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

SUMMONS FOR JUDGMENT NO. 2 OF 2015
IN
SUMMARY SUIT NO. 556 OF 2014

Hasmukhrai Sunderji Panchmatia ...Applicant/Plaintiff
vs
M/s Accentia Technologies Ltd. & Ors. ...Defendants

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Mr Simil Purohit a/w S.L.Shah i/b Shah Legal for the Plaintiff
Mr Kezar Kharawala i/b R.K.Associates for Defendant No.1.

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CORAM : S.C. GUPTE, J.
FEBRUARY 29, 2016

P.C. :

The Summary Suit is in respect of a bill of exchange drawn by Defendant No.1 and accepted by Defendant Nos.2 to 6. The suit is also on dishonoured cheques drawn by Defendant No.1 on account of its liability towards the subject bill of exchange.

2 The case of the Plaintiff is that Defendant No.1 drew in favour of Plaintiff a bill of exchange dated 9 January 2013 for the sum of Rs.2 Crore for valuable consideration received by it by way of a cheque payment of Rs.2 Crores of the same date made by the Plaintiff to Defendant No.1. The bill of exchange was accepted by Defendant Nos.2 to 6. The bill was payable on demand at Mumbai for the sum of this bill of exchange, namely, Rs.2 Crores together with interest @ 3 % per month with monthly rests. There is no dispute between parties either on the drawing of this bill of exchange by Defendant No.1 or the valuable consideration for which the same was drawn or the acceptance of the bill of exchange by Defendant Nos.2 to 6. Apart from the bill of exchange, there was also a letter addressed by the Defendants confirming drawing and acceptance of the bill of exchange. This letter, which is dated 9 January 2013, is signed by the Managing Director of Defendant No.1 and also by Defendant Nos.2 to 6. It is the Plaintiff's case that the bill of exchange was dishonoured for

payment upon its presentation to Defendant Nos.2 to 6. The Plaintiff thereupon approached Defendant No.1, being the drawer of the bill of exchange, for payment of the bill. Defendant No.1 requested forbearance on the part of the Plaintiff and thereafter issued cheque No.627651 dated 9 April 2013 for Rs.40 Lacs along with a covering letter. A copy of this covering letter is produced with the plaint. The cheque of Rs.40 Lacs was dishonoured upon its presentation for payment by the bank of Defendant No.1 and returned with the remark "**Funds Insufficient**". It is the Plaintiff's case that thereafter Defendant No.1 paid an aggregate sum of Rs.1 Crore to the Plaintiff through RTGS as per the following particulars:

(a) On 27.06.2013, Rs.55,00,000/- (Rs. Fifty Five Lacs only).
(b) On 02.07.2013, Rs.20,00,000/- (Rs. Twenty Lacs only).
(c) On 10.07.2013, Rs.25,00,000/- (Rs. Twenty Five Lacs only).

The payments were confirmed by a letter dated 10 July 2013. A copy of this letter is produced with the plaint. The letter confirms payment of a total sum of Rs.1 Crore towards the bill of exchange, through RTGS on the dates respectively mentioned in the letter. There is no dispute between parties as to the existence or receipt of this letter or the contents thereof. After these payments, further payments were made of Rs.15 Lacs and Rs.5 Lacs, respectively, on 18 July 2013 and 20 July 2013, towards the payment of the subject bill of exchange. It is the Plaintiff's case that after all these payments, which account for a total sum of Rs.1.20 Crores, Defendant No.1 issued five post-dated cheques to the Plaintiff aggregating to Rs.1.20 Crores of the following particulars:

Sr.No.	**Cheque No.**	**Date**	**Amount**
1	627650	06/11/13	Rs.20,00,000/-
2	627652	08/11/13	Rs.20,00,000/-
3	627653	11/11/13	Rs.20,00,000/-
4	627654	13.11.2013	Rs.40,00,000/-
5	627655	15.11.2013	Rs.20,00,000/-
			Rs.1,20,00,000/-

