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

SUMMONS FOR JUDGMENT NO.33 OF 2016
IN
SUMMARY SUIT NO.289 OF 2016

Rupinder Singh Arora ….Plaintiff

V/s.

Kapil Puri ....Defendant

Ms.Ankita Singhania a/w Mr.Sidharth Samantary and Mr.Ashir R.Amin i/by Kanga & Co. for the plaintiff.

Mr.Rohaan Cama a/w Ms.Neha Naik i/by Phoenix Legal for the defendant.

CORAM : K.R.SHRIRAM,J
DATE : 27.9.2016

P.C.:-

1 The plaintiff has approached this court seeking a summary decree in the sum of Rs.7,64,27,397/- with further interest on the sum of Rs.5,50,00,000/- at the rate of 18% p.a. from 1.3.2016 until payment/realization. The suit is based upon a debit note dated 5.4.2011 for Rs.4,50,00,000/- read with settlement agreement dated 27.9.2013.

2 It is the case of the plaintiff that the defendant had agreed to pay sum of Rs.4,50,00,000/- towards Strategic Advisory Services rendered by the plaintiff in the past to the defendant for the progress of the defendant-company, Spanco Limited (which is in liquidation). its subsidiaries and associated companies. It is alleged in the plaint

that the plaintiff rendered his services to the defendant as agreed and sent his debit note dated 5.4.2011. The defendant by a letter dated 25.10.2012 has confirmed to the plaintiff that he owes Rs.4.5 crores towards fees for services rendered. The defendant also forwarded post dated cheque of Rs.4.5 crores dated 26.12.2012 and further agreed to pay interest @ 27% p.a. for any payment if delayed beyond 26.12.2012. It will be useful to reproduce this letter.

"October 25, 2012

To,
Mr.Rupinder Singh Arora
Arora House, 16, Golf Link,
Union Park, Khar (West),
Mumbai-400 052.

Sub.: Your dues of Rs.4.5 crores.

Dear Mr.Arora,

This is to confirm that I owe you Rs.4.5 Crores towards your fees for services rendered.

To this effect, I enclosed herewith my cheque No.023932 dt.26.12.2012 drawn on Bank of India, Chembur Branch, Mumbai-400 071 for Rs.4.5 Crores.

I agree to pay you interest at 27% p.a. for any payment if delayed beyond 26.12.2012.

Thanking you,

Yours faithfully,

KAPIL PURI"

3 This cheque was deposited by the plaintiff and the cheque came to be dis-honoured due to insufficient funds. The defendant thereafter met the plaintiff and handed over to the plaintiff a letter written in his own handwriting dated 2.1.2013 whereby the defendant agreed to replace on or before 4.1.2013 the cheque that was dis-honoured, by another cheque and assured that the cheque will be honoured on or before 31.1.2013 without fail with interest. A copy of the said letter is annexed at Exhibit-D to the plaint. The defendant however, did not hand over the fresh cheque. The plaintiff, therefore, sent a notice dated 23.1.2013 calling upon the defendant to make the payment as agreed of Rs.4.5 crores. In the said notice it is also stated that the plaintiff was engaged for `Strategic Advisory Services' and that the defendant agreed to pay sum of Rs.4.5 crores as lumsum payment for Strategic Advisory Services rendered and based thereon a cheque for Rs.4.5 crores has been issued by the defendant which has been dis-honoured for insufficient funds. In response, the defendant, through his advocates, has simply stated that the contents of the notices are denied in toto and called upon the plaintiff to refrain from initiating any legal action and that the defendant will respond in detail to the notice issued by the plaintiff. It is necessary to note that no reply was ever sent by the defendant and the defendant has not denied the plaintiff's allegations that the

plaintiff has rendered advisory services and the defendant has agreed to pay Rs.4.5 crores for the advisory services rendered. The defendant has also not denied any of the documents mentioned above. This point is important because the stand of the defendant has been no such advisory services was ever rendered.

