape his liability only on the ground that blank cheque had been issued. The same view has also been affirmed in MOJJ Engineering Systems Ltd. Vs. A.B. Sugars Ltd. 154 (2008) DLT 579 and Purushottam Maniklal Gandhi Vs. Manohar K. Deshmukh MANU/MH/1188/2006.”

8. The learned counsel for the Plaintiff submits that the Defendants raised one of the objections during the arguments that the Plaintiff has not produced original documents before the court. She submits that all original documents are filed in the proceeding filed under section 138 of the Negotiable Instruments Act, 1881. She submits that the Plaintiff had offered inspection of certified copies to the Advocate for the Defendants. She submits that these facts are stated by the Plaintiff in their rejoinder.

9. On the basis of the above submission, the learned counsel for the Plaintiff submitted that this Hon'ble Court be pleased to make absolute the summons for judgment and pass a decree in terms of prayer clauses (a) and (b) of the plaint.

10. On the other hand, the learned counsel for Defendant No.2 vehemently opposed the summons for judgment. He submits that the summons for judgment taken out by the Plaintiff itself is not maintainable in law. He submits that on several occasions the Defendants called upon the Plaintiff to give inspection of original documents. The Plaintiff failed and neglected to provide the inspection of original documents on the ground that some of original documents are already filed in court matters filed by the Plaintiff under section 138 of the Negotiable Instruments Act, 1881.

11. The learned counsel for the Defendant No.2 submits that in the present proceedings, there was no contract between the Plaintiff and Defendants for supply of goods. He submits that the Plaintiff has failed to place on record any order placed by the Defendants for supply of goods. Hence, there is no question of any contract between the Plaintiff and Defendants. Therefore, the Defendants are entitled unconditional leave to defend the suit.

12. The learned counsel for Defendant No.2 submits that though the Plaintiff relied on several lorry receipts and delivery challans to prove that the goods were delivered to Defendants at their respective branches, same were not signed either by Defendant No.2 or Defendant No.3. He submits that even in the entire proceedings neither in plaint nor in affidavit in support of the summons for judgment the Plaintiffs have disclosed the name of the signatory of those delivery challans. Hence, there is no question of accepting the contention made by the Plaintiff that the goods were duly delivered to the Defendants. As the Plaintiff failed and neglected to prove the delivery of goods the

Defendants are entitled unconditional leave to defend the suit.

13. The learned counsel for Defendant No.2 submits that the blank cheques were issued to the Plaintiff as per their instructions towards security. He submits that the Defendants, by their letter dated 04/02/2011 specifically stated/directed not to deposit those cheques in bank without their permission, as those cheques were issued towards security. Without informing the Defendants, the Plaintiff deposited those cheques. Therefore, as the Plaintiff deposited those cheques without prior permission from the Defendants, they are not liable to pay the said amount to the Plaintiff. The learned counsel for the Defendants, on the basis of above mentioned submission, submits that there is no substance in the present summons for judgment and same be dismissed with costs with liberty to the Defendants to defend the suit unconditionally.

14. Heard the learned counsel for the Plaintiff as well as Defendant No.2 at length. It is to be noted that the present suit is based on dishonour of cheques issued by Defendants in the sum of Rs.1,30,89,810/-. The Plaintiff placed on record invoices raised by them from time to time, lorry receipts as well as delivery challans signed by the Defendants/their representatives. This itself shows that though the Defendants received goods, they raised the objection about non delivery. Apart from that, the Defendants had issued 6 cheques of Rs.1,30,89,810/-, which were dishonoured, itself shows that they are liable to pay said amount to the Plaintiff. The objections raised by the Defendants about contract, pendency of criminal case under section 138 of the Negotiable Instruments Act, 1881, blank cheques issued by

them towards security and inspection of original documents, is not relevant at present. Because, the original documents are also filed by the Plaintiff in six criminal cases under section 138 of the Negotiable Instruments Act, 1881. The Plaintiff offered the inspection of certified copies to the Defendants. The objection raised with regard to no written contract and others by the Defendants are not relevant because the learned counsel for the Plaintiff has relied on the invoices, delivery challans and lorry receipts in respect of the goods delivered to the Defendants. Cheques issued by the Defendants for payment of their liability dishonoured. Considering these facts, I am of the opinion that the Defendants are not entitled to unconditional leave to defend the suit. They have to deposit the suit claim to defend the present suit.

15. Hence, following order is passed:

- a. Defendant Nos.2 and 3 are directed to deposit sum of Rs.1 crore in the Office of Registrar/Prothonotary & Senior Master of this court within 8 weeks from today.
- b. If amount is deposited within stipulated time, the Prothonotary & Senior Master is directed to invest the same in a fixed deposit account of any Nationalized bank, initially for a period of one year which shall be renewed from time to time till hearing and final disposal of the suit.
- c. Defendant No.2 and 3 to file written statement within 12 weeks from today.
- d. Summons for Judgment stands disposed off accordingly.

(K.K. TATED, J.)