The cheques, drawn on Axis Bank, were sent to the Plaintiff along with a covering letter for each of the cheques. The covering letters reiterate that the cheques were towards the liability of Defendant No.1 in respect of the subject bill of exchange. These cheques were dishonoured upon being presented for payment and returned by the bank of Defendant No.1 with the remark “funds insufficient”. The Plaintiff has produced photocopies of the cheques along with memos of dishonour issued by the bank. The Plaintiff, thereafter, through his Advocates sent a legal notice dated 30 November 2013 to Defendant Nos.1 to 6 demanding balance payment along with accrued interest, aggregating to Rs.1,35,86,881/-, as due and payable by the Defendants. The Defendants failed to pay. The Plaintiff has, in the premises, approached this Court with the present Summary Suit on dishonoured bill of exchange as well as dishonoured cheques.

3 In their reply to the Summons for Judgment, the Defendants have taken up a plea that the Defendants have already paid a sum of Rs.2,55,00,280/- against the loan extended by the Plaintiff to Defendant No.1 and that out of this payment, a sum of Rs.1,35,00,112/- is not reflecting in the statement of account produced by the Plaintiff. Secondly, it is submitted that the Plaintiff has been misusing the bill of exchange as well as cheques kept with the Plaintiff as comfort cheques, which are said to be, in any case, issued without any legally enforceable debt. It is submitted that on the dates when the cheques were presented, there was no legally enforceable debt due and payable by the Defendants to the Plaintiff. Thirdly, it is submitted that the bill of exchange is not adequately stamped. Apart from these three defences, the only other defence raised in the affidavit in reply is that the suit was barred under the provisions of the Bombay Money Lenders Act, 1946, the Plaintiff having lent money without a money lending licence.

4 In his rejoinder, the Plaintiff has demonstrated that the payments of Rs.1.35 Crores, which, according to the Defendants, were not accounted for, were all towards the Defendants' liability to the Plaintiff under another bill of exchange dated 12 September 2012 for Rs.2 Crores. The Plaintiff has also produced a letter addressed by Defendant No.1 to the Plaintiff as of 15 July 2013,

claiming these payments to be part of the discharge of liability under this other bill of exchange of 12 September 2012.

5 After this was pointed out by the Plaintiff in his rejoinder, the Defendants have come up with an altogether different case. The Defendants now claim in their sur-rejoinder that a total loan of Rs.5.80 Crores was taken by them from the Plaintiff, including loans of Rs.2 Crores on 12 September 2012, of Rs.2 Crores on 10 January 2013 and Rs.1.80 Crores on 9 March 2013. It is submitted that all three loans were running simultaneously and concurrently and that as a matter of fact an amount of Rs.6,87,16,204/- has been paid off by the Defendants in full and final payment, which includes not only the principal but also interest payable on all these bills. For the first time, the Defendants rely upon certain payments said to be made in cash towards discharge of their liability under the bills of exchange. The statement of account produced by the Defendants in this behalf indicates that a total sum of Rs.1,06,92,204/- is claimed to be paid in cash to the Plaintiff. An additional affidavit filed in this behalf by the Defendants claims that as a result of these payments through RTGS, cheques as well as cash, a total sum of Rs.2,20,81,758/- was paid towards the bill of exchange dated 12 September 2012, whereas a sum of Rs.2,32,88,446/- was paid towards the bill of exchange of 9 January 2013 (which is the suit bill of exchange) and Rs.2,30,87,000/- was paid towards 3rd and 4th bills of exchange dated 7 March 2013. These payments include a sum of over Rs.1 Crore said to be paid in cash, as noted above. This was an altogether different case pleaded by the Defendants in their affidavits filed subsequent to their reply to the Summons for Judgment. The case is not only unbelievable, but absurd. By its token, what turns out is that the Defendants have made several payments in excess on the 3rd and 4th Bills of Exchange to the Plaintiff in repayment of the Bills of Exchange.

