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

SUMMONS FOR JUDGMENT NO. 46 OF 2016
IN
SUMMARY SUIT NO. 629 OF 2015

Chhattisgarh Distilleries Ltd. .. Applicant/Orig.Pltff.

In the matter between :

Chhattisgarh Distilleries Ltd. .. Plaintiff
Vs.
Bank of India .. Defendant

Mr.Shyam Kapadia a/w. Mr.Lalan Gupta i/b M/s. Dhruva Liladhar and Co. for plaintiff.

Mr.O.A. Das for defendant.

CORAM : K.R.SHRIRAM, J.
DATE : 5TH DECEMBER, 2016

P.C.

1 The plaintiff has filed the present suit for recovering an amount of Rs.2 crores deposited by the plaintiff with the defendant during the pendency of Special Leave Petition that was filed by the plaintiff before the Hon'ble Supreme Court of India.

2 The background of the case is as under :

Sometime in the year 1995, the plaintiff and another company of the plaintiff's group namely M/s.Kedia Distilleries (which is now wound up) entered into a commercial transaction with the defendant under which the plaintiff availed the lease finance and other credit facilities from the defendant. Around February 1999, the defendant filed a complaint against the plaintiff as well as its Directors as there was default in repayment of bank dues. The defendant also lodged two complaints with CBI against the then Chief Manager of the defendant-Bank and Chairman and Director of the plaintiff and the plaintiff-company alleging the misappropriation of the funds. Pursuant thereto, criminal cases were registered and the matters are pending before the Addl. Metropolitan Magistrate, Mumbai. Charges have been framed.

3 The defendant also filed cases under Section 138 of the Negotiable Instruments Act, 1881 against the plaintiff as well as its Directors and also instituted a Civil Suit for realization of its money. The plaintiff, by letter dated 17th January 2008, offered the defendant One Time Settlement (OTS) of Rs.415 lakhs in full and final discharge of all its liabilities to the defendant. The defendant, by a letter dated 15th February 2008 accepted the OTS of Rs.415 lakhs. The defendant made it clear that this amount will be payable on or before 31st March 2008. The plaintiff paid this amount and the defendant, vide letter dated 12th April 2008, issued 'No Dues Certificate' to the plaintiff. As the claim of the defendant was settled, the plaintiff and the

other accused file an application being criminal application no. 1703 of 2008 before this Court under Section 482 of the Criminal Procedure Code for quashing the FIR. This Court was pleased to dismiss the petition against which the plaintiff filed a Special Leave Petition (SLP).

4 During the pendency of SLP, it is the case of the plaintiff that after the hearing on 28th August 2009, the plaintiff was advised by its counsel that it should deposit Rs.2 crores with respondent no.3 in addition to the amount already paid under the OTS. Accordingly, the plaintiff prepared two demand drafts of Rs.1 crore each and forwarded the same to the defendant. The defendant did not accept the same since the account of the plaintiff was closed due to 'One Time Settlement'. It is also stated that the plaintiff, thereafter, forwarded these two demand drafts with a forwarding letter on 28th August 2009 to the defendant. On 10th September 2009, when the matter came up before the Apex Court, the counsel for the plaintiff brought to the notice of the Court about the demand drafts being sent and that the demand drafts were yet to be encashed. The Court, therefore, was pleased to pass an order on 10th September 2009 which reads as under :

> *“Delay Condoned.*
>
> *Mr.R.F.Nariman and Dr.A.M.Singhvi, Learned Senior Counsel appearing on behalf of the petitioners submit that a draft of Rs.2 crore would be deposited with the Registrar of this Court within a week.*

> *On deposit of the said amount, issue notice returnable within three weeks. Dasti in addition is permitted.*
>
> *The amount deposited may be kept in fixed deposit for a period of three months."*

5 The plaintiff deposited the amount of Rs.2 crores as directed by the Court. It is also stated that the defendant, in the meanwhile, also encashed the two demand drafts which means that in addition to Rs.2 crores the plaintiff paid into the Supreme Court registry, the plaintiff paid the defendant also, i.e., the plaintiff was out of pocket by Rs.4 crores. Subsequently, when the SLPs came up for hearing before the Supreme Court, the Court was pleased to dismiss the petitions but granted the plaintiff liberty to raise all factual and legal issues before the Trial Court and also granted leave to the plaintiff to withdraw the amount deposited before the Court. That amount of Rs.2 crores with accumulated interest has been withdrawn by the plaintiff from the Supreme Court registry. When the plaintiff wrote to the defendant to return the amount of Rs.2 crores, the defendant refused. This suit is filed to recover that amount of Rs.2 crores and the plaintiff is also claiming interest at 12% per annum.