4 The parties thereafter entered into a settlement agreement dated 27.9.2013 in which also the fact that the plaintiff had rendered advisory services has been recorded. The fact that the defendant agreed to pay Rs.4.5 crores and issued post dated cheques with the assurance that it would be honoured on presentation has been admitted, the fact that cheque was dis-honoured due to insufficient funds and that the defendant agreed to replace the cheque with fresh cheque has been admitted and that the defendant failed to replace the said cheque has been admitted and it is also stated that due to financial crunch defendant could not pay to the plaintiff the amount due towards Strategic Advisory Services rendered. It is also mentioned in the recitals of the settlement agreement that the plaintiff has filed a criminal complaint under the provisions of the Negotiable Instruments Act 1881 and the parties with the intervention of well wishers and to keep the relations cordial agreed to settle the matter and filed settlement terms.

Under this settlement agreement, the defendant agreed to pay a lumsum amount of Rs.1 crores towards interest from the date of dis-honour of the cheque, i.e., 29.12.2012 till 31.12.2013. This works out to approximately 22% p.a. interest as against 27% p.a. that the defendant agreed to pay in his letter dated 25.10.2012. The defendant agreed to pay sum of Rs.30 lakhs out of the interest component of Rs.1 crores on or before 30.12.2013 and the balance Rs.70 lakhs towards interest @ 18% p.a. alongwith installment of principal amount of Rs.4.50 crores was also agreed. The defendant agreed to pay this balance amount in 36 installments as per the statement annexed to the settlement agreement. The parties also agreed that the period for repayment shall remain 3 years and shall not be extended for any reason whatsoever beyond period of 3 months and if 3 consecutive defaults occur and defendant make payment within 90 days from the date of each default, the default shall be deemed to be cured and the right of the defendant for 3 consecutive default shall revive and defendant shall be entitled for 3 consecutive default again. Clauses-6 & 8 of this agreement is necessary to be reproduced because the defendant's one main thrust of defence is that the contract is null and void. Clauses-6 & 8 read as under :-

> *"6 THAT in case of fourth consecutive default during the period of three years committed by the Second Party, this agreement shall become null and void and the First Party shall be entitled to claim the entire remaining amount in one go from the Second Party. Further, in case of aforesaid defaults*

during the period of three years, the Second Party shall be liable to pay interest to the First Party on the due amount of Rs.4.5 crores at 18% per annum from the date of default and till the time of payment.

8 THAT it has been agreed between the parties that in case of fourth consecutive default during the period of three years committed by the Second Party as stipulated in clause 6 hereinabove, this Agreement shall become null and void and the First Party shall be entitled to resume the criminal proceedings in the above-mentioned criminal complaint and shall have the right to recover the remaining balance Dues along with interest @ 18% per annum from the Second Party."

As the defendant did not make any payment, the plaintiff has filed the present suit.

5 The defendant based his defence on 5 limbs- (a) the settlement agreement is not stamped ; (b) the settlement agreement and all the correspondences were entered into/written due to coercion under the threat of continuing with the criminal prosecution which the plaintiff has filed in view of dis-honour of the cheque ; (c) No services were ever rendered by the plaintiff to the defendant and the cheque for Rs.4.5 crores that was given by the defendant to the plaintiff was only a security to repay the loan of Rs.6 crores that the defendant had taken from the plaintiff which is the subject matter of another suit filed by the plaintiff ; (d) In view of clause-6 & clause-8 of the settlement agreement stating that if there are 4 defaults the

agreement would become null and void and admittedly the defendant has committed 4 defaults, the settlement agreement is null and void and hence cannot be even acted upon or looked into ; (e) Debit Note cannot be considered because it is time barred.