6 Coming now to the so called defences, it is pertinent to note that the Plaintiff is not seeking to recover any loan advanced by the Plaintiff to the Defendants. The suit is based on a dishonoured bill of exchange as well as dishonoured cheques. It is no defence that the consideration for the negotiable

instruments was a loan advanced without holding a money lender's licence. Secondly, as far as the alleged payments of Rs.1.35 Crores made in cheques/ RTGS, which are said to be unaccounted for, it is now clear from the Defendants' own letter dated 15 July 2013, that this entire amount of Rs.1.35 Crores claimed by the Defendants as not accounted for, is actually admitted to be a payment towards the first bill of exchange dated 12 September 2012 for Rs.2 Crores. There is absolutely no merit in the defence that the bill of exchange, which is payable on demand, is not adequately stamped. As for the alleged ground that the cheques were issued as comfort instruments, the plea is as vague as can be and does not inspire any confidence. It is not indicated in what manner the cheques were issued as collaterals or security. The defence is completely silent on these aspects. It does not lie in the mouth of a listed public company that it actually issued cheques signed by its Managing Director as collaterals or security without issuing any covering letter or maintaining any other record. On the other hand, the covering letters produced by the Plaintiff, which are vaguely said to be fabricated in the Defendants' sur-rejoinder, are clear pointers that the cheques were towards discharge of the Defendants' liability under the suit bill of exchange. As for the alleged plea that there were cash payments of a sum of over Rs.1 Crore by Defendant No.1 to the Plaintiff, the defence merely needs to be stated to be rejected. In the face of the respective pleas of the parties and undisputed record, it is clearly unstatable that a listed public company such as Defendant No.1 would make payment of over Rs.1 Crore in cash, would not take a single receipt for the same and would not refer to it in any of its correspondence. In any event, as I have shown above, the theory of cash payments has been proposed much after the original reply to the Summons for Judgment was filed and is clearly illusory and moonshine.

7 At the hearing of the Summons for Judgment, learned counsel for the Defendants submits that atleast one payment of Rs.35 lacs, which has been made by Defendant No.1 by cheque to the Plaintiff, is unaccounted for insofar as the payments acknowledged by the Plaintiff are concerned. In the first place, there is no plea to this effect in any of the pleadings of the Defendants. Be that as it may, from the record produced by the Plaintiff it clearly emerges that this

particular payment was made by cheque dated 8 September 2012 for Rs.35 Lacs on account of the liability of Defendant No.1 towards the bill of exchange which was accepted by Defendant No.1 and endorsed in favour of the Plaintiff. The four bills of exchange which are referred to above are all drawn by Defendant No.1 and accepted by Defendant Nos.2 to 6. All these bills are drawn after 8 September 2012. It is very clear that this cheque was towards an altogether different bill of exchange, which was accepted (and not drawn) by Defendant No.1 and which was endorsed in favour of (and not originally held by) the Plaintiff. As far as the suit bill of exchange and dishonoured cheques are concerned, this payment has nothing to do with the same.

8 In the premises, it is clear that there is absolutely no statable defence to the Summons for Judgment. The Defence, which is urged, is clearly nominal, illusory and moonshine. This court would clearly be justified in passing a decree on the Summons for Judgment. However, with a view to give the Defendants' one opportunity, by way of mercy, I have thought it fit to grant leave to defend to the Defendants subject to the condition of their depositing into this Court the entire amount of the suit claim as at the date of the suit.

9 In the premises, the following order is passed:

(i) The Defendants are granted leave to defend the suit on, and subject to, the condition of deposit of a sum of Rs.1,52,92,154/- within a period of eight weeks from today;

(ii) On payment of the aforesaid amount, the suit to be transferred to the list of commercial causes;

(iii) The Defendants shall file their written statement within a period of six weeks after payment of the aforesaid amount;

(iv) The amount paid by the Defendants, if any, shall be invested by the Prothonotary and Senior Master of this Court in Fixed Deposit/s of a nationalized bank, initially for a period of two years, and thereafter renewable from time to time and to abide by further orders that may be passed in the suit;

(v) The Summons for Judgment is disposed of accordingly.

(S.C.GUPTE J.)