6 Shri Kapadia, counsel appearing for the plaintiff submitted that the correspondence exchanged between the plaintiff beginning from the demand

letter, dated 29th March 2014 is a Written Contract. First of all, that is not the case of the plaintiff in the plaint. Paragraph 6 of the plaint states that *"the present suit is based on bills of exchange and hence filed under Order 37, Rule 1, Sub-rule 2 of CPC".* Moreover, though, exchange of correspondence can be considered as Written Agreement, in this case, there is no communication from the Bank accepting the offer of the plaintiff. In fact, there is no offer of the plaintiff. The correspondence on which Shri Kapadia relied upon is actually a demand letter dated 29th March 2014. Therefore, the submission that the claim arises under a Written Contract, cannot be accepted.

Shri Kapadia, thereafter, submitted that the suit is based on the bills of exchange. In my view, even this submission of the plaintiff is fallacious. Order 37, Rule 1(2) of CPC reads as under :-

> ***ORDER XXXVII-SUMMARY PROCEDURE***
>
> ***1. Courts and classes of suits to which the Order is to apply.-*** *(1) This Order shall apply to the following courts, namely:—*
>
> *(a) High Courts, City Civil Courts and Courts of Small Causes; and*
>
> *(b) other Courts;*
>
> *Provided that in respect of the courts referred to in clause (b), the High Court may, by notification in the Official Gazette, restrict the operation of this order only to such categories of suits as it deems proper, and may also, from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this order as it deems proper.*
>
> *(2) Subject to the provisions of sub-rule (1), the order applies to the*

> *following classes of Suits, namely:*
>
> *(a) suit upon bills of exchange, hundies and promissory notes;*
>
> *(b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest arising-*
>
> > *(i) on a written contract; or*
> >
> > *(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt (other than a penalty); or*
> >
> > *(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.*

7 Shri Kapadia was pitching his submission under Order 37, Rule 2(1)(a). A demand draft is a bill of exchange drawn by one bank upon the other, but the suit is not based on a bill of exchange which was issued in favour of the plaintiff. What the plaintiff is trying to claim is the money that the plaintiff had given to the defendant in addition to the OTS amount that was paid. Shri Kapadia submitted that as the Rs.2 crores was paid by demand draft, i.e., bill of exchange, the suit is based upon a bill of exchange and is maintainable as a summary suit.

I am afraid, I cannot agree with Shri Kapadia. A suit upon a bill of exchange means a suit to recover money due on a bill of exchange drawn by the defendant which is dishonoured. The suit must be for recovery of money of demand draft or cheque drawn in favour of or endorsed to the plaintiff. When somebody files a suit on the basis of bills of exchange, the same is drawn in favour of the plaintiff or endorsed in his favour. The demand drafts on the basis of which the suit is allegedly filed, has already been encashed by the defendant and what the plaintiff is seeking is return of the said money. A suit for recovery of an amount paid, as the plaintiff has done in this case, by a demand draft, is not a suit upon a bill of exchange and as such is not maintainable as a summary suit. Such a suit, in my view, cannot be called a suit based upon bills of exchange. I find support for this view in (a) ***Purnima Jaitly V/s. Ravi Bansi Jaisingh*** [1]***;*** (b) ***Iram Feroz V/s. Ayaz Gadhiya*** [2]***; and*** (c) ***Syed Mossa Emani Vs. Sunil Kumar Gilani & Anr.*** [3]

In addition to the above, an application on behalf of the plaintiff to direct the defendant to refund this amount of Rs.2 crores claimed in this suit was filed before the Apex Court on or about 22nd May 2014 and that application was rejected by the Apex Court by an order, dated 15th September 2014.

8 In the circumstances, in my view, this summons for judgement is not maintainable and the same stands dismissed. The suit be transferred to list of Commercial Causes.

9 The defendant to file written statement on or before 9th January 2017. On or before 23rd January 2017, the parties to file their respective affidavits

1 2004(1) Mh.L.J.114
2 (2006) 3 Bom. C.R.689
3 MANU/DE/0018/1984

of documents. On or before 6th February 2017, parties to complete inspection and discovery and also exchange statements of admission and denial with reasons for denial.

10 The suit be listed on 20th February 2017 for issues.

(K.R. SHRIRAM, J.)