6 The counsel for the defendant submitted that the agreement has not been stamped under Section 35 of the Stamp Act and hence, the document is inadmissible in evidence and cannot be acted upon. The counsel submitted that if the document suffers from any defects such as want of requisite stamp, evidence will have to be led on original consideration and in that case it ceases to be a summary suit. The counsel submitted that in the present case the document which is termed as settlement agreement attracts a stamp duty and having regard to section 34 of the Maharashtra Stamp Act 1958, the Court cannot act upon the same and on this ground alone, leave has to be granted. The counsel relied upon the judgment of the Apex court in [1]***Sms Tea Estates Private Limited Vs. Chandmari Tea Company Private Limited,*** [2]***Avinash Kumar Chauhan Vs. Vijay Krishna Mishra,*** [3]***Yogendra Patwardhan Vs. Khandelwal hermann Electronics Ltd.,*** [4]***M/s.Kalyanji Hansraj & Ors. Vs. Mrs.Kamini A.Agarwal & Ors.*** and unreported order dated

1 (2011) 14 SCC 66
2 (2009) 2 SCC 532
3 1989 (1) Bom. C.R.96
4 1990 (1) Bom.C.R.348

14.7.2015 in ***Summons for Judgment No.54 of 2013 in Summary Suit No.3303 of 2008.***

7 In my considered view, first two judgments are of no help to the defendant. In both these judgments the issue involved was appointment of Arbitrator under Section 11 of the Arbitration Act 1996. Those judgments dealt with a situation under Section 11 of the Arbitration & Conciliation Act 1996 where the Court had to appoint an Arbitrator under the Arbitration agreement. Passing an order would have completely disposed of the matter and hence the Court felt that it is better the document be stamped before the court passes an order. That is not the situation in the present case. In fact, I find support in the judgment passed by the Division Bench of this court in the matter of [5]Unity Infraprojects Limited Vs. L & T Finance Limited where the Court was considering the appeal filed against an order granting conditional leave to defend. The Court has considered the Sms Tea Estates Pvt. Ltd. (supra) and has held that the observations made by the Apex Court would not apply to proceedings in suit.

8 The Stamp Act is a fiscal measure enacted with an object to secure revenue for the State on certain classes of instruments and it is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. Once that object is secured according

5 2016(2) Bom.C.R.395

to law, the party staking his claim on the instrument will not be defeated on the ground of initial defect in the instrument. I find support in [6]***Hindustan Steel Limited Vs. Messrs Dilip Construction (Company), [7]Neolite Polymer Industries Pvt. Ltd. Vs. Standard Chartered Bank & Ors.*** **and** ***[8]Wolstenholme International Ltd. Vs. Twin Stars Industrial Corporation & Ors.***

In my view, if the document is impounded and sent for adjudication, the technical defect alleged by the defendant has been taken care of. In view of the observations in these 3 judgments and in other judgments referred to in those judgments, the defendant cannot be given unconditional leave on such technicality.

9 As regards the 2nd limb that is coercion, in my view, it is purely an after thought. There is not even a single correspondence which is produced by the defendant to indicate that there was coercion. It should be noted that the defendant was Chairman & Managing director of the Company which also had many subsidiaries. Even when the notice by the advocate dated 23.1.2013, copy whereof is annexed to the plaint was sent, the defendant did not respond by stating that the correspondence dated 25.10.2012 or the cheques were taken by the plaintiff under coercion. This also will apply to the hand written note given by the defendant to the plaintiff.

6 1969(1) SCC 597
7 2007(6) Bom.C.R.539
8 2001(4) Bom.C.R.114

It is necessary to note that the settlement agreement is dated 27.9.2013, eight months after the advocates' notice was issued. Moreover, in the rejoinder annexed are prints of various emails from the defendant to the plaintiff in which the subject is “repayment of Rs.6 crore and Rs.4.5 crore with interest”. These emails are exchanged not only between the plaintiff and the defendant but also their respective lawyers where the draft of the settlement agreement is discussed. Therefore, it is quite clear that it is just a bogie being raised by the defendant without any substance.

