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

APPEAL (L) No. 922 OF 2015
IN
SUMMONS FOR JUDGMENT No.100 OF 2014
IN
SUMMARY SUIT No. 581 OF 2014

Ajit Waman Satam and Anr. ...Appellants
Vs.
Sai Service Agency (Bombay) Pvt. Ltd. ...Respondent

Mr.Sachin Pawar for Appellants
Mr.Sharad Ghadge for Respondent

**CORAM : V. M. KANADE &
REVATI MOHITE DERE, JJ.**

DATE : FEBRUARY 22, 2016

P.C. :

1. Heard the learned counsel appearing on behalf of the Appellants and the learned counsel for the Respondent.
2. The Appellants are the Original Defendants and the Respondent is the Original Plaintiff (for the sake of convenience hereinafter referred to as "Plaintiff" and

“Defendant Nos.1 and 2”). The Appellants are aggrieved by an order passed by the Learned Single Judge, granting conditional leave to defend the suit. The Learned Single Judge has directed the Appellants to pay an amount of Rs.3,00,00,000/- in the Court within a period of eight weeks from the date of the order and upon such deposit being made, the Appellants /Defendants were granted leave to defend.

3. The learned counsel appearing on behalf of the Appellants has submitted that he had raised rival contention that an unconditional leave ought to have been granted by the Learned Single Judge. He has relied on the judgment of the Apex Court in the case of **M/s. Mechelec Engineers & Manufacturers Vs. M/s. Basic Equipment Corporation [(1976) 4 Supreme Court Cases 687]**.

4. Brief facts which are relevant for the purpose of deciding the appeal are as under:

5. The Plaintiff is a company and is an authorized dealer of Bajaj Auto Ltd. and has its showroom and workshop at various

places in Mumbai. Defendant No.1, who is the brother of Defendant No.2 was employed with the Plaintiff as Sales Manager since 1996. It is the case of the Plaintiff that in the year 2011, it was realized by the Plaintiff that Defendant No.1 has misappropriated a sum of Rs.4,85,87,002/-, which he had collected from the Dealer Sales Associates.

6. According to the Plaintiff, Defendant No.1 confessed to the misappropriation and agreed to repay the amount. He also informed the Plaintiff that he had shared a part of the amount with Defendant No.2. An indemnity bond was executed by Defendant No.1 wherein he admitted misappropriation of the said amount by giving details of said misappropriation. Defendant No.2 who is the brother of Defendant No.1, also executed a declaration and in the said document, he agreed to compensate the Plaintiff and issued five cheques drawn on Karnataka Bank Ltd., Nerul, Navi Mumbai. He also offered to transfer the land owned by the Defendants within two months. However, Defendant No.2 failed to transfer the land and as per the undertaking, the cheques were deposited by the Plaintiff,

which were dishonoured on 20th March, 2013. The Plaintiff, therefore, filed the present suit on the basis of the cheques which were dishonoured.

7. It is submitted by the learned counsel for the Appellants that the Appellants had denied issuance of the cheques, misappropriation of the amount and execution of the ideminity bond. It is further submitted that the account on which the cheques were drawn, did not belong to Defendant No.2. It is submitted that, therefore, the cheques were forged and fabricated and did not bear the signature of Defendant No.2. The learned counsel for the Appellants submits that in paragraph 6 of the order, the Learned Single Judge has stated that she compared the signature on the cheques with the signature of Defendant No.2 on the Vakalatnama. It is submitted that however, no notice was given to the Appellants and the Learned Single Judge on her own had made comparison after the judgment was reserved. It is submitted that, therefore, the direction to deposit a sum of Rs.3,00,00,000/- was uncalled for.

8. In our view, there is no substance in the submissions made by the learned counsel appearing on behalf of the Appellants. It is well settled position in law that only if the defendant establishes that there are triable issue, he is entitled to file his written statement. In our view, the Learned Single Judge has examined each and every submission made by the learned counsel for the Appellants and has found that it is without any substance. Firstly, Defendant No.2 has issued five cheques and prima facie, the Learned Single Judge after examining the signature of the Defendant No.2 on the Vakalatnama, has come to the conclusion that it is his signature. The Defendant No.2 also has executed one indemnity bond and has also executed a declaration. In spite of having agreed to transfer the land within two months, the Defendants have failed to do so and, therefore, the Plaintiff was constrained to file the suit. The total amount which is given by the Plaintiff is Rs.7,46,57,534/- . The Learned Single Judge has directed the Appellants to pay a sum of Rs.3,00,00,000/-, which is less than 50% of the claim made by

the Plaintiff. In the case of **M/s. Mechelec Engineers (supra.)**, the Apex Court has observed that only if a triable issue is made out, then in such cases, the Trial Court is duty bound to grant unconditional leave to defend. The ratio of the judgment does not apply to the facts of the present case. Hence, appeal is dismissed. Time to deposit the amount is extended by four weeks.

REVATI MOHITE DERE, J.

V.M. KANADE, J.