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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ RFA(OS) 6/2015, CM No. 1203/2015, CM No. 1205/2015, CM No. 7190/2015 & CM No. 4433/2016

SANJEEV JINDAL ..... Appellant

Through: Mr. Bhagat Singh, Advocate.

versus

M/S PRADYUMAN OVERSEAS LTD ..... Respondent

Through: Mr. Sanjay Poddar, Sr. Advocate alongwith Mr. Sandeep Bajaj and Mr. Govind Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **30.03.2016**

The present appeal is directed against an order of the learned Single Judge rejecting an application for leave to defend.

The plaintiff/respondent filed a summary suit under Order 37 of the Code of Civil Procedure claiming a decree for Rs.41,66,895/- together with interest at 18% per annum. The total decree sought was for Rs. 44,31,978.02/-. The plaintiff alleged that the present appellant was sole proprietor of M/s Bhagwati Trading Company as well as M/s Apaar Enterprises with which it had commercial dealings. The plaintiff sold and supplied several goods in relation to which it raised invoices. The impugned judgment has listed the said invoices in para 1 (iii); aggregate Rs. 41,66,895/- i.e. the suit amount. It was alleged that to discharge the said liability, the defendant/appellant issued six cheques for the amount, all of which were returned unpaid. Thereafter, the defendant requested the plaintiff to re-present the cheques, which was done. These cheques were again dishonoured. The suit further alleged that the defendant acknowledged its liability in writing on 25.06.2010 and agreed to liquidate the amount together with interest. It was further urged that to secure the payment, the defendant had deposited his title deeds in respect of property bearing No. S-13, measuring about 58 sq yds, situated at Village Madipur, Shivaji Park on Rohtak Road, New Delhi. Apparently, the defendant furnished the post dated cheque (dated 31.08.2010) for the sum of Rs. 43,33,342.48/- which included an interest element. It is contended that the plaintiff claimed that the cheque was drawn on an account which was subsequently closed. On the basis of these averments, the suit was filed.

After service of summons, the defendant entered appearance and sought leave to defend. The defendant's application denied that the invoices and cheques pertained to any transaction with the plaintiff. He also alleged that no purchase orders were placed by the defendant upon the plaintiff and it was also pointed out that invoices/bills relied upon did not bear any acknowledgment or signatures. Furthermore, it was denied that the cheque for Rs. 43,33,342.48/- was ever issued by the defendant – it was not even in his writing. The defendant alleged that he was a transporter and trading under the name M/s Jindal Auto House.

It was also argued that the plaintiff company had approached the defendant, proposing that it ought to act as a front for tax evasion purposes and that the plaintiff managed to secure the defendant's signatures on several blank sheets of paper. The defendant further stated that the understanding initially made – in 2006 worked smoothly till 2010 when the plaintiff went back on its understanding and started misusing the cheques.

The learned Single Judge, after noticing the rival contentions, particularly that the defendant's argument that the acknowledgment was by one Apaar Enterprises, and that in taking the totality of circumstances, i.e. that the defendant did not dispute his signatures on the six cheques which were dishonoured after their second presentation before the bank (for Rs. 41,66,895/-) and that it was his signatures on the letter head of M/s Apaar Enterprises, the claim for leave to defend was not made out.

The learned Single Judge was of the opinion that the defendant's averments were vague and bereft of particulars besides being unbelievable.

The explanation that the defendant was in the transportation business and that he was endowed into acting as a front man for the plaintiff was not believed.

It was argued on behalf of the appellant that the learned Single Judge fell into error in not considering the facts and circumstances which appeared on the record in its proper perspective. Learned counsel highlighted that the bills filed in Court alongwith the suit were bereft of any particulars. It was highlighted that these bills stated the amounts that were due and payable towards bidis and other such articles supplied by the plaintiff. However, the terms of the contract and further evidence such as delivery challans, purchase orders etc or even proof of statutory compliance were missing. It was submitted that these bills could not be correlated with the cheques alleged to have been drawn and issued. Those cheques, it was argued, related to some other transactions. Learned counsel secondly urged that the learned Single Judge completely over-looked the fact that the so-called acknowledgment was not by the plaintiff but by the proprietor of one Apaar Enterprises-the proprietor of which was not the defendant but M/s Anjul Aggarwal. The appellant's counsel, in this regard, relied upon sales tax registration form signed by M/s Anjul Aggarwal on behalf of Apaar Enterprises which was filed against the application under Order 41 Rule 27.

It was thirdly argued – again on the basis of documents filed alongwith the application for adducing additional evidence that the plaintiff misrepresented and no amounts were infact due or payable by the defendant to it. Learned Counsel relied upon the statutory balance sheets and especially on the list of debtors for the assessment year 2011-12 which disclosed that for the said period i.e. financial year 2010-11, the amounts shown to be due from the defendant i.e. Bhagwati Trading Company were not Rs. 44 lacs but a much smaller amount. It was submitted that the plaintiff's explanation that these figures were wrongly reflected and the reliance placed upon the documents filed alongwith its reply were misleading.

Learned counsel urged in this regard that contrary to the provisions of the Company's Act, particularly Sections 217 and 227, there was no verification or certification by the Company's Auditors nor did the Directors of the plaintiff Company state that the rectification/clarification was in order. Consequently, the explanation of the plaintiff was unbelievable best documents in its possession i.e. its statutory returns clearly show that no amount were due and payable.