10 On the 3rd point that it was part of the loan transaction, first of all, the dispute relating to the loan transaction is a subject matter of another suit. In this suit except making a bald statement, the defendant has not annexed any of the document regarding the loan transaction. In the affidavit in reply it is stated that as against Rs.4.5 crores the defendant had pledged his shares with the plaintiff and had asked the plaintiff to dispose of the shares to get back the amounts payable by the defendant. There is not a shred of evidence annexed to this pleading that the defendant had pledged these shares to the plaintiff or defendant had asked the plaintiff to dispose those shares. Even assuming that the defendant had done so, pledging of shares is only a security and that will not allow the defendant not to pay the amount under the transaction. To state that

plaintiff could have disposed the security can never be a defence to a person who has borrowed money. Moreover, the emails exchanged between the parties expressly mentioned in the subject column atleast to the 2 payments as payable, i.e., Rs.4.5 crores and Rs.6 crores with interest. Rs.4.5 crores is the subject matter of this suit and therefore, to say that both are part of one and the same transaction is not acceptable.

11 The 4^{th} point on which the defendant relied heavily to oppose this summons for judgment is clause-6 and clause-8 of the settlement agreement. The counsel for the defendant submitted that both these clauses expressly provide that if 4 defaults are made by the defendant the said settlement agreement becomes null and void and in view thereof, the document has no legal effect or force and hence, cannot be a basis for a summary judgment. The counsel also relied upon the definition of null and void in Blacks Law Dictionary. The counsel also submitted that if a document has to be interpreted, unconditional leave has to be granted because evidence will have to be led to understand the meaning of what the parties intended.

12 In my view the settlement agreement is plain and clear. In any event, in interpreting a contract, Court cannot place emphasis on isolated provisions from the contract or unrelated provisions. The

Court has to read the contract as a whole in order to understand the meaning which the parties attributed to the words used in the contract. Interpretation in commercial matters must ensure that it records the sense. The Court should view and read the whole document in such a way that it makes sense of the contents. I find support from the judgment of this court in [9]***MMRDA Vs. Unity Infraproject Ltd.*** and of the House of Lords [10]***Mannai Investment Co. Ltd. Vs. Eagle Star Life Assurance Co. Ltd.*** Let us understand therefore what the parties intended in settlement agreement. It is necessary to note that the defendant has not denied that he has entered into settlement agreement. His first point that it was entered into under coercion has also been dismissed by me above. After the cheque was dishonoured, the plaintiff commenced proceedings under the provisions of Negotiable Instruments Act 1881. The defendant and the plaintiff therefore, entered into the settlement agreement whereby the defendant agreed to pay the amount with interest and in installments within 3 years and until the defendant continued to pay the installments, the plaintiff agreed not to prosecute the complaint filed under Negotiable Instruments Act. The parties have also agreed that if the defendant makes 4th consecutive default, the entire amount will become payable and the installment granted to the defendant will not be available. It

9 2008(5) Bom.C.R.196
10 2 Weekly Law Report 945

is quite evident from paragraph-6 where the expression used "............. shall be entitled to claim the entire amount in one.........." So also from para-8 where it says "......... first party shall be entitled to resume the criminal proceedings in the above mentioned criminal complaint and shall have the right to recover the remaining balance dues along with interest @ 18% p.a............"

Further section 10 of the Contract Act provides that all agreements are contract if they are made by the free consent of parties who are competent to contract for a lawful consideration and with a lawful object and not expressly declared as void. Chapter 2 of the Contract Act also provides that if the contract is not entered into by a person who is otherwise competent to contract or free consent has been taken under coercion or undue influence or fraud or mis-representation or mistake, then the agreement will be void. None of these factors has been alleged by the defendant except coercion which I have dismissed already . Therefore, the whole contract cannot be considered as void.

In fact the Apex court in its judgment in the matter of [11]***State of Kerala Vs. M.K.Kunhikannan Nambiar*** has held "Mere use of the word `void' is not determinative of its legal impact. The word `void' has a relative rather than an absolute meaning." Therefore, even this ground of defence is rejected.

11 AIR 1996 SC 906

13 Coming to the last limb that debit note is time barred, in my view, it is not so. This is because after the debit note was raised, the defendant has by a letter dated 25.10.2012 acknowledged liability. This was followed by issuing a cheque for Rs.4.5 crores, followed by a hand written note dated 2.1.2013 and finally by the settlement agreement dated 27.9.2013. The plaint has been lodged on 11.3.2016 and therefore, it is well within time.

