

dik

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

**SUMMONS FOR JUDGMENT NO. 35 OF 2015
IN
SUMMARY SUIT NO. 322 OF 2015**

Rajesh Ramanlal Shah	...Plaintiff
VS	
Pradeep Shah & Anr	...Defendants

.....

Mr Simi Purohit a/w Sharmili Mhatre i/b Rohit Shetty for the Plaintiff
Ms Sunanda Kumbhat for Defendant No.1 in SS 322 of 2015 and for Defendant
Nos.1 and 2 in SS No. 264 of 2015.
Ms Shama Mulla for Defendant No.2 in SS No.322 of 2015 and for Defendant
No.3 in SS No.264 of 2015.

.....

CORAM : S.C. GUPTA, J.

JANUARY 27, 2016

P.C. :

The Summary Suit is based on dishonoured cheques. The consideration for these cheques is stated to be a loan of Rs.2 Crores given by the Plaintiff to Defendant No.2 at the instance of Defendant No.1. It is the Plaintiff's case that this loan was given in February 2012 and in May 2012 Defendant No.1 gave four cheques of Rs.50 Lacs each aggregating to Rs.2 Crores, towards repayment of this loan. The cheques were dishonoured when presented for payment, whereupon statutory notice was issued under Section 138 of the Negotiable Instruments Act, 1881 and a criminal case was filed. This case is pending before the Metropolitan Magistrate's Court at Girgaon in Mumbai. The Summary Suit seeks recovery of this amount.

2 In their reply, Defendant Nos.1 and 2 have denied this loan. Defendant No.1 in its reply states that these cheques were given to the Plaintiff in 2010, since the Plaintiff was a close relative of Defendant No.1, being his brother-

in-law, because of the Plaintiff's financial needs. Defendant No.1 has produced his bank statement in support of his case that the cheques were indeed issued in 2010. Defendant No.2, on his part, claims that the Plaintiff and Defendant No.1 were indulging in share trading in respect of Varun Industries, promoted by one Shri Gopal Agrawal, by using the account of Defendant No.2. Though funds were arranged by Defendant No.1, there was a net loss of Rs.1.62 Crores on account of this transaction and as per that MOU Rs.2.03 Crores was repaid to Defendant No.1 and his associates by Defendant No.2 on the directions of one of the parties to the MOU. It is submitted that the amount paid to Defendant No.2 was in connection with this transaction. These pleadings do give rise to several triable issues, on which evidence needs to be led at the trial. The Defendants deserve, in the premises, an unconditional leave to defend.

3 Accordingly, the Defendants are granted leave to defend the suit unconditionally. The written statement to be filed within a period of six weeks from today. Place the suit for directions after six weeks.

(S.C.GUPTE J.)