Learned counsel submitted that having regard to these circumstances, the impugned judgment should not be sustained. It was urged here that ordinarily when a defendant approaches the Court for leave under Order 37 Rule 3 CPC, the Court would grant liberty with or without conditions unless the defense disclosed is totality unbelievable or "moonshine". Learned counsel argued in this regard that the defense in this case is credible – i.e. it was of such quality as was sufficient to warrant trial. It was submitted that the reliance on dubious and suspect documents by the plaintiff on one hand, the fact that the so-called acknowledgment was not by the defendant and that the cheques which were dishonoured were not the basis of the suits constitutes sufficient cause for the Court to hold that the case for leave to defend was sufficiently made out.

Counsel for the plaintiff/respondent on the other hand highlighted that the new document sought to be placed on the record, reliance of which has been made by the defendant, in no way support its case. It was submitted that the defendant is seeking to confuse the issues by relying upon the multiple identities its proprietors chose to use in the course of the business. Learned Senior Counsel of the plaintiff argued that the defendant trades under the style of appellant-Bhagwati Trading in Delhi.

The other two enterprises, which the plaintiff used to trade with are Bhagwati Trading Company and Bhagwati Enterprises. Furthermore, argued the counsel for the plaintiff, that Apaar Enterprises was, infact connected with the defendant. It is pointed out that the said concern is based out of the same address as the defendant and besides as noticed by the learned Single Judge, the bank account of the said Apaar Enterprises was open with the aid of M/s Bhagwati Trading company proprietor.

Learned Senior Counsel also relies on the fact that the signatures on the acknowledgment of debt dated 25.06.2010 of the defendant were infact admitted-as is recorded by the Single Judge in the impugned judgment. It is further urged that the so-called discrepancies in the balance sheet were infact on account of mistake and over-sight. Learned counsel relied upon the Value Added Tax (VAT) returns filed by the plaintiff correlate with the bidi supplied to the defendant for the relevant period i.e. May 2010. It was lastly urged that there is no controversy at all about the facts that the title deeds of the property owned by defendant were handed over to the plaintiff.

It is clear from the above discussion that the plaintiff had sued on the basis of two claims i.e. supply of goods through invoices/bills – which were placed on the record. The second claim was on the basis of acknowledgment of liability dated 26.06.2010. What the defendant did in the course of the proceedings before the learned Single Judge was to entirely deny the issuance of cheques for Rs. 43 lacs- and sought to build an entirely different story, contending that the transactions with the plaintiff were really shady and no commercial dealings took place. It was also submitted before the Single Judge that some of the documents were denied and were even forgeries and at the least not genuine. On the other hand, what stands out clearly is that the defendant had a connection with Apaar Enterprises as is evident from the signatures on the acknowledgment of debt dated 25.06.2010- which is recorded in para 11 of the impugned order. If such were the truth as well as the fact that the defendant's title deeds in relation to his properties were handed over to the plaintiff – a lot of unanswered questions would immediately crop up. If that indeed the defendant was a front man facilitating the plaintiff's dubious business, the question of why he would have to issue acknowledgment of debt or even deposit title deed would arise.

The Single Judge further noticed that no dates and particulars were given as to when the accounts were open and the last transaction in the transportation business was of the year 2006-07. It was further noted as follows:-

> *"Ordinarily, if the plaintiff had stopped giving transportation business to the defendant and in consideration of which the defendant claims to have agreed to aid and abet the plaintiff in avoiding its taxation liability, the defendant would have immediately reneged from the said assistance to the plaintiff also. Moreover, this Court cannot take into consideration any such pleas of illegality and the principles of pari delicto will apply."*

In case the defendant had a genuine grievance and a triable case on the ground that all the documents relied by the plaintiffs or some of them were not genuine, nothing prevented the defendant at least to make an attempt to have it enquired. The entire proceedings are absolutely silent on this. The defendant made no effort in the course of the proceedings to have the documents inspected, refer it to a handwriting or forensic expert. Even in the course of these proceedings, all that the defendant has done is to produce further documents to try and establish that the plaintiff's claims are false. The acknowledgment relied upon by the plaintiff in a suit (dated 25.06.2010), apart from the fact of its bearing the defendant's signatures clearly mentions sum of Rs. 41,66,359/- as payable to the plaintiff.

In suits under Order 37, the normal procedure applicable in civil actions do not apply; the public policy consideration in this regard is that in commercial transactions-including those based upon Negotiable Instruments and written agreements, the defendant, should make out a credible cause for trial to proceed. The Supreme Court has evolved the applicable test that the Courts should apply in such circumstances in its judgment reported as ***Mechelec Engineers & Manufacturers Vs Basic Equipment Corporation*** *1977 AIR 577 and later in* ***M/s Sunil Enterprises & Anr vs. SBI Commercial & International Bank Ltd.*** *AIR 1998 SC 2317.* Broadly, only such defences as would appeal to the Court as having some wring of applicability or plausibility, even though it may not be extremely strong would be allowed to proceed. Thereto, the Court has discretion in either granting unconditional leave to defend or imposing such conditions as may be appropriate - such as deposit of amounts. In all other circumstances-termed by the Supreme Court as "moonshine" defences, the Court would decline leave. The circumstances outlined above- and as discussed by the learned Single Judge elaborately reveal that the defendant's plea involves entire reconstruction of the facts. Now, the mere reconstruction of fact *ipso facto* may not disqualify for leave, however, there should be some element of credibility in these reconstruction of facts. What the Court perceives here is that the defendant has chosen to deny all transaction based upon which the suit was founded. As highlighted earlier, there are several unanswered questions which the defendant has chosen to overlook or rather kept silent on. These impressed the learned Single Judge in holding that leave not ought to be granted. We entirely agree with the conclusions and the reasoning of the Single Judge that the facts of this case do not warrant to granting of leave nor has the defendant/appellant made out any better case that he did before the Single Judge, to the extent he has relied upon the documents produced before the Court under Order 41 Rule 27.

For the foregoing reasons, the appeal has no merit and is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 30, 2016

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