14 Paragraph-3 of the judgment of the Apex court in [12]***Raj Duggal V/s. Ramesh Kumar Bansal*** reads as under :-

> *"Leave is declined where the court is of the opinion that the grant of leave would merely enable the defendant to prolong the litigation by raising untenable and frivolous defences. The test is to see whether the defence raises a real issue and not a sham one, in the sense that if the facts alleged by the defendant are established there would be a good or even a plausible defence on those facts. If the court is satisfied about that leave must be given. If there is a triable issue in the sense that there is a fair dispute to be tried as to the meaning of a document on which the claim is based or uncertainty as to the amount actually due or where the alleged facts are of such a nature as to entitle the defendant to interrogate the plaintiff or to cross-examine his witnesses leave should not be denied. Where also, the defendant shows that even on a fair probability he was a bona fide defence, he ought to have leave. Summary judgments under Order 37 should not be granted where serious conflict as to matter of fact or where any difficulty on issues as to law arises. The court should not reject the defence of the defendant merely because of its inherent implausibility or its inconsistency."*

12 1991 Supp (1) SCC 191

15 Therefore, leave to defend has to be granted only if there is a triable issue in the sense that there is a fair dispute to be tried on which the claim is based on uncertainty as to the amount actually due or where the alleged facts are of such a nature as to be entitled to the defendant to interrogate plaintiff or to cross-examine his witnesses. In this case in my view, no triable issue has been raised. There is no uncertainty on the amount involved. The debit note and the settlement agreement are both rather clear as to why the amount is payable and what happens if there has been a 4^{th} consecutive default. It only means that the defendant does not get installments to repay the amount and the plaintiff will proceed with his complaint filed under Negotiable Instruments Act. It is to be noted that between the date of the agreement and sometime in September-2014 the plaintiff did not even prosecute the complaint that they had filed under Negotiable Instruments Act.

16 Having taken into consideration the entire facts and circumstances of the case, in my opinion, grant of leave to defend would hereby enable the defendant to prolong the litigation by raising untenable and frivolous defences. The defences raised as of now are all illusory, sham and practically moonshine. Though the plaintiff should be entitled to a judgment, I would still grant leave to defend to the defendant by protecting the plaintiff. The protection is that the

defendant has to deposit with the Prothonotary & Senior Master, High Court, Bombay, a sum of Rs.4.50 crores within six weeks from today. Once the amount is deposited, the Prothonotary & Senior Master, shall invest the same in the fixed deposit with a nationalized bank for a period of one year, to be renewed year to year, until hearing and final disposal of the suit.

Within two weeks of deposit of this amount the defendant to file written statement and serve copy thereof upon the plaintiff.

Within two weeks thereafter the parties to file their respective affidavit of documents and also complete discovery and inspection of the documents relied upon by each other and file statement of admission and denial with reasons for denial.

Suit in such a case to be listed for issues on 19.12.2016.

17 If the defendant does not deposit the amount, the suit be placed for directions on the first Friday after the expiry of six weeks period.

18 The plaintiff has tendered the original of the settlement agreement dated 27.9.2013. This document is hereby impounded. The Prothonotary and Senior Master is directed to forward this document to the Superintendent of Stamps/Collector of Stamps, Mumbai for adjudication. Copy of the forwarding letter to be sent to

the Advocate for the plaintiff and the defendant. The Superintendent of Stamps/Collector of Stamps, Mumbai is directed to adjudicate within four weeks from receiving the document from the Prothonotary & Senior master, High Court, Bombay. Once adjudicated, the order be communicated to the Prothonotary & Senior Master with a copy to the Advocate of the plaintiff and the defendant.

The plaintiff to pay the amount of stamp duty including penalty etc. i.e., adjudicated amount within four weeks of receiving a copy of the order. If the plaintiff is aggrieved by any such adjudication order, the plaintiff will be entitled to challenge the adjudication in accordance with Law.

Summons for Judgment accordingly disposed.

(K.R.SHRIRAM,J)