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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **RSA 58/2016**

**Date of Decision: 14.03.2016**

**M/S ELECTOR LUX INDUSTRY THROUGH ITS**  
**PROP. SAYED AMAN MEER** ..... Appellant  
Through Mr.Ashok Gurnani, Adv.

versus

**JAGVIR SINGH** ..... Respondent  
Through None.

**CORAM:**  
**HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

**ASHUTOSH KUMAR, J. (ORAL)**

1. The appellant/plaintiff has put up a challenge to the judgment dated 18.12.2015 passed by the Additional District Judge-I, Central, Tis Hazari Courts, Delhi in RCA No.15/2015 whereby the orders dated 08.12.2014 and 09.01.2015 have been set aside and the parties, i.e. the appellant and the respondent, have been directed to appear before the Trial Court on 04.01.2016 for a full fledged trial.
2. The appellant/plaintiff had filed a suit under Order 37 of the Code of Civil Procedure for recovery of Rs.2 lakhs from the respondent. The appellant/plaintiff sells and repairs motors, transformers, stabilizers etc. The respondents had purchased three motors, two transformers and four stabilizers on 05.12.2013 and because of the old acquaintance between them, a personal loan of

Rs.50,000/-, returnable in the first week of February, 2014 was also advanced by the appellant to the respondent. It is the case of the appellant that after settlement of the account including the advance given, the outstanding amount with respect to the purchase price of the motor parts came to Rs.2 lakhs, for which the respondent issued post dated cheque of Rs. 2 lakhs, payable on 04.03.2014. The aforesaid cheque was issued on 07.02.2014.

3. On presentation, the aforesaid cheque was dishonoured with the remark that the signature of the drawer did not match with the specimen signature. A legal notice dated 14.03.2014 was sent but to no avail.

4. Hence the summary suit for recovery of the aforesaid amount.

5. The Trial Court, by order dated 08.02.2014, granted the respondent, the leave to defend on the condition of his depositing 50% of the claimed amount in the Court.

6. The aforesaid amount (50% of the claimed amount) was not deposited and hence the Trial Court, finding no justification for not depositing the amount and by resorting to the provisions under Order 37 Rule 3(6)(b) CPC, allowed the suit, holding the appellant to be entitled for recovery of the amount as also the cost to the extent of the Court fee involved in the case by order dated 09.01.2015.

7. The respondent preferred an appeal vide RCA No.15/2015 raising various issues viz. the judgment of the Trial Court not being based on law and facts, untenable and not in consonance with the law dealing with disposal of summary suits.

8. It was urged on behalf of the respondent before the first

Appellate Court that the appellant herein did not produce any bills and challans of the goods sold by the company to the respondent.

9. The first Appellate Court took notice of the fact that the cheque issued by the respondent was dishonoured on presentation as the signature of the respondent did not match with the signature kept as a specimen.

10. The respondent has averred that his signature was obtained through misrepresentation and fraud and that the cheque in question did not relate to the respondent as it was not issued from the account maintained by him.

11. The Appellate Court vide judgment dated 18.12.2015 set aside the Trial Court order primarily on the ground that the statement of defence entitled the respondent to contest the suit without any condition, especially of depositing 50% of the claimed amount. In the opinion of the first Appellate Court, the issues raised by the respondent were triable and, therefore, the respondent was entitled to unconditional leave to defend.

12. In *Sunil Enterprises & Anr. vs. SBI Commercial & International Bank Ltd*, (1998) 5 SCC 354, the Supreme Court, after examining the judgments in *Santosh Kumar vs. Bhai Mool Singh*, AIR 1958 SC 321; *Milkhiram (India) (P) Ltd vs. Chamanlal Bros*, AIR 1965 SC 1698 and *Mechelec Engineers & Manufacturers vs. Basic Equipment Corpn*, (1976) 4 SCC 687 listed the following proposition with respect to defence in summary suits:-

- (i) If the defendant satisfies the Court that he has a good defence to the claim on merits, the defendant is entitled to

unconditional leave to defend;

- (ii) If the defendant raises a triable issue indicating that he has a fair or bonafide or reasonable defence, although not a possibly good defence, the defendant is entitled to unconditional leave to defend;
- (iii) If the defendant discloses sufficient materials entitling him to raise his defence, the Court could impose conditions at the time of granting leave to defend but the conditions being as to time and mode of trial but not as to payment into Court or furnishing security;
- (iv) If the defendant has no case or the defence is absolutely unsustainable he would not be entitled to any leave to defend;
- (v) In case of a moonshine defence, the plaintiff is to be protected with a condition of payment of the claimed amount into Court or creating a condition whereby the claim of the plaintiff is secured.

13. The aforesaid position of law was reiterated in several successive cases and the defendant was given an unconditional leave to defend.

14. Mr.Gurnani, learned counsel for the appellant, submitted that under Section 139 of the Negotiable Instruments Act, 1881 unless the contrary is proved, the holder of a cheque is presumed to have received the cheque towards payment of a debt in whole or in part or other liability and once a cheque is issued, the drawer cannot escape the responsibility of respecting the cheque. It was further submitted

that the respondent had initially challenged the judgment dated 09.01.2015 whereby the suit was decreed but later withdrew the appeal in order to file a fresh appeal impugning the order dated 08.12.2004 along with the order dated 09.01.2015 referred to above. It was contended that once the appeal was withdrawn, the respondent ought not to have been permitted to file another appeal. The other argument advanced on behalf of the appellant is that if at all the respondent had any grievance as against the grant of conditional defence in the suit, the order dated 08.12.2014 ought to have been challenged, otherwise it would be presumed that the respondent had accepted to contest the suit on depositing 50% of the claimed amount.

15. From the records, it appears that the respondent had a substantial defence and the issues raised by him were triable. By no stretch of imagination can the defence raised by the respondent be said to be vexatious, frivolous or moonshine. The plaint ought to have included the prima facie evidence of the purchase of the articles by the respondent. The respondent was perfectly within his rights to raise the issue of there being no responsibility of his to pay and that fraud was played in obtaining his signature on the cheque. These are defences which require threadbare trial and findings on all issues.

16. I do not concur with the view of the Trial Court that the respondent, as a matter of mercy, be permitted to raise his defence on the condition of depositing 50% of the claimed amount. If the defence of the respondent is established, the suit would definitely fail.

17. This Court cannot lose sight of the fact that ordinarily the condition imposed for grant of leave to defend in a summary suit

should not be unnecessarily onerous so as to prevent the defendant from contesting the suit.

18. Considering the grounds for not having respected the order dated 08.12.2014 (grant of conditional leave to defend), this Court is of the opinion that the condition imposed by the Trial Court was neither justified nor warranted.

19. Pursuant to the remand order of the first Appellate Court, the respondent has appeared before the Trial Court and has filed his written statement.

20. I do not wish to interfere in the matter at this stage.

21. The Trial Court is directed to dispose of the suit in a time bound manner, considering that it is a summary suit and the amount involved is not heavy.

22. For the reasons aforesaid and in the absence of any substantial question of law having been raised by the appellant, this second appeal is dismissed.

**ASHUTOSH KUMAR, J**

**MARCH 14, 2016**

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