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

\+ **CS(OS) No. 83/2006**

% **20th October, 2015**

SH. RANA INDERJIT SINGH ..... Plaintiff

Through: Mr. R.K. Dhawan, Advocate.

versus

M/S KEMBIOTIC LABORATORIES & ORS. ..... Defendants

Through: Mr. Munish Tyagi, Advocate

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This suit is filed by the plaintiff Sh. Rana Inderjit Singh for recovery of Rs. 53.50 lacs alongwith *pendente lite* and future interest against four defendants. Defendant no.1 is a partnership firm M/s Kembiotic Laboratories. Defendants no. 2 to 4 Sh. R.K.Gandhi, Smt. Sneh Gandhi and Sh. Mohit Gandhi are partners of defendant no.1.

2. The facts set out in the plaint are that plaintiff is the proprietor of Khalsa Clothing Company and a permanent resident of Canada. Plaintiff is also engaged in export business of biochemical products and he used to provide raw materials to the defendants for the business of defendant no.1.

Defendant no.1 runs the business of a pharmaceuticals laboratory. It is further averred in the plaint that defendants offered to the plaintiff in the year 2001 to collaborate with its business on 50% shareholding basis and plaintiff was requested to advance a loan of Rs.53.50 lacs. Plaintiff paid a sum of US Dollars 1,13,829.78 equivalent to Rs.53.50 lacs and it was agreed that the necessary formalities with regard to collaboration shall be completed by the defendants within 12 weeks after defendants come back from Hong Kong, and where the amount of Rs.53.50 lacs was paid to the defendant no.2 for the defendant no.1. It is further pleaded in the plaint that defendants did not complete the formalities till July, 2002, and therefore when the plaintiff came to India in November, 2002, he requested the defendants to repay the loan amount, and hence the defendants in acknowledgment of their liability issued the following cheques in favour of the plaintiff:-

“S.No.	Cheque No.	Date	Amount	Drawn on
1.	055916	20.12.2002	3,50,000/-	State Bank of Bikaner and Jaipur, Kirti Nagar, New Delhi.
2.	035841	25.01.2003	5,00,000/-	State Bank of Mysore Punjabi Bagh, New Delhi
3.	035842	25.02.2003	5,00,000/-	--do--
4.	035843	25.04.2003	5,00,000/-	--do--
5.	035844	25.05.2003	5,00,000/-	--do--
6.	035845	15.07.2003	5,00,000/-	--do--

7.	035846	25.08.2003	5,00,000/-	--do--
8.	035847	25.09.2003	5,00,000/-	--do--
9.	035848	25.11.2003	5,00,000/-	--do--
10.	035849	25.10.2003	5,00,000/-	--do--
11.	035850	25.01.2004	5,00,000/-	--do--
		Total	Rs.53,50,000/-"	

However, when these cheques were deposited by the plaintiff on the due dates, the cheques were returned due to insufficiency of funds/refer to drawer. The subject suit for recovery therefore came to be filed by the plaintiff. The suit was originally filed under Order XXXVII of the Code of Civil Procedure, 1908 and the defendants were given unconditional leave to defend. The suit thereafter proceeded as per the normal procedure.

3. The defendants have filed the written statement and have denied that any amount whatsoever was paid by the plaintiff to the defendants, and as claimed by the plaintiff. Defendants have denied that any amount was paid by the plaintiff to the defendant no.2 in Hong Kong. Defendants also denied that defendants offered to the plaintiff in the year 2001 to collaborate in the business of defendant no.1 on 50% shareholding basis. So far as the issuing of cheques by the defendants is concerned, it is stated by the defendants that plaintiff fraudulently obtained post dated

cheques from the defendants on the pretext of sending money but which moneys the plaintiff never sent.

4. The following issues were framed in the suit on 15.2.2010.

> "(1) Whether the suit has been filed by the duly authorized attorney of the plaintiff? OPP
>
> (2) Whether the plaintiff is entitled to a decree for a sum of Rs.53,50,000/- as prayed for? OPD (s*ic*: OPP)
>
> (3) Whether the defendants have paid the suit amount by way of post dated cheques as security to the plaintiff? OPD
>
> (4) Whether the plaintiff is entitled to interest @ 18%, if so for what period? OPD
>
> (5) Relief."

