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

+ CM(M) 701/2016 & CM No.26016/2016

MANISH AGGARWAL Petitioner

Through Mr.Puneet Goel, Adv.

versus

ANIL JAIN Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **04.08.2016**

1. By the present petition the petitioner seeks to impugn the order of the trial Court dated 6.5.2015 whereby a suit filed by the petitioner for recovery of Rs.13 lacs under Order XXXVII CPC was treated as a 'general suit for recovery' and summons were issued accordingly. He is also aggrieved by the order of the trial Court whereby no relief was granted to the petitioner in his application under Order 38 Rule 5 CPC.

2. The suit is filed by the petitioner stating that petitioner has been regularly paying monthly instalment of the chit to the respondent. It is further averred that in a meeting held on 5.11.2015 where ten members were present in the office of the defendant/respondent, the plaintiff/petitioner succeeded to get a chit in his favour of Rs.13,50,000/-. It is, however, urged that the defendant/respondent induced the petitioner/plaintiff to give the aforesaid amount of Rs.13,50,000/- to the respondent on the promise that he will pay 2% interest to the petitioner. Subsequently, on account of various defaults by the respondent, the respondent issued a post dated cheque of Rs.12,50,000/- dated 22.8.2016 with an assurance that money would be

returned on or before the said date. The defendant also gave a cash receipt in his handwriting acknowledging receipt of Rs.12,50,000/- from the petitioner as principal amount and also assured that he would pay Rs.25,000/- per month in instalment to the petitioner, as interest.

3. The trial court, however, took the stand that the receipt and the post dated cheque both show that payment is payable by 22.8.2016 and hence the cause of action has not yet accrued in favour of the petitioner. Hence, the trial court directed that the suit be registered as a general suit for recovery in place of a summary suit.

Order 37 rule 1(2) reads as follows:-

“37(1) Courts and classes of suits to which the Order is to apply.-

(2) Subject to the provisions of sub-rule (1), the order applies to the following classes of Suits, namely:

(a) suit 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.”

4. Hence, all the suits which are for money recoverable on a written contract or on a bill of exchange, hundies or a promissory note are subject matter of a summary suit under Order 37 CPC. Perusal of the plaint shows that it is the case of the petitioner that the defendant has violated the terms of the cash receipt whereby he was supposed to pay Rs.25,000/- per month as

interest but has not paid any amount whatsoever. It is also averred that the whereabouts of the defendant are not known and he is absconding. Hence, the contention is that there is a breach of contract on the part of the respondent on account of which the present suit is being filed.

5. For the purpose of consideration as to whether the suit would be under Order 37 only the averments of the plaint are to be taken into account. As per the plaint, the defendant has defaulted and not paid as per the agreement and hence a cause of action has arisen. Whether the petitioner ultimately succeeds is not relevant at this stage. Accordingly, the present suit would be covered by the definition of a summary suit as it is based on a written receipt/agreement. The impugned order to that extent is modified. It is directed that the suit be registered as a summary suit under Order 37 CPC and summons be issued accordingly.

6. Regarding the contention of the petitioner regarding the order passed Under Order 38 Rule 5 CPC, a perusal of the impugned order shows that the aforesaid application is still pending and has not been disposed of. It would be for the petitioner to seek an appropriate relief from the trial court.

7. As the impugned order has been passed in the absence of the respondent or his counsel there will be no reason to serve the respondent.

8. A copy of this order be given dasti to counsel for the petitioner.

9. The present petition is disposed of.

JAYANT NATH, J

AUGUST 04, 2016/n