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

+ **CS(COMM) 419/2016**

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Judgment dated 26th October, 2016

**NAMDHARI FOOD INTERNATIONAL
PRIVATE LTD**

..... Plaintiff

Through : Mr.Naveen Sharma and Ms.Divyaa
Garg, Advs.

versus

BUSH FOOD OVERSEAS PRIVATE LIMITED Defendant

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Plaintiff has filed the present suit under Order XXXVII of the Code of Civil Procedure for recovery of Rs.2,02,00,000/-.
2. Summons were issued to the defendant in the prescribed form. The defendants had entered appearance, which is evident upon reading of the order sheets. Thereafter the plaintiff filed an application seeking summons for judgment. Defendant has failed to file an application seeking leave to defend. On 19.9.2016, when the matter was listed before the Joint Registrar, counsel for the defendant had made a statement that he is not getting any instruction from the defendant.
3. Learned counsel for the plaintiffs prays for a decree in terms of Order XXXVII(3)(6) of the Code of Civil Procedure.
4. As per the plaint, defendant-company had approached the plaintiff sometimes in the year 2008 for supply of rice. The goods were duly supplied by the plaintiff for which the defendant paid the price of the

goods supplied. In the year 2012, defendant-company again approached the plaintiff company for supply of rice. For the rice supplied, defendant issued nine cheques of different dates in the total sum of Rs.2,02,00,000/- in favour of the plaintiff-company. Details of the nine cheques are as under:

S.No.	Date	Cheque No.	Amount (in Rs.)
1.	08.08.2012	000055	23,00,000.00
2.	11.08.2012	000056	24,00,000.00
3.	19.08.2012	000957	25,00,000.00
4.	20.08.2012	000958	25,00,000.00
5.	22.08.2012	000960	25,00,000.00
6.	23.08.2012	000961	15,00,000.00
7.	08.10.2012	000475	20,00,000.00
8.	10.10.2012	000476	20,00,000.00
9.	12.10.2012	000477	25,00,000.00

5. The aforesaid cheques upon presentation were returned for the reasons given below:

S.No.	Date	Cheque No.	Amount (in Rs.)	Reason
1.	08.08.2012	000055	23,00,000.00	Exceeds Arrangement
2.	11.08.2012	000056	24,00,000.00	Not Presented in Bank
3.	19.08.2012	000957	25,00,000.00	Insufficient Funds
4.	20.08.2012	000958	25,00,000.00	Insufficient Funds
5.	22.08.2012	000960	25,00,000.00	Exceeds Arrangement
6.	23.08.2012	000961	15,00,000.00	Exceeds

				Arrangement
7.	08.10.2012	000475	20,00,000.00	Payment Stopped by Drawer
8.	10.10.2012	000476	20,00,000.00	Payment Stopped by Drawer
9.	12.10.2012	000477	25,00,000.00	Payment Stopped by Drawer

6. Learned counsel for the plaintiff submits that after the return/dishonour of the cheques, the plaintiff made repeated request to the defendants to clear the outstanding, however, neither the requests of the plaintiff was responded to nor the amount was cleared by the defendant.
7. I have heard learned counsel for the plaintiff and also perused the plaint, application and the documents filed along with the plaint.
8. It may be noticed that upon perusal of the records shows that the suit was filed by the plaintiff on 10.8.2015 vide Diary No.394265, and, thus, the present suit is within limitation. The plaintiffs have also placed on record the original cheques.
9. Order XXXVII of the Code of Civil Procedure reads as under:

ORDER XXXVII
SUMMARY PROCEDURE ²[*]**

³**[1. Court 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) suits 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.]

10. As per order XXX of the Code of Civil Procedure, a suit based on Hundies, bills of exchange, promissory notes, would fall within the scope of Order XXXVII of the Code of Civil Procedure. Since the present suit is based on cheques, the suit is maintainable under the provisions of Order XXXVII of the Code of Civil Procedure.

11. Further Order XXXVII Rule 2(3) of the Code of Civil Procedure prescribes the manner in which after service the defendant is to enter appearance. Thereafter the procedure prescribed is for the plaintiff to

file summons for judgment and thereafter the defendant is to file leave to defend within a period of ten days thereafter.

12. In this case, after the summons for judgment were served upon, the defendant has failed to make an application seeking leave to defend. In fact, the counsel for the defendant had made a statement before the Joint Registrar that he is not receiving instructions from the defendant.
13. Order XXXVII Rules 3(6)(a) of the Code of Civil Procedure provides that in case leave to defend is not filed, the plaintiff is entitled to a decree forthwith. Order XXXVII Rules 3(6) of the Code of Civil reads as under:

[3. Procedure for the appearance of defendant

(6) At the hearing of such summons for judgement, -

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgement forthwith;

14. Accordingly, the present suit is decreed in favour of the plaintiff and against the defendant. The plaintiff would be entitled to *pendente lite and future* interest at the rate of 8%, per annum. Let a decree sheet be drawn up accordingly.

I.A. 18533/2015 (STAY)

15. Application stands disposed of in view of the order passed above.

G.S.SISTANI, J

OCTOBER 26, 2016

msr