<u>Issue no.1</u>

5. So far as issue no.1 is concerned, the plaintiff has proved the special power of attorney Ex.PW1/1 whereby the plaintiff authorized the filing of the suit by the attorney Sh. Gurminder Singh. Nothing relevant has been elucidated in the cross-examination to doubt the validity of the special power of attorney Ex.PW1/1 that the suit has not been validly filed, and therefore, I hold issue no.1 in favour of the plaintiff and against the defendants.

Issue nos.2 and 3

6. Both these issues can be taken and decided together. The question is that whether the plaintiff has paid an amount of Rs.53.50 lacs to the defendants and if not then whether the defendants had only given the post dated cheques as security for an amount of Rs.53.50 lacs but the same was never paid by the plaintiff to the defendants. Onus of issue no.2 is on the plaintiff and onus of issue no.3 is on the defendants.

7. No doubt, plaintiff has not led any documentary evidence to show that the amount of Rs. 53.50 lacs was paid by the plaintiff to the defendant no.2 in Hong Kong, however, the fact that the amount of Rs.53.50 lacs was paid by the plaintiff to the defendant no.2 becomes clear from two crucial aspects. The first crucial fact is that undoubtedly original cheques of the suit amount were given by the defendants to the plaintiff and the same were in possession of the plaintiff. Section 114 illustration (i) of the Indian Evidence Act, 1872 provides that when the original instrument comes back into the hands of the issuer of the same, then it is presumed that the obligation under the cheques would be discharged, however, once the original instruments being the cheques continue to remain with the obligee, viz the plaintiff and in whose favour the cheques were issued, a presumption

arises that the amount was paid under the cheques by the plaintiff to the defendant no.2 for defendant no.1 and the obligation is not discharged by payment of amount due under the cheques. This presumption has not been adequately rebutted on behalf of the defendants inasmuch as, there is no valid explanation how the original cheques continued to remain with the plaintiff as onus to prove this was on the defendants as per issue no.3 framed. In fact, this is the crucial second fact/reason for holding that the plaintiff has proved that the amount of Rs.53.50 lacs was paid to the defendants, inasmuch as, cheques were given in the year 2002 but till the due dates of the cheques from December, 2002 to January, 2004, no letter or any notice was ever written by the defendants to the plaintiff that in this entire period and for this long period plaintiff is illegally holding on to the subject cheques and the subject cheques should be returned by the plaintiff to the defendants because as per the defendants no amount was paid by the plaintiff to the defendants and the cheques were thus allegedly given only as security. The very fact that no communication whatsoever was ever issued by the defendants to the plaintiff for return of the cheques shows that the cheques were given for a valuable consideration and which valuable consideration was the amount of Rs.53.50 lacs. Clearly therefore defendants have failed to prove that the plaintiff retained the cheques with himself although allegedly as per the defendants plaintiff did not give any amount to the defendants under the subject cheques which were given as security. Defendants have failed to discharge the onus upon them of issue no.3 that the plaintiff fraudulently withheld the cheques and as is the case of the defendants as per the written statement.

In view of the above, issue nos.2 and 3 are held in favour of the plaintiff and against the defendants and therefore defendants are held liable to pay the amount of Rs.53.50 lacs.

Issue no.4

8. Since the defendants have illegally held on to a huge amount of the plaintiff and caused the plaintiff to file the present suit for recovery of moneys, plaintiff is held entitled to interest @ 9% per annum simple *pendente lite* and future till payment of the decretal amount.

Relief

9. In view of the above discussion, the suit of the plaintiff is decreed against the defendants for a sum of Rs.53.50 lacs alongwith *pendente lite* and future interest @ 9% per annum simple till realization of

the decretal amount. Plaintiff is also entitled to the costs of the suit. Decree sheet be prepared.

OCTOBER 20, 2015 **VALMIKI J. MEHTA